

Maternity needs

DGR/BC

Commissioner's File: CSB/492/1985

C A O File: AO 2465/85

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: Louise Elizabeth McCoy

Social Security Appeal Tribunal: Rochdale

Case No: 15/20/11

1. For the reasons hereafter appearing, the decision of the social security appeal tribunal given on 11 February 1985 is not erroneous in point of law, and accordingly this appeal fails.
2. On 30 May 1985 the claimant, who was in receipt of supplementary benefit, made a claim for a single payment for disposable nappies. On 31 May 1984 the adjudication officer disallowed the claim on the ground that the claimant did not satisfy the conditions of regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981.
3. In due course the claimant appealed to the tribunal who in the event upheld the adjudication officer's decision. The tribunal appear to have found more than one ground for disallowing the claim, but without considering any other grounds on which the tribunal relied it is enough for me to say that the tribunal were satisfied that the case fell within regulation 6(2)(n) and were right to conclude from this that the claim must necessarily fail.
4. The claimant had produced a medical certificate from her doctor certifying that her daughter Alison was "allergic to nappy cleaners and requires to use disposable nappies". Unfortunately for the claimant regulation 6(2)(n) provides as follows:

"6(2) Notwithstanding any provision in these regulations, in particular regulation 30, no single payment shall be made in respect of any of the following:-

.....

'a medical, surgical, optical, aural or dental need".

Manifestly, the daughter's condition was an allergy, and accordingly the need for disposable napkins was a medical need. As is clear from regulation 6(2)(n) such a need is fatal to the claim. In reaching this conclusion the tribunal in no way erred in point of law.

5. However, the adjudication officer now concerned has submitted that the tribunal should have gone on to consider, pursuant to their inquisitorial role, the possibility of a claim for an additional requirement, and that their failure so to do constitutes a breach of regulation 19(2)(b) of the Adjudication Regulations. In my judgment, they were not required to consider anything so futile. There is no provision in Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 or anywhere else permitting payment of an additional requirement in respect of disposable napkins. Accordingly, the tribunal's failure to refer to the matter is only what would be expected of a tribunal acting in a sensible fashion. They are not expected to deal with untenable propositions, particularly when they were never put forward in the first place.

6. Accordingly, I do not see in what respect it could be said that the tribunal erred in point of law, and I have no hesitation in dismissing this appeal.

(Signed) D G Rice
Commissioner

Date: 10th October 1985.