

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

IDENTIFIABLE DECISION

Social Security Appeal Tribunal:

NOT TO BE SENT OUT OF THE DEPARTMENT

Case No:

1. My decisions are that (a) the decision of the appeal tribunal of 25 November 1985 is erroneous in point of law and is set aside and (b) the original decision of the adjudication officer is confirmed.
2. The claimant and his wife were discharged from hospital in May 1985 and took up residence at "C". He claimed a supplementary allowance. On 30 July 1985 an adjudication officer gave this decision "Supplementary Allowance of £215.75 determined and paid weekly from the pay-day (Thursday) in week commencing 5.8.85." The claimant's daughter and son-in-law appealed on his behalf from this decision to the appeal tribunal. On 25 November 1985 the tribunal allowed the appeal. The claimant was unable to attend the hearing. However his daughter and son-in-law attended on his behalf. The tribunal recorded the following findings "1. That since May 1985 the appellant and his wife have been residents at C. Home following their discharge from Llandough Hospital. 2. This home is Registered as a Residential Care Home for the Elderly and is Registered under the Registered Homes Act 1984 for persons in need of personal care." and gave these reasons for their decision "Under the SB (Requirements) Regulations 1983 para 3 - the entitlement of the appellant is to be found in para 2(d) ie for his wife who is suffering from a terminal illness £198.60 per week and in his case £138.60 per week, less any attendance allowance payable." The adjudication officer has now appealed to the Commissioner on a question of law having been given leave to do so by me.
3. It has been submitted, and I accept, that what the tribunal had to determine was the maximum amount payable to the claimant in respect of the accommodation occupied by him and his wife at "C". I am satisfied that this involved the application of the provisions of Schedule 1A of the Requirements Regulations in force at the relevant time which are set out in the appendix to this decision.
4. In his submission to the Commissioner the adjudication officer has contended that paragraphs 3 and 5 are not applicable and that "where the accommodation provided for the claimant is a residential care home for persons in need of personal care by virtue of old age the appropriate amount shall be £110 per week." that is to say the claimant's entitlement

had to be determined by reference to paragraph (1) (headed "Residential care homes") (1)(a) of the Schedule in view of the tribunal's finding of fact in relation to "C" namely that "This home is Registered as a Residential Care Home for the Elderly and is Registered under the Registered Homes Act 1984 for persons in need of personal care." He went on to submit that "the decision of the tribunal to award £138.60 maximum in respect of [the claimant] and £198.60 maximum in respect of [the claimant's wife] was erroneous in law." and that in awarding such amounts "the tribunal have decided that the accommodation provided for [the claimant and his wife] is a nursing home for persons in need of personal care by virtue of terminal illness and any other condition not previously listed." that is to say that they decided that they were entitled to determine entitlement by reference to paragraph 2 (headed "Nursing homes") (e) and (f) whereas "the accommodation is clearly not a nursing home for such people, rather, it is registered as a residential care home for persons in need of personal care by virtue of old age." He maintained that "on the evidence before them and on the facts found no person acting judicially or properly instructed as to the law could have come to the decision made by the tribunal." I have very reluctantly come to the conclusion that each one of the adjudication officer's contentions is well founded for the reasons he has given and that accordingly I have no alternative other than to hold that the tribunal's decision is erroneous in point of law and is set aside. I can well understand why the tribunal came to their decision. They had evidence before them to the effect that the claimant was aged 87 years, suffered from angina and deep depression and had to stay indoors and that his wife was aged 86 years had a colostomy and suffered from cancer and was also very frail. In addition they were informed at the hearing that she "needed constant medical care and there was an SRN working at "C"". It has been pointed out subsequently that she was in fact given this care. However the tribunal also had before them the information provided by the "proprietress" of the home "C" to the local office of the Department of Health and Social Security following an enquiry made on 14 August 1985. She stated that "The Category of care which applies to [the claimant and his wife] is OLD AGE" and that "THE HOME IS REGISTERED AS A RESIDENTIAL CARE HOME FOR THE ELDERLY" and added that it had been registered with the local authority since 18 April 1985. The finding of fact made by the tribunal was clearly based on this information. The adjudication officer has submitted that there are sufficient findings of fact to enable me to substitute my decision for that made by the tribunal. I accept that this is so and consider it expedient to give the decision the tribunal should have given. My decision is therefore that set out in paragraph 1.

5. The adjudication officer's appeal is allowed.

(Signed) E Roderic Bowen
Commissioner
Date: 12 March 1986