

Diet addition.

JBM/SH/16

Commissioner's File: CSB/0451/1986

C A O File: AO 2312/86

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: William Brown

Social Security Appeal Tribunal: Manchester

Case No: 013/04

1. My decision is that the decision of the appeal tribunal is erroneous in point of law. Accordingly I set it aside and substitute the decision that the appeal tribunal should themselves have made namely that the claimant is entitled to the dietary rate addition per week as per paragraph 14(e) of Part II of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 from the date on which the dietary addition was reduced to the lower rate by the adjudication officer's decision of 10 December 1984. Accordingly the relevant decision is reviewed and revised to that extent.
2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer refusing to review issued on 14 February 1985 and set out in Box 1 of Form AT2.
3. The facts and history of the case are dealt with partly by reference in paragraphs 1 to 4 inclusive of the submission dated 18 April 1986 of the adjudication officer now concerned on which the claimant and the claimant's representatives have had the opportunity to comment (and have in fact so commented). No useful purpose would be served by my setting out these matters afresh here. I would however add that pursuant to the claimant's request for an oral hearing, an oral hearing was arranged for 12 February 1987. The Commissioner postponed the hearing in the light of a Tribunal of Commissioners which sat to hear an appeal in CSB/688/1986 on 25 February 1987 of relevance to the instant case. The claimant's representatives were duly provided with a copy of the decision of a Tribunal of Commissioners which was promulgated on 21 April 1987. The claimant's representatives provided further observations dated 14 July 1987 a copy of which observations was provided for information only to the adjudication officer.
4. The relevant statutory references are referred to in paragraph 5 and the provisions of paragraph 14 of Schedule 4 to the Requirements Regulations relevant at the material time are set out at paragraphs 5 and 7 respectively of the submission dated 18 April 1986. No useful purpose is to be gained by my setting out these matters afresh here.
5. In my judgment for the reasons given in this paragraph the decision of the appeal tribunal is erroneous in point of law. In the light of the decision of a Tribunal of

Commissioners referred to above being CSB/688/1986 (promulgated as indicated above after the decision of the appeal tribunal) the appeal tribunal erred in point of law in that the appeal tribunal decided that an award for a special diet can be made under one or more of the sub-paragraphs of paragraph 14 of Part II of Schedule 4 to the Requirements Regulations and the amount awarded shall be the higher or highest amount by virtue of regulation 13(2). In their letter dated 14 July 1987 the claimant's representatives stated "we do not consider it necessary for an oral hearing and would be obliged if the Commissioner would decide this appeal on the papers." Accordingly no further oral hearing was held. There is sufficient evidence before me found by the tribunal to enable me to give the decision that the tribunal themselves should have given. On the facts as found by the appeal tribunal they should have found that the claimant was entitled to a dietary addition in accordance with paragraph 1 of my decision. Paragraph 14(e) provides a dietary addition where a claimant has to follow a diet which involves extra cost, substantially in excess of the amount specified in sub-paragraph (a) in column (2) which at the relevant time was £3.60. What is substantial is a matter of judgment in accordance with the ordinary use of the English language and on the evidence before them and their findings of fact the provision of "substantially" is in my judgment met.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. As the appeal tribunal made adequate findings of fact I exercise my jurisdiction to give the decision that the tribunal themselves should have given. The appeal tribunal did not of course have the benefit of the decision of a Tribunal of Commissioners in CSB/688/1986 which was promulgated after their decision. My decision at paragraph 1 of this decision will require review by the adjudication officer from time to time in the light of changes in "the weekly cost" as provided in paragraph 14(e) of Schedule 4.

7. Accordingly the claimant's appeal is allowed.

(Signed)

J B Morcom
Commissioner

Date: 2 December 1987