

SDP Post-Bate (ML)

Commissioner's File: CIS\015\96

**SOCIAL SECURITY ADMINISTRATION ACT 1992**

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name: Mr W Bird on the behalf of Mrs Ivy Bird**

**Appeal Tribunal: Sheffield**

**Case No: 1-08-95-07290**

1. This is an appeal by the adjudication officer against the decision of a social security appeal tribunal, given on 11 December 1995 and relating to entitlement to a severe disability premium pursuant to paragraph 13 of Schedule 2 to the Income Support (General) Regulations 1987.

2. The conditions for entitlement to a severe disability premium include the condition that the claimant should have no "non-dependants" residing with him/her: see paragraph 13(2)(a)(ii) of Schedule 2 to the 1987 Regulations, and see regulation 3 of those Regulations for the definition of "non-dependent". That definition was materially amended as from 10 April 1989 and was further amended as from various later dates. The tribunal, following *Bate v Chief Adjudication Officer* in the Court of Appeal, awarded the premium to the claimant from 1 December 1984.

3. The House of Lords (16 May 1996) has now allowed the appeal of the Chief Adjudication Officer against *Bate* in the Court of Appeal and the tribunal's decision is, in consequence, erroneous in law. I accordingly allow this appeal, set aside the tribunal's decision and remit the case for re-hearing by a differently constituted tribunal.

4. The new tribunal must have regard to the following -

- (a) *Bate* in the House of Lords has now conclusively established that "jointly occupies" in regulation 3(2)(c) (before the amendment having effect from 9 October 1989) involves a legal relationship between the parties rather than mere factual co-residence. Accordingly, a claimant can no longer succeed by reference to regulation 3(2)(c) for the period 11 April 1988 to 8 October 1989 on the basis of co-residence, as had been decided in *Trotman* and *Crompton*;

- (b) the claimant may be able to establish entitlement to the premium from 10 April 1989 by satisfying regulation 3(2)(d) as amended from that date; the relevant principles are explained in CIS/754/91 (Boddy) and CIS/630/92 (Mistry).
- (c) from 1 October 1990 to 10 November 1991 regulation 3(2)(d) became 3(2)(d),(da) and (db) and to satisfy any of those versions the liability is required to be "on a commercial basis"; that particular matter is dealt with in paragraphs 4 and 5 of CIS/195/91 (*Scarborough*), paragraphs 32 to 34 of the common Appendix to the decision of the Tribunal of Commissioners in CSIS/40/92 and CSIS/28/92 and in paragraph 15 of *Boddy*; (see also CIS/529/94, the decision of a Tribunal of Commissioners given on 13 August 1996, in particular paragraph 8).
- (d) from 11 November 1991 regulation 3(2)(d), (da) and (db) - now to be found in regulation 3(2A)(a), (b) and (c) - do not assist a claimant where the other person in question is a close relative of the claimant or of his or her partner.

5. There may be other reasons which would prevent the claimant from establishing entitlement to the premium for all or part of the period in issue. For example, there is no entitlement if invalid care allowance is in payment in respect of caring for the claimant. The provisions about backdating on review (as to which see CIS/11/91 and R (IS) 10/92) should, as relevant, be borne in mind as also should *Eggleton* in the Court of Appeal and *Bate* in the House of Lords (in relation to section 69 of the Social Security Administration Act 1992). No doubt the adjudication officer in his submissions to the tribunal will seek to identify any reasons which in his view prevent the claimant from establishing entitlement.

6. The adjudication officer should also seek to identify any provision, other than as referred to above, which might possibly give rise to entitlement. Thus, for example if the case is one in which it appears that regulation 3(2)(c) (regulation 3 (2B) with effect from 11 November 1991) might assist the claimant otherwise than on the basis of co-residence, the adjudication officer should deal with this in his submissions. The adjudication officer should also consider whether the claimant might be assisted by the transitional provisions in the Income Support (General) Amendment No. 6 Regulations 1991.

(Signed) S J PACEY  
Commissioner

(Date) 10 September 1996