

GR/SH/43

Commissioner's File: CIS/44/1989

Region: Wales & South Western

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 21 February 1989 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that as from 14 April 1989 the claimant has been entitled to benefit, consisting of income support, a transitional addition, and invalidity benefit at the rate of £77.99 per week.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 21 February 1989. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant appeared in person, whilst the adjudication officer was represented by Mr P. Buckley of the Chief Adjudication Officer's Office.

3. It is not in dispute that during the "first benefit week", namely the week commencing 4 April 1988 the claimant was in receipt of supplementary benefit and invalidity benefit amounting in all to £77.99. From the week commencing 11 April 1988 (the "second benefit week") income support replaced supplementary benefit. A new formula was adopted to determine the claimant's entitlement to the new benefit. Under regulation 17(a) and (d) of, and paragraphs 1(3)(c) and 15(4)(b) of Schedule 2 to, the Income Support (General) Regulations 1987 the claimant became entitled to a personal allowance of £51.45 and a disability premium of £18.60 i.e. £70.05 in all, subject, of course, to adjustment so as to take into account invalidity benefit. However, in accordance with the policy of ensuring that a claimant did not suffer any disadvantage from the transition from supplementary benefit to income support, the claimant was awarded a transitional amount of £7.94, representing the difference between his entitlement under the Income Support Regulations and his entitlement under the old Supplementary Benefit provisions.

4. However, from 10 April 1989 the amount of the claimant's personal allowance and his disability premium were increased to £54.80 and £19.50 respectively pursuant to the Uprating Order 1989. The total applicable amount from that date therefore became £74.30. The subject once again to adjustment so as to take into account invalidity benefit. The net income support figure together with invalidity benefit was still below the total payment of £77.99 per week received during the benefit week commencing 4 April 1988, and accordingly the only practical effect of the increase, as far as the claimant was concerned, was that his transitional payment decreased from £7.94 per week to £3.69. He derived no advantage from the uprating, nor will he from any future uprating until such time as his new entitlement under the Income Support provisions together with invalidity benefit exceeds £77.99 per week.

5. The authority for reducing the transitional amount is regulation 14(1) of the Income Support (Transitional) Regulations 1987. That particular provision reads as follows:-

"14(1) The amount of a claimant's transitional addition shall be reduced -

(a) if in respect of any benefit week subsequent to his second benefit week, he is entitled to income support as well as a transitional addition and his applicable amount under Part IV of the General Regulations increases, by the amount of that increase but this sub-paragraph shall not apply to an increase to which regulation 13(3) applies (increase in personal expenses);

(b)-(e) ...."

6. Mr Sims in his submissions to me complained bitterly that, during the year from the commencement of the income support legislation to the date of the uprating, he had suffered increased costs of living, which were not reflected in any adjustment of his entitlement. I see the force of what he said, but I have no powers to go outside the relevant statutory provisions. His complaint is really political in concept, and that is an aspect of the case with which, of course, I am not concerned. Parliament has specified in the relevant regulations, what claimants shall receive by way of benefit and those regulations I must apply. For the reasons already stated the claimant is entitled to no increase from 14 April 1989.

7. Unfortunately, although the tribunal reached the right conclusion, they failed to give adequate reasons for their decision, and accordingly there has been a breach of regulation 25(2)(b) of the Adjudication Regulations 1986. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. All the facts are known, and this is a case where I can conveniently substitute my own decision for that of the tribunal, and give full reasons in support thereof.

8. Accordingly my decision is as set out in paragraph 1.

(Signed) D.G. Rice

Commissioner

Date: 31 October 1989