

MJG/SH/6

Commissioner's File: CSB/204/1990

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 13 February 1989 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to an entirely differently constituted social security appeal tribunal: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a single woman aged 31 at the relevant time, living with her two dependent children, then aged 11 and 4 respectively. The appeal is against the unanimous decision of the social security appeal tribunal dated 13 February 1989 which was dealing with the claimant's appeal from a decision of the local adjudication officer to the effect that the claimant was entitled to £79.07 per week supplementary benefit from 12 October 1987.

3. The tribunal considered the various items that were in dispute viz a dietary addition for the claimant's son aged 11; a laundry addition; and a heating addition because of the claimant's son's asthma. They allowed the appeal in part and gave as their decision,

"To revise the decision of the Adjudication Officer and award an additional requirement for heating at the lower rate of £2.20 per week to be back-dated to the date of claim on 15 October 1987. Her weekly entitlement was therefore £79.72 per week."

4. The claimant has appealed to the Commissioner from that decision, principally on the ground that the tribunal held that there must be set-off against any sum due under the tribunal's

award an overpayment of £1 per week which had been made throughout the period of entitlement to the claimant because "available scale margin was not deducted from her entitlement" (paragraph 14 of local adjudication officer's submission to the tribunal). However in point of fact that is correct as is demonstrated by the written submission dated 2 October 1990 of the adjudication officer now concerned, referring to section 53(5) of the Social Security Act 1986 and regulation 5(1) of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1987.

5. However, in that submission, the adjudication officer supports the claimant's appeal on the following grounds (paragraphs 3 and 4 of the written submission of 2 October 1990),

"In my submission the tribunal's decision is erroneous in law in so far as it relates to the issue of diet. In her grounds of appeal to the Commissioner the claimant states that she provided medical evidence from her GP and from the doctor at the hospital where her younger son was a patient. As no mention is made of this in the notes of evidence, I am unable to comment upon the relevance of this. However, the claimant's evidence to the tribunal was that she said her child suffered from asthma and bronchitis, he was hyperactive, had to avoid artificial additives and was very fussy about food. In their reasons for decision the tribunal state that there was no evidence. In my submission this leaves the claimant in the dark as to why her own evidence failed to satisfy them and I submit, therefore, that their decision fails to comply with the requirements of regulation 25(2)(b) of the [Social Security (Adjudication) Regulations 1986]."

Although it is clear to me that the tribunal took care with this case, I consider that the adjudication officer's submission is correct on this point. That therefore involves my setting aside the entirety of the decision of the social security appeal tribunal, it not being possible to sever one decision into parts.

6. As evidence needs to be taken and factual matters considered anew, this is not appropriate case for me to give a decision myself. I therefore remit the case for rehearing and redetermination to an entirely differently constituted social security appeal tribunal. Their task will be to re-examine all the elements involved in the calculation of the claimant's supplementary benefit for the relevant period and to arrive at their own conclusion upon them. They will not be confined to the question of diet on which I have had to set aside this decision.

Moreover they are not in any way bound by the decision of the earlier tribunal eg. to award an additional requirement for heating. All factual matters are entirely within the competence of the new tribunal.

(Signed) M.J. Goodman
Commissioner

(Date) 27 January 1992