C.A.R.G.

MH/1/LM **Commissioner's File:** CSB/270/90

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that this appeal must be dismissed. The claimant was not in February 1988 entitled to the whole cost of a special diet under paragraph 14(e) of Part II of Schedule 4 to the Social Security (Requirements) Regulations 1983, nor was she entitled to backdate such a claim to her 16th birthday, 9 December 1984.

2. The claimant was born on 9 December 1968, and at the material time was living with her family. She claimed supplementary benefit on 16 February 1988 because she had ceased college due to sickness, and was not yet claiming any national insurance benefits. She had been in full-time non-advanced education until June 1987. Supplementary benefit was awarded from 17 February 1988, but did not include any amount as an additional requirement for a special diet. She had stated in her application she was suffering from "post viral syndrome". After some further correspondence and telephone calls by the claimant's mother and other persons on her behalf, a formal decision was given by an adjudication officer on 2 March 1989. The material part of such decision was that the claimant was entitled to a sum of £1.65 per week under paragraph 14(b) of Part II of Schedule 4 of the Requirements Regulations, but not under paragraph 14(a) or 14(e). She was not entitled to have her claim backdated to 1984 because she had not proved that throughout that period she was so severely disabled that continuous good cause was proven.

3. The claimant appealed to the Burnley social security appeal tribunal, which heard the appeal on 19 March 1990 the claimant was not present, but her mother gave evidence on her behalf explaining about her condition, and the diet which she had adopted. The chairman recorded a lengthy note of evidence, which included submissions made on behalf of the claimant. Lengthy findings of fact were recorded including the finding that the claimant had been diagnosed as suffering from

post viral syndrome/myalgic encephalomyelitis (ME). As to findings on other aspects of the case, those relevant will be discussed further below. The appeal tribunal decided that the appeal did not succeed. They found that good cause for a late claim had not been established, and, further, that they did not accept that the claimant had in fact been consuming a special diet.

4. The claimant now appeals with leave of the Commissioner. I held an oral hearing in London, at which the claimant was represented by Mr K. Cutts, welfare rights office, Lancashire County Council, and the adjudication officer was represented by Mr Jenking-Rees, of the Solicitor's Officer DSS.

5. Mr Cutts made submissions under three general headings, that the record of the appeal tribunal was incomplete, that there had been an insufficient statement of facts in that record, and that no adequate reasons had been given. As to the incompleteness of the record, the first point he made was that a letter from him to a Dr Downing, and its reply, relating to the client's condition and diet, had not been expressly referred to in the record of the appeal tribunal. However in the notice of appeal from the decision of the tribunal, drawn up by Mr Cutts, it is expressly stated that both these documents were handed to the tribunal at the hearing, in view of the length of the written parts of the decision of the tribunal, I do not think the absence of these references has any material significance, and certainly does not amount to an error of law. He next complained of an obvious mis-statement of the date from which the backdating claim was being made, in the note of evidence. It is clear to me that this was a slip, since in the tribunal's reasons for decision the correct date of 9 December 1984, the claimant's 16th birthday, is given. Mr Cutts next referred to a sentence in the note of evidence which appeared to show that a Dr Dawes had referred to a diet in a letter from her, when she had not. My conclusion is that this is a trivial matter, which also does not amount to an error of law on the part of the tribunal. Finally under this head, he referred to a list of foods said to have been consumed by the claimant as having been put forward by Mr Cutts, according to the note of evidence. In truth, this had been drawn up by the claimant's mother, and Mr Cutts had arranged for it to be typed out. It appeared in its typed form in the Commissioner's file at pages T13-15. Again, I do not consider this point even relates to any error committed by the chairman in making a note, and it certainly does not amount to an error of law. The conclusion under this head, none of the matters put forward on behalf of the claimant amount to any error of law.

6. The first complaint made on behalf of the claimant in relation to the statement of facts complains of a mis-statement of the age at which the illness of the claimant began. However this mis-statement is merely in the summary of facts in the submission made by the adjudication officer in writing to the appeal tribunal. There is no suggestion that the mistake was in fact adopted by the tribunal, who in my view seem to have a perfectly good idea of the material dates in the case. The next

matter was a complaint about the finding of the tribunal that they did not accept the evidence of the claimant's mother that she had followed the diet suggested by the mother. He said that reasons ought to have been given for this finding. The full text of the relevant finding is:

> "5 The evidence is not clear but in or about 1987 (when the appellant was 17) she was given medical advice to follow a "special diet", although there was no clear evidence before us as to what was then meant as "special diet". For example she was never given a diet sheet. She was apparently advised to avoid certain foods to which she had shown some allergic reaction and to have a high protein diet.
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> 6 The appellant's mother gave evidence that this diet had been followed by the appellant since 1987 and involved the appellant eating four very substantial cooked meals each day and that details were shown on appendix K on the documents produced to us. We gave careful consideration to the evidence of the appellant's mother but having seen and heard her we do not accept her evidence that the appellant did follow the diet as suggested by her mother."

In the circumstances of the present case, my conclusion is that there was no need to give any further reasons for a conclusion reached by the appeal tribunal. Having regard to the length of the findings, and the other contents of the record of the appeal tribunal. I do not consider that there was any error of law in their coming to their conclusion, which was fully open to them on the evidence which was given to them. The next point under this heading was that there were three letters which should have been expressly dealt with in the decision, being the two letters already referred to, those to and from Dr Downing, and the further note from a GP whom she went to in 1989. Again in the circumstances of the present case, I do not consider that a failure to refer to these letters expressly in the decision was in any way an error by the tribunal, and certainly not an error of law. Finally, there is a complaint that more findings should have been made upon the issue as to whether the claimant had good cause for a late claim. In the reasons for decision in relation to this question, the tribunal stated:-

> "We have considered all the authorities to which we have been referred. There was no evidence before us that the appellant had made any enquiries about her entitlement to benefit of some sort. She is an intelligent girl and until mid-1985 obviously capable of going out and about for herself and even thereafter capable of attending college and studying for A' levels. She also had a family on whom she could turn to for advice and help in seeking outside advice (as she has since clearly done).
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> She was also very obviously capable, with or without the assistance of her family, of seeking and understanding advice about her entitlement to benefit and we consider

that over the very lengthy period of this late claim - some 3 years 3 months - the appellant should have made enquiries about her entitlement to benefit which she clearly did not.

In all the circumstances we do not find that the appellant had continuous good cause for the delay in making her claim for the period under appeal."

In my judgment, the above passage is a perfectly adequate summary of the relevant factors in the evidence before the tribunal which they have set out in an acceptable manner, and which fully justify the conclusion at which they arrive. None of the grounds put forward under the heading of insufficient statement of evidence is accordingly accepted as showing any error of law by the tribunal.

7. The third ground of objection put forward by Mr Cutts was under the heading of the failure to give adequate reasons. The first was that the tribunal failed to give full effect to the evidence of the mother of the claimant that it was not until it was appreciated how severe the condition was, and the length of time it would be likely to last that any consideration was made for seeking supplementary benefit. This may have been the case, but I am most doubtful whether it would in any event have been relevant on the question, in connection with which it was raised, whether the claimant had good cause for a late claim. The next point taken was that the tribunal ought not to have approached the two principle issues in the case by first considering whether a case had been established of continuous good cause for a late claim, and then, secondly, considering whether the claimant was entitled to the whole cost of a special diet under paragraph 14(e). I had some difficulty in following the argument put forward by Mr Cutts, but in the end I came to the conclusion that it was not a good argument that the tribunal had been wrong in approaching the case in that way. There were two quite separate issues before the tribunal, both of which had to be decided in any event. They had been identified in the written submission by the adjudication officer before the tribunal, and I am clear that, in the circumstances of this case, the tribunal was entitled to consider the two issues in whatever order appeared to it to be appropriate. This was not a case where the issues raised required them to be considered in a particular order, where, for example, the findings on one question would lead on to be considered under a separate question. A further point under this heading of the argument on behalf of the claimant was that some of the documents, numbered 69-78, relating to a particular form of diet, were not before the appeal tribunal, although they are in the Commissioner's file. In view of the finding of the tribunal that the claimant was not even following a different diet, which had been devised by her mother, and in view of the lack of any evidence that she was following the diet at the above pages, I do not consider that the absence of that document from the bundle before the tribunal, if that indeed was the case, amounts to any error of law.

8. I do not set out paragraph 14 in Part II of Schedule 4 to