

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 the decision of the social security appeal tribunal given on 1 August 1990 is erroneous in point of law and accordingly I set it aside; I remit the case to a new social security appeal tribunal for determination.
2. This is a claimant's appeal against the decision of the Liverpool social security appeal tribunal which decided that he was entitled to a special diet payment of £3.80 from 12 October 1987 but not from any earlier date.
3. I have before me written grounds of appeal prepared on behalf of the claimant by Mr Alan Bornat of the Merseyside Welfare Rights Advice Centre and a submission from the adjudication officer now concerned which supports the appeal.
4. The issue before the tribunal was whether, and from what date, the claimant was entitled to an additional requirement in respect of a special diet. The tribunal found as fact that the diet followed by the claimant was analogous to that required for ulcers but they found that there was no justification for backdating the claim to 1983 (because they thought that a valid claim had not been made in that year). It is common case before me that the decision as to backdating is erroneous in point of law; both because the tribunal failed to give adequate reasons for their decision relating to this aspect of the case and because they were under the impression that in all circumstances a formal claim must be made for the diet addition. The adjudication officer who is now concerned with the case carefully analysed the difficulties that have arisen concerning the backdating and the new tribunal will derive some assistance from the remarks made by him in his submission to the Commissioner. In addition I direct their attention to CSB/336/1987 and in particular to paragraph 17 thereof.
5. There is a further point. The tribunal found that the diet followed by the claimant was analogous to that required for ulcers. There was a conflict before them as to whether the diet was so analogous. It is not clear why they accepted the

claimant's assertion that it was analogous in preference to the opinion of the medical officer given on behalf of the Department of Social Security. I direct the attention of the new tribunal to what was said at paragraph 11 of R(SB) 3/88.

(Signed) J J Skinner
Commissioner

Date: 16 March 1992