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Commissioner's File: CIS/11139

Region: Midlands

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the unanimous decision of the Wolverhampton social security appeal tribunal given on 4 July 1988 is not erroneous in point of law.
2. The claimant appeals with leave of the chairman of the tribunal against the decision of the tribunal confirming the decision of the adjudication officer, issued on 5 February 1988, that the claimant was not entitled to a higher pension premium from 11 April 1988. The tribunal also dealt with the claimant's appeal against a refusal of a single payment, but he is only appealing against the decision regarding the higher pension premium and this decision is accordingly only concerned with that.
3. At the material time which, it is clear from the adjudication officer's decision, was the date upon which the provisions of the Social Security Act 1986 relating to Income Support came into force, 11 April 1988, the claimant was aged 61, his wife was 63 and they were living together in a house owned by them. The claimant has, as I understand it, not been employed since his former employers went into liquidation in 1982: initially he registered for employment on a three monthly basis but in 1987 he elected not to register and thereafter received supplementary benefit and a pension from his former employers. It is plain from the claimant's letters in the papers that neither the claimant nor his wife are in good health and, indeed, that he has undergone surgery for cancer in 1982 and 1986 and has a colostomy. Prior to 11 April 1988 the claimant was sent details of the way in which his income support had been calculated. I presume that is the case because the copy of form AT2A(1988) is neither dated nor, I believe, complete, but it would seem self-evident that the claimant must have been aware of the calculation, and have objected to it, in order for the adjudication officer to have issued his decision on 5 February 1988 that he was not entitled to higher pension premium. The claimant maintains that he is so entitled.
4. The law is complicated and is fully set out in the adjudication officer's submission to the tribunal. In summary, it is clear that someone of the claimant's age and circumstances who, prior to 11 April 1988, was in receipt of supplementary benefit is entitled to income support which includes both a pensioner premium and a transitional addition; that is not in dispute and it is therefore not necessary for me to go into any detail. By virtue of regulation 17(d) of the Income Support (General) Regulations 1987 the amount of any premium is to be determined in accordance with Parts III and IV of Schedule 2 to the regulations. Part IV sets out the weekly amounts payable under Part III so only falls to be considered if the claimant establishes an entitlement other, of course, than his agreed entitlement to a pensioner premium (paragraph 9 of Part III). The conditions of entitlement to Higher Pensioner Premium are contained in paragraph 10. The only category possibly applicable to the claimant is that contained in paragraph 10(1)(b)(i), namely that -

"(b) he is aged less than 80 but not less than 60, and

- (i) the additional condition specified in paragraph 12(1)(a) or (c) is satisfied ... "

Paragraph 12(1)(a) and (c) provide in so far as they are relevant that -

"12.(1) ... the additional condition referred to in paragraph 10 ... is that either -

- (a) the claimant or, as the case may be, his partner -

- (i) is in receipt of one or more of the following benefits: attendance allowance, mobility allowance, mobility supplement, invalidity pension ... or severe disablement allowance ... or

- (ii) is provided ... with an invalid carriage ... or

- (iii) is registered as blind ...

.....

- (c) the claimant or, as the case may be, his partner was in receipt of either -

- (i) mobility allowance or invalidity pension ... or

- (ii) attendance allowance ... "

5. For the sake of clarity and because the claimant says that he is not "well versed in the art of complicated laws" and could hardly be expected to be, I have abbreviated the relevant paragraphs but I have not, I hope, distorted their essential meaning. I also hope that it will now be apparent to the claimant that neither he nor his wife, despite their ill health, come into any of the categories of paragraph 12(1)(a) or (c). It follows that when the tribunal found and gave as their reason for their decision that -

"... the appellant does not satisfy the additional conditions specified in paragraph 12(1)(a) or (c) ... In particular, the appellant was not in receipt of any of the relevant qualifying benefits, and does not satisfy any of the other conditions contained in that paragraph",

they were correctly interpreting and applying the law. In these circumstances I have to agree with the submission dated 18 April 1989 by the adjudication officer now concerned with the case that the tribunal did not err in law.

6. The claimant clearly feels that his health should entitle him to some additional payment. For completeness I have therefore considered whether any other paragraph of Part III could assist the claimant. Unfortunately for the claimant, paragraphs 11 and 12 (Disability Premium) and paragraph 13 (Severe Disability Premium) contain the same qualifying conditions that the claimant must be in receipt of attendance allowance or some other benefit.

7. The law, although involved, is in my view perfectly clear and, as the tribunal had, I have a duty to apply the law as it stands and my natural sympathy for the claimant, or anyone in his situation, cannot alter that. The claimant's appeal is accordingly dismissed.

(Signed) M H Johnson  
Commissioner

Date: 22 May 1989