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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION
OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Pearson
Social Security Appeal Tribunal: Cleveland
Case No: 13/07

1. My decision is that the decision of the social security appeal tribunal in so far as it concerned Rebecca was erroneous in point of law and the decision to such extent, and such extent only, is set aside. I refer the question of the additional requirement for extra baths for Rebecca to a differently constituted social security appeal tribunal who will no doubt bear in mind what I have said in the ultimate paragraph of this decision.
2. This is a claimant's appeal against that part of the decision of the Cleveland social security appeal tribunal, given on 22 September 1986, which confirmed the adjudication officer's decision of 30 July 1986 that an additional requirement for extra baths was not payable in respect of his child, Rebecca.
3. At the material time the claimant was aged 29 years and lived with his wife and four children. He was receiving supplementary allowance of £74.00 and child benefit of £25.40 per week. In December 1985 a weekly addition to benefit was awarded to meet the extra costs of baths to be taken by the claimant's three daughters. He had produced medical certificates at that time stating that the children suffered from enuresis. On 30 July 1986 the additional requirement was withdrawn. The decision of the adjudication officer was that the claimant was not entitled because, although they were incontinent, there was no medical reason why his daughters had to have extra baths resulting from that condition. In addition he took note of the fact that the claimant's general practitioner did not explicitly state that extra baths were needed, merely that he thought the claimant should qualify for assistance with extra baths taken.
4. The claimant appealed against the adjudication officer's decision. The claimant and his wife appeared before the tribunal and his wife stated that her daughter, Alison, was under a psychologist and that she and her sister, Kathryn, had eczema. She produced a certificate from her general practitioner stating that Kathryn needed bathing and bath oil additives and a further certificate stating that Alison needed frequent bathing. At the time of the hearing Kathryn did not have eczema. The case for the claimant was then made that the doctor stated bathing was needed on a daily basis and that the award based on the original medical note should not have been changed. The adjudication officer's case was that the bathing did not alleviate the condition and was only required for hygienic purposes. The members of the tribunal in their findings of fact found that three of the children Alison, Rebecca and Kathryn were bed wetters. Alison and Kathryn sometimes suffered from eczema, but all were otherwise in good health although Alison was under a psychologist. In the reasons for their decision the members of the tribunal accepted the evidence in respect of Alison and Kathryn that they were bed wetters and suffered from time to time from

eczema. In their view the effect of bed wetting and urine on the children's bodies could aggravate the eczema and both Alison and Kathryn should have a bath each day. They were of opinion that Rebecca's case was different from that of her sisters because she was no longer a baby, she did not suffer from eczema and she was in good health and had no problems other than bed wetting. They examined the evidence of the doctor that urine was a skin irritant but this in their view referred to the effect on the skin of babies. Rebecca was not a baby. They had regard to the doctor's reference to the psychological effect of going to school smelling of urine, but thought that she could properly and adequately be sponged down, if she suffered an episode of bed wetting at night and all the urine could thus be removed before going to school. In the view of the tribunal there was no medical ground which would justify a payment in respect of Rebecca.

5. It is conceded by the adjudication officer now concerned both that the children Alison and Kathryn suffered from eczema and there was evidence that this condition may be helped by frequent bathing, and he accepts that this is sufficient to satisfy the term "medical grounds" as used in paragraph 11 of Part II of Schedule 4 to the Supplementary Benefit (Requirements) Regulations. He submits, however, that the tribunal should have considered whether a bath within the meaning of paragraph 11 was needed more than weekly on medical grounds or whether some other means of cleaning, such as sponging down, was sufficient in the case of these two children. I do not accept this as a valid criticism of the tribunal's decision. It seems to me that the distinction between a bath and some other form of washing, such as sponging, was clearly in the minds of the members of the tribunal. I would not accept that their reasoning was limited only to the desirability of bathing as distinct from need on medical grounds.

6. I now turn to the case of Rebecca. The members of the tribunal found that she was in good health and had no problem other than bed wetting. They further found that she was no longer a baby (she was 5 years of age at the material time). She did not suffer from eczema. They had regard to the medical evidence and said in respect of it that the opinion of the doctor was that urine is a skin irritant but that he referred to its effect on the skin of babies, however, in their view Rebecca was not a baby. They were of opinion that the psychological effect of going to school smelling of urine would not arise because the child could be sponged down to remove the urine.

7. Paragraph 11 of Part II of Schedule 4 to the Supplementary Benefit (Requirements) Regulations provides for the circumstances in which additional requirements for baths are appropriate and in so far as it is material to the appeal before me it is as follows:

"11. Person who on medical grounds needs more than one bath a week."

The test is whether the baths are needed on medical grounds. Such need may arise because the treatment of a person's medical condition requires baths. There was evidence in the instant case that Rebecca was enuretic but did that condition require treatment or healing by way of baths? It did not. Of course medical grounds are wider than that. Such can, also, relate to a case where a patient has to be clean because of what occurred as a result of his condition and where failure to bath, to cleanse him in that way, will aggravate his existing medical state or cause some other medical condition such as eczema. In the instant case there was no evidence that the child suffered from eczema, but the tribunal did go on to consider whether the effect of the urine passed during the nocturnal enuresis might be to give rise to skin infection and the members decided on the medical evidence that such was not the case. However there is a point arising from this which causes me concern. The tribunal appear to have disposed of this question on the basis that Rebecca was not a baby, and as if the doctor's report referred to the effect of urine on the skin of babies only. I set out the material part of the report:

"Further to my letter in regard to enuretics and the necessity of daily bathings I would like to stress that skin conditions and irritations would be very likely if daily bathings

were not carried out. Urine is a skin irritant and this is well demonstrated in babies where nappy rashes are extremely frequent. I think this point alone makes it clear that bathing in the enuretic patient on a daily basis is important:

1. Because it is psychologically upsetting to work with people or to be at school with other children when one smells of urine. I do not think this fact could be disputed.

2. Because the irritant effect of urine as exemplified in the baby with a nappy and urine poultice, as it were, is highly susceptible to fungal rashes in the groin and to general skin irritation."

It is clear I think from the report that the doctor's opinion is that urine is a skin irritant and that this is "well demonstrated" and "exemplified" in the case of babies, but it does not appear to me that he was limiting the risk to babies. Again the report of the doctor would appear to suggest that there is a need on medical grounds for a daily bath, and this is certainly stated in the earlier letter of 8 August 1986 in which a daily bath is spoken of as a necessity and because otherwise the child will be upset emotionally if he mixes with other children when smelling. I have asked myself why the tribunal rejected the doctor's evidence, particularly the part which refers to the fact that skin condition and irritations will be very likely if daily bathing was not carried out. It is a question to which no answer is provided by the record. It seems to me that the failure of the tribunal to consider this evidence, or in any event the failure to record the reason for rejecting it, constitutes an error of law upon which I must set aside the decision. I do so with some sympathy for the members of the tribunal because I think they gave considerable thought to their decision.

8. The differently constituted social security appeal tribunal to whom the case is referred will have to consider whether Rebecca on medical grounds needs more than one bath a week and when doing so will bear in mind what I have said in the course of this decision. If the adjudication officer wishes to contest the medical evidence then no doubt he will ensure that a medical report from one of the doctors in the Department of Health and Social Security is submitted to the tribunal.

(Signed) J J Skinner
Commissioner

Date: 23 September 1987