

MPAG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that this appeal must be allowed. The case is remitted for reconsideration by a differently constituted social security appeal tribunal.

2. On 19 April 1989 the adjudication officer decided that supplementary benefit was not payable to the claimant at the long-term scale rate. She appealed against this decision to the Liverpool social security appeal tribunal, which heard the appeal on 5 July 1990.

3. It was submitted on her behalf that she qualified for the long-term scale rate of supplementary benefit because she came within regulation 6(e) of the Social Security (Conditions of Entitlement) Regulations 1981. The appeal tribunal dismissed the appeal. The material passage in their reasons for decision was:-

"It was contended on her behalf that she came within Reg.6(e) - at the material time she was asked to supply medical evidence of incapacity she failed to do so - The request was in relation to Reg.6(c) - It appears probable that the claimant regarded the varicose veins as a great inconvenience rather than a disability with the terms of Reg.6(e) - At all material times [the claimant] held herself out as seeking employment and therefore not "disabled"."

"As has already been said Reg.6(c) is not satisfied because the claimant has not proved bodily or mental disablement at the material time the claimant was offering herself as employable. For the like reason Reg.6(e) is not satisfied."

4. The claimant appeals with leave of the chairman of the appeal tribunal. The appeal is supported by the adjudication officer. In the written submission the adjudication officer refers to the contention of the claimant's representative that the tribunal erred in law because they appear to have decided

that regulation 6(e) of the Conditions of Entitlement Regulations was not satisfied as the claimant could not be disabled because she made efforts to find employment. This submission is supported; it is stated that in order to satisfy the conditions of regulation 6(e) it is necessary, amongst other conditions, to have no further prospects of employment by reason of disablement and to have made reasonable efforts to find employment. The argument was therefore supported that by fulfilling one condition of regulation 6(e) the claimant cannot be prevented from satisfying the other conditions. It was submitted that the tribunal appeared to have misinterpreted regulation 6(e) in this respect and that their decision was accordingly erroneous in law. I accept this submission, since the passage quoted above from the reasons for decision clearly show an error in legal argument on the part of the appeal tribunal.

5. A further submission was made on behalf of the adjudication officer that the tribunal further erred in failing to consider whether the claimant's evidence of her age, health and lack of recent work experience was sufficient to constitute disablement for the purpose of satisfying the conditions of regulation 6(u) by analogy to regulation 6(e) of the Conditions of Entitlement Regulations. This submission also seems to me to be correct; on this ground also the decision of the appeal tribunal must be set aside.

6. The appeal is accordingly allowed, and the case submitted for reconsideration by a separate social security appeal tribunal.

(Signed) M Heald
Commissioner

Date: 7 April 1992