

*Claimant must have opportunity of commenting on what was said by medical assessor. So it was error of law for medical assessor stayed behind to "proffer any relevant medical evidence".*

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Stephen Parsley

Social Security Appeal Tribunal: Haverfordwest

Case No: 1/6

1. I set aside my decision of 28 November 1985 and determine the claimant's appeal from the decision of the social security appeal tribunal of 19 July 1985 afresh. My decision is that the decision of the social security appeal tribunal of 19 July 1985 is erroneous in point of law and is set aside.

2. On 28 November 1985 I decided that the decision of the social security appeal tribunal of 19 July 1985 relating to the claimant's entitlement to a single payment for a refrigerator was not erroneous in point of law. Since then there has been a development which, in my judgment, gives rise to the need to look at the case afresh. In his submission to me prior to my decision of 28 November 1985 the adjudication officer observed that "the claimant alleges that the medical assessor discussed the appeal with the tribunal without the claimant's presence. It is not apparent from the record of proceedings that this was the case." I accepted that this was so. However following representations by the claimant additional information has become available. It is to the effect that the medical practitioner who sat with the tribunal as a medical assessor remained in the room in which the tribunal was held after the tribunal had heard the evidence and submissions and after he, the claimant, had been told to leave the room and had done so. The chairman of the tribunal has stated that the assessor did so "to enable him to proffer any relevant medical advice". However the chairman has also stated that the assessor was not present when the tribunal, in the absence of the claimant, carried out their deliberations in the case. The question which arises is whether in the light of this information the decision of the tribunal of 19 July 1985 should be held to be erroneous in law. I consider that it is far from being an easy matter to determine.

3. I have no doubt that the chairman of the tribunal acted in good faith throughout and that what he has stated is accurate. Regulation 18(5) of the Adjudication Regulations provides that "(5) An assessor sitting with an appeal tribunal as aforesaid shall not take any part in the determination or decision of that tribunal except in an advisory capacity." I am satisfied that what occurred does not amount to a failure to obey what is laid down in this provision. In Decision R(I) 14/51 the learned Commissioner observed that "It is usually desirable that before the tribunal begin to deliberate on their decision the Chairman should summarise briefly the effect of any advice given to the tribunal by the medical assessor and should give the claimant and insurance officer (if present) an opportunity of commenting on that advice if they desire to do so." There is no suggestion

that this course was followed in the present case. It is unfortunate that it was not followed in view in particular of the fact that the claimant has made it clear that he regards with great suspicion "what occurred during my own appeal behind closed doors" (see his letter dated 7 February 1986). It may be argued with some force that while a failure to follow this course is unfortunate and undesirable it does not give rise to an error in law. However in my judgment a tribunal is required to act in such a way as to exclude the possibility that the assessor tendered advice to them which was not made known to the claimant and which he did not have an opportunity of criticising or commenting on. The information before me as to what occurred does not enable me to exclude this possibility. Accordingly I hold, after some considerable hesitation, that what occurred amounted to a breach of the requirements of natural justice. I am satisfied that I have the power to set aside the decision of 28 November 1985 (see paragraph 5 of Decision R(S) 6/83) For the reasons I have given I set aside that decision and the decision of the appeal tribunal of 19 July 1985. Unfortunately it is not expedient in the circumstances for me to give the decision the tribunal should have given. I therefore refer the case to yet another tribunal whose constitution is entirely different from that of the tribunals of 5 December 1984 and 19 July 1985. Should the chairman of this tribunal determine that a medical practitioner should sit with the tribunal as an assessor then the tribunal should be supplied with a copy of this decision in the hope that it may assist them in performing their task.

4. The claimant's appeal is allowed.

(Signed) E Roderic Bowen  
Commissioner

Date: 11 February 1986