

Commissioner's File: CIS/25/1988

Region: London North

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 decision of the social security appeal tribunal given on 24 August 1988 is erroneous in point of law and accordingly I set it aside. However, as I consider it expedient to give the decision the tribunal should have given, I further decide that the claimant is entitled to income support at the weekly rate of £1.40 from and including 11 April 1988, and for so long as the claimant's circumstances remain unchanged.

2. This is the claimant's appeal on a point of law against the tribunal's decision given on 24 August 1988 confirming the adjudication officer's decision issued on 4 May 1988, leave having been granted by the tribunal chairman. The claimant asked for an oral hearing of the appeal, a request to which I acceded. At the hearing held before me the claimant attended and was represented by Mr P James and Mr A Salisbury from the Greater London Pensioners' Association. The adjudication officer was represented by Mr R Buckley from the Chief Adjudication Officer's Office.

3. The facts recorded on form AT2 state that the claimant and his wife, both aged 78, live in local authority accommodation. Their rent and 80% of their general rates are covered by housing benefit. Consequently the claimant is responsible for 20% of the general rates and for the water rates. His income consists of income support and retirement pension. The claimant's wife is also in receipt of retirement pension. They have no savings. The claimant was in receipt of supplementary benefit for some years, which was converted to income support on 11 April 1988. The adjudication officer decided that the claimant was entitled to income support combined with retirement pension at the total weekly rate of £45.68. However, the claimant considered that this amount was insufficient to meet his needs and he appealed to the tribunal.

4. In his written observations on the claimant's appeal the adjudication officer set out the relevant law in support of his decision showing how the total weekly sum of £45.68 was calculated.

5. The claimant and Mr Salisbury attended the hearing of the appeal before the tribunal on 24 August 1988. The claimant reiterated his grounds of appeal that he was entitled to the higher pensioner's premium of £18.60 as part of his normal income support applicable amount rather than the standard pensioner's premium awarded. In the event the tribunal dismissed the appeal. The findings of fact read:-

"The facts set out in paragraphs 1-3 of Summary of Facts on form and the claimant's stated grounds of appeal in Box 4 of form AT2 and claimant's evidence in Box 1 were accepted."

The reasons for decision read:-

"The Tribunal accepted paragraphs 5-20 of the Adjudication Officer's submission on form AT2 and their reasons for disallowing the appeal.

We examined the form AT2A (1988) and was satisfied that the claimant had been awarded the correct Income Support at the weekly rate of £45.68 from 11 April 1988."

6. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall record a statement of the reasons for the decision and of the findings on material questions of fact. In the present case the decision failed to comply with the statutory requirements because although the findings state "claimant's evidence in Box 1 were accepted" no reasons are given for nevertheless rejecting the claimant's contentions and confirming the adjudication officer's decision. Further the findings of fact and reasons for the decision give no indication that adequate consideration was given to the relevant regulations. The parties concerned are left in the dark as to why and upon what basis the claimant's claim was rejected. Mr Buckley supported the appeal on this ground.

7. Mr Buckley provided a very helpful and detailed analysis of the relevant law. He explained that the claimant's weekly entitlement to supplementary benefit formed the basis of any calculation for transitional protection purposes under the income support scheme. It was not in dispute that the claimant's combined weekly rate of supplementary benefit and retirement pension was £44.00 prior to 4 April 1988. The calculation included a laundry addition and a heating addition at the higher rate. He also received housing benefit which covered his rent, general and water rates. However, under new Housing Benefit Regulation which came into force on 4 April 1988 the claimant became responsible for 20% of the general rates and all the water rates, although his rent continued to be paid in full. With effect from 11 April 1988 the claimant's supplementary benefit was replaced by income support, pursuant to the Income Support (General) Regulations 1987 [S.I. 1987 No. 1967], which he received at the same rate. However, as during the week commencing 4 April 1988, he was obliged to pay his water rates amounting to £1.45, the claimant's supplementary benefit was increased by £1.38 under regulation 18(1)(a) of the Supplementary Benefit (Requirements) Regulations, 1983 making a total of £45.38 during that one week. He was 7p out of pocket, because no account was taken of any increase in water rate after 31 December 1987.

8. The Income Support (Transitional) Regulations (S.I. 1987 No. 1969) provide that benefit income should be protected for former recipients of supplementary benefit. Protection is awarded in accordance with regulations 9 and 10 of the said Regulations. The principle is that a sum should be awarded under regulation 10 where this is necessary to bring a claimant's benefit income in the first week (week commencing 11 April 1988) to the same level as in the last week (week commencing 4 April 1988) of the old scheme, with the additional proviso that a rate paying claimant, as in the present case, should have from 11 April 1988 an actual increase in income of at least £1.30. This sum is notionally added to the total benefit income for the week commencing 4 April 1988 under regulation 9(4) and is intended to be a contribution towards the ratepayer's liability for 20% of his general rates under the revised housing benefit scheme.

9. In the present case the claimant's total benefit income for the last week of the old scheme (i.e. beginning 4 April 1988) was £45.38 combined supplementary benefit and retirement pension, £23.75 wife's retirement pension and the notional figure of £1.30 for general rates liability making a total of £70.43. Transitional protection under regulation 10 would be due if the total benefit income under the new income support scheme was less than this figure. From 11 April 1988 the claimant's wife's retirement pension was increased to £24.75, so that the claimant's combined retirement pension and income support entitlement needed to be not less than £45.68, being £70.43 less £24.75.

10. Section 20(3)(b) of the Social Security Act 1986 provides that a person in Great Britain is entitled to income support if he has no income or if his income does not exceed the applicable amount. The applicable amounts are determined in accordance with sub-paragraphs (1), (2) or (3) of paragraph (1) of Part I of Schedule 2 to the General Regulations. Under paragraph 1(3)(b) the amount in respect of the claimant and his wife is £51.45. In addition the amount of any premiums which may be applicable to a claimant are determined in accordance with Parts III and IV of Schedule 2. In the present case the adjudication officer determined that in accordance with sub-paragraph 9(b) of paragraph 4

of Part III the claimant was entitled to the standard pensioner's premium amounting to £16.25 specified in paragraph 15(2)(b) of Part IV. Consequently the total applicable amount for the claimant's family was £67.70. As at the material time neither the claimant nor his wife were in receipt of invalidity benefit, I agree with Mr. Buckley that the claimant was not entitled to the higher pensioner's premium as he did not satisfy any of the conditions contained in paragraph 10(2) of Part III for an award.

11. Mr Buckley stated that in the week commencing 11 April 1988 the claimant's retirement pension was £44.28 and his wife's retirement pension was £24.75. As a result the family's combined weekly income was £69.03. As this amount was in excess of the applicable amount of £67.70 there was no entitlement to income support without the benefit of the transitional addition. For the reasons stated in paragraph 9 above the claimant's total benefit income for the last week of supplementary benefit was a total of £70.43. In the week commencing 11 April 1988 the claimant's retirement pension was uprated to £44.28 and his wife's retirement pension was £24.75 so that the total benefit income was £69.03. Under the provisions of regulation 10 of the Transitional Regulations the claimant was entitled to the transitional addition of £1.45, being £70.73 less £69.03. As a result the claimant was entitled to income support of £1.40 paid with his retirement pension at the weekly rate of £44.28, making a total weekly entitlement of £45.68. Consequently the claimant was "out of pocket" by 48p for the week commencing 4 April 1988, and 55p for the week commencing 28 March 1988.

12. Mr James did not dispute that the claimant's entitlement to income support had been correctly calculated in accordance with the relevant law. However he submitted that the tribunal's decision was nevertheless erroneous in law because the decision resulted in the claimant being financially worse off than when he was a supplementary benefit claimant. This result was contrary to the Government's declared policy and was in breach of the rules of natural justice. Unfortunately this argument does not assist the claimant. My jurisdiction is limited to the interpretation of the statutory regulations as they are currently enacted. I have no power to amend them or to apply them in an arbitrary way. Although I have sympathy with the claimant, the right to entitlement to income support is granted by legislation and is subject to the terms and conditions imposed. The right is not absolute.

13. The claimant's appeal is allowed in so far as the tribunal's decision is erroneous in law because it failed to comply with the requirements of the Adjudication Regulations. However, for the reasons set out above I have reached the same conclusion and I give the decision set out in paragraph 1.

(Signed): R.F.M. Heggs
Commissioner

Date: 7 August 1989