Pregnancy diet addition

DGR/FH

Commissioner's File: CSB/285/1985
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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

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 6 December, 1984, in so far as it was concerned with a claim for an additional requirement for a special diet in favour of the claimant's wife, is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be re-heard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the adjudication officer, brought with my leave, against the decision of the social security appeal tribunal of 6 December, 1984. That decision was concerned with two claims, one for an additional requirement for heating, the other for an additional requirement for a special diet in favour of the claimant's wife. The present appeal is only concerned with the latter claim.

3. On 6 September, 1984 the claimant, who was at that time on strike and was caught by the provisions of section 8 of the Supplementary Benefits Act, 1976, and in consequence received by way of supplementary benefit a lower payment than would otherwise have been the case, requested a review of the amount of his award so as to include additional requirements in respect of heating and a special diet for his wife, who was then pregnant. As explained above I am only concerned with the latter claim. The adjudication officer reviewed the award but declined to revise it.

4. In due course, the claimant appealed to the tribunal, who in the event, as regards the matter with which I am concerned, found in favour of the claimant. They made the following findings of fact:-

> "On the basis of a reasonable diet for a pregnant woman [the claimant's wife] was not receiving anything like an adequate diet and was suffering from malnutrition in pregnancy".

They gave as the reasons for their decision the following:-

> "[The claimant's wife's] diet which was all that could be afforded was insufficient for her needs as a pregnant woman and her history subsequent to the birth supports this".

5. I am afraid that the tribunal's sympathies induced them to disregard their duty to apply the relevant statutory provisions. Regulation 13(3) of the Supplementary Benefit (Requirements), Regulations 1983 reads as follows:-

> "(3). No amount shall be applicable under Part II of Schedule 4, other than paragraphs 12, 14(a), (d) and (e) and 17, where any member of the assessment unit is a person affected by a trade dispute".

The relevant sub-paragraphs of paragraph 14 of Schedule 4 provide as follows:-

> "14. Person who needs a special diet because he -
>
> (a) suffers from diabetes; a peptic, including stomach and duodenal, ulcer; a condition of the throat which causes serious difficulty in swallowing; ulcerative colitis, a form of tuberculosis for which he is being treated with drugs; or from some illness for which he requires a diet analogous to that required for the other illnesses specified in this sub-paragraph;
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> (d) suffers from renal failure for which he is treated by dialysis; or
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> (e) suffers from a condition, other than one specified in sub-paragraph (a), for which he has to follow a diet which involves extra cost, substantially in excess of the amount specified in sub-paragraph (a) in column (2)".

The sum specified in sub-paragraph (a) was at the relevant time £3.35 (£3.60 as from 26 November, 1984)

6. Manifestly, pregnancy is not in itself an illness, so that the claimant's wife did not fall within paragraph 14(a). Admittedly, pregnancy is a condition, but, in my judgment, it is not the kind of condition envisged by paragraph 14(e). The words "other than one specified in sub-paragraph (a)" make it clear that the kind of condition contemplated is a pathological condition, that is to say, a deviation from the healthy norm which is amenable to medical intervention in the form of the prescription of a special diet of a kind to cure or ameloriate the effects of that condition. Normally a pregnancy is not a pathological condition. Of course, if the pregnancy is ectopic or if there are complications in the form of the presence of pathological conditions, eg a marked increase in the blood pressure, then it will constitute a pathological condition and, in my judgment, fall within paragraph (e). However, in the present case there was no finding to that effect, nor was there any evidence which could have led to that finding. Accordingly, the claimant did not get within paragraph 14 and in consequence the tribunal had no authority to make the award that they did.

7. However, even if the pregnancy of the claimant' wife had been of a pathological kind, it would still have been necessary for the tribunal, before making their award, to decide whether she needed a special diet and if so, whether it involved extra cost substantially in excess of £3.35 (£3.60 as from the 26 November, 1984).

8. Manifestly, a 'special diet' means a diet different from the norm. Although a pregnant woman needs a healthy and nutritious diet, it does not have in any sense to be special. It has merely to be a healthy, normal, well-balanced diet. To the extent that any supplement is required for medical

reasons it would, in my judgment, constitute a proprietary food or substance available under the relevant Health Service Acts and as such should be disregarded in determining whether an additional requirement is needed. The tribunal made no finding that there was a need for a special diet, and this in itself was fatal to an award.

9. Furthermore, even if the claimant had been suffering from a pathological condition and had a need of a special diet, the tribunal would have still been required, before they could have awarded an additional requirement to find that the diet involved extra cost substantially in excess of the relevant statutory amount. The tribunal made no such finding, and this too is fatal to the claim.

10. It follows from what has been said above that I have no option but to set aside the tribunal's decision as being erroneous in point of law. Accordingly I direct that the appeal be re-heard by a differently constituted tribunal who will have regard to the matters mentioned above.

11. I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 3rd August 1995.