

file

Maternity needs

IDENTIFIED DECISION
NOT TO BE TAKEN OUT OF
THE DEPARTMENT

27

DB/HD

Commissioner's File: CSSB/33/85
C.A.O. File: AO 9382/84
L.O: Aberdeen North
L.O. Ref. No: 211/184246

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO COMMISSIONER 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 dated 15 October 1984 in so far as it dealt with the claimant's claim for disposable napkins is erroneous in point of law and is therefore set aside. The decision which the tribunal should have given was that the claimant was not entitled to an additional requirement in respect of disposable napkins having regard to the relevant provisions of the Supplementary Benefit (Requirements) Regulations 1983.

2. This appeal is concerned with a claim made by the claimant for an additional requirement for disposable napkins for her younger daughter. The local adjudication officer and, after an appeal by the claimant, a social security appeal tribunal decided that the claimant was not entitled to an additional payment in respect of disposable napkins. The claimant applied for leave to appeal to a Commissioner on a question of law against the tribunal's decision which was dated 15 October 1984. The chairman of the tribunal granted that application. I am now concerned with the appeal. The claimant requested an oral hearing in connection with the appeal, but I have decided that the appeal can properly be determined without an oral hearing.

3. The claimant's claim for disposable napkins was made in July 1984. The claimant stated that her younger daughter was allergic to towelling napkins and that she had to resort to disposable ones which involved her in additional expense. It is clear in my view that what the claimant was making was a claim for an additional requirement in respect of disposable napkins.

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4. Under section 1(3) of the Supplementary Benefits Act 1976 it is provided that the requirements of any person to be taken into account for the purposes of the said 1976 Act do not include any medical, surgical, optical, aural, or dental requirements. The said statutory provision also lays down that regulations may provide that the requirements which by virtue of that statutory provision are not included in a person's requirements include or exclude prescribed requirements. Regulation 11 of the Requirements Regulations provides as follows:-

"11. - (1), The items to which the category of additional requirements relates are those for which provision is made in Schedule 4.

(2)

(3) The requirement which by virtue of section 1(3) (exclusion of medical, surgical, optical, aural and dental requirements) are not included in a person's requirements exclude the items to which paragraphs 1, 10, 11 and 14 of Schedule 4 relate".

As above stated the claimant maintains that her younger daughter requires disposable napkins on account of an allergy. I agree with the adjudication officer now concerned with the case that that requirement falls to be regarded as having arisen due to a medical condition. In this connection I agree with the adjudication officer now concerned with the case that there is no provision in Schedule 4 to the said Requirements Regulations which would warrant payment of an additional requirement in respect of disposable napkins. In particular I agree that paragraph 20 of Part II of Schedule 4 of the said regulations does not assist the claimant.

The tribunal in question reached their decision on the basis that the claimant's claim was a claim for a single payment under the Supplementary Benefit (Single Payments) Regulations 1981, and they decided that regulation 6(2)(n) of the said regulations which came in operation on 5 November 1983 precluded any payment in respect of disposable napkins. In fact the claimant's claim was not for a single payment but was clearly for an additional requirement. The tribunal reached in my view the correct decision, but they reached it by applying the wrong regulations.

I agree with the adjudication officer now concerned with the case that the tribunal did not comply adequately with regulation 19 of the Social Security (Adjudication) Regulations 1984, and that for that reason the tribunal's decision must be set aside. The facts, however, are in my view not in dispute, and I have therefore given in paragraph 1 above the decision which the tribunal should have given.

8. The claimant's appeal is disallowed.

(signed) Douglas Reith
Commissioner
Date: 24 April 1985