

Baths addition - award may be justified if refusal of award likely to give rise to some future medical condition.



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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

Name: ~~XXXXXXXXXX~~

Social Security Appeal Tribunal: Cleveland

Case No: 30/08

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 27 November 1986 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 27 November 1986. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant was represented by Mr P Lewis of the Cleveland Welfare Rights Organisation, whilst the adjudication officer appeared by Mr C Gratwick of Counsel instructed by the Solicitor's Office of the Department of Health and Social Security.

3. On 24 April 1986 the claimant, a married man with four dependent children, who was in receipt of supplementary benefit, made a claim for an additional requirement for baths in respect of two of his children, namely David aged 4 and Lindsay aged 10. The basis of his claim was that the two children regularly wet their beds at night, and in support of his claim he relied on medical evidence. However, the adjudication officer disallowed the claim. In due course the claimant appealed to the tribunal, but in the event the tribunal upheld the adjudication officer, as far as the claim in respect of David was concerned, but allowed an additional requirement for baths in respect of Lindsay.

4. Paragraph 11 of Part II of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No.1399] provides the circumstances in which an additional requirement for baths is appropriate. It reads as follows:-

"11. Person who on medical grounds needs more than one bath a week."

It will be seen that the criterion is "on medical grounds" ie for medical reasons. In my judgment, a medical reason justifying more than one bath a week will occur where the person concerned is either suffering from a medical condition giving rise to such a need, if

the condition is not to be exacerbated, or although not presently suffering from any such condition, he will, if he does not take more than one bath a week, be liable to contract some medical condition.

5. Now, in the present case the tribunal, after reciting the medical evidence, went on to make the following finding of fact:-

"On the medical evidence before us we cannot but find that Lindsay suffers from enuresis, that that is a known medical condition, and that daily baths appear generally to be necessary in the case of those who suffer from enuresis. Although the evidence produced by the appellant stopped short of saying that Lindsay needs daily baths we are prepared to draw that as an inference and to record a finding of fact to that effect. That is Lindsay needs a daily bath by reason of enuresis."

I think that on the evidence the tribunal were fully entitled to reach the conclusion they did with respect to Lindsay, nor did Mr Gratwick oppose this conclusion with any enthusiasm. Although, of course, the appeal to me puts the award in favour of Lindsay in jeopardy, nevertheless I am satisfied that the tribunal did not err in law in granting an additional requirement in respect of Lindsay.

6. However, as regards David the tribunal made the following finding of fact:-

"We neither find that David is enuretic nor that he needs additional baths by reason of any medical condition."

Earlier the tribunal had observed as follows:-

"In the case of the child Lindsay the doctor certifies that she 'suffers from enuresis and has done so since birth'. In the case of the child David, not only does the doctor refrain from making out such a certificate, but observes 'he wets the bed at night quite frequently - this is not unusual in a four year old'."

7. A person can be said to be suffering from a medical condition where such a condition is unusual in the circumstances of the case. Incontinence is not normal in adults or in children beyond a certain age. Where it occurs it is clearly a medical condition. However, in the case of newly born babies and for some considerable time thereafter bedwetting is in no way abnormal. The baby or young child has simply not learnt to control himself. Accordingly, it is not a medical condition. In the present case there was medical evidence before the tribunal that bed-wetting was not unusual in a four year old, and accordingly it could not properly be said that he suffered from the medical condition of enuresis. It follows that the tribunal were fully entitled to reach the conclusion that David was not suffering from any medical condition and hence there was no basis on that ground for an award of an additional requirement. However, that was not the end of the matter. For, as explained earlier, an award may be justified where, although there is no existing medical condition justifying it, nevertheless the refusal of an award is likely to give rise to a future medical condition.

8 Mr Lewis argued that, unless the urine was removed from the person of David, he was likely to incur fungal rashes in the groin together with general skin irritation. Moreover, the removal of the urine could only be properly effected by baths, and these should be on a daily basis. He relied, in particular, on the evidence of Dr W G Conn in his report dated 17 September 1986 and on that of Miss Walters, a retired nursing officer, in her letter dated 21 October 1986. He contended that the tribunal had not applied their mind to this issue, and to this extent they were in breach of regulation 19(2)(b) of the Adjudication Regulations.

9. I agree that there is nothing to suggest that the tribunal did consider this aspect of the

case, or if they did, they certainly made no findings on these issues. Accordingly, I must set aside their decision and direct that the appeal be reheard by a differently constituted tribunal. That tribunal will have to consider whether the failure to remove promptly urine from the person of David would give rise to a medical condition, and if so, whether such removal could only be properly effected by baths. If they decide that David is in need of a bath on a more frequent scale than once a week, they will have to determine how many baths per week he will need and in the light of that determine the amount of the addition.

10. Accordingly I allow this appeal.

(Signed) D.G. Rice
Commissioner

Date: 9 November 1987