

SP. clothing.

JBM/SH/2/LS

Commissioner's File: CSB/397/1985

C A O File: AO 2769/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Mahima Norris (Mrs)

Social Security Appeal Tribunal: Acton

Case No: 24/08/12

1. My decision is that the decision of the Acton social security appeal tribunal dated 29 January 1985 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the decision of the appeal tribunal confirming the decision of the adjudication officer set out in box 1 of Form AT2.

3. The facts and history of the case are dealt with in paragraphs 1 to 6 inclusive of the submission dated 20 August 1985 on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to in paragraph 7 of the submission dated 20 August 1985 of the adjudication officer now concerned. Nothing is to be gained by my setting out these references afresh here save in so far as I do so below.

Regulation 27(1)(iv) of the Supplementary Benefit (Single Payments) Regulation 1981 provides as follows:-

"27. - (1) A single payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing or footwear and -

(a) the need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -

...

(iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear,"

5. In my judgment the decision of the appeal tribunal is erroneous in point of law in that it fails to comply with regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984. The tribunal have in respect of the items of clothing claimed on 22 October 1984 failed to have regard to the provisions of regulation 27(1)(a)(iv) set out immediately above in this decision. The tribunal could not properly determine the claim for those items by reference to regulation 3(2) alone. It is manifest that the claim was brought on the ground that the claimant's son needed additional vests and jumpers to those already possessed and that the need for such additional items arose on account of the child's asthma and exzema. The tribunal have not recognised that the claim was made for additional items. In consequence they have failed to determine first whether there was a need for additional items and then whether regulation 27(1)(a) applied or if it did not apply whether regulation 30 applied.

6. I turn now to the claims for shoes and slippers. In regard to those claims the tribunal have failed to consider or if they have considered failed to record on the face of the record their reasons for concluding that the child's existing footwear might represent suitable alternatives in terms of regulation 3(2)(b)(ii) of the Supplementary Benefit (Single Payments) Regulations 1981. Guidance in that regard is to be found in decision R(SB)1/84 which lays down that such determination is to be taken not upon any generalised criteria but by reference to the particular circumstances of the individual assessment unit. The tribunal failed to make findings of fact as to those circumstances and to record their reasons for the conclusion drawn from those circumstances.

7. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred to above in this decision. Further they shall consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision. In regard to the claimant's further comments dated 24 August 1985 I would add that all questions of fact are at large before the tribunal to whom I remit this case.

8. Accordingly the claimant's appeal is allowed.

(Signed): J B Morcom
Commissioner

Date: 17 December 1985