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MHJ/14/LM

Commissioner's File: CIS/74/1989

Region: North Eastern

SOCIAL SECURITY ACTS 1975 TO 1986  
CLAIM FOR INCOME SUPPORT  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the unanimous decision of the Sheffield social security appeal tribunal given on 17 August 1988 is erroneous in point of law. Accordingly I set it aside and remit the matter for rehearing by an entirely differently constituted tribunal.

The claimant appeals with my leave against the decision of the tribunal refusing her appeal against the decision of the adjudication officer, issued on 20 June 1988, that she was "entitled to income support of £185.55 a week from 23.5.88".

3. The claimant, who is a widow in her late 80s, moved to KM Nursing Home on 16 March 1988. She was, and is, in receipt of a retirement pension and a mineworker's widow's pension. The adjudication officer calculated her entitlement to income support by reference to the appropriate amount in paragraph 7(f) of Schedule 4 to the Income Support (General) Regulations 1987, £185.00 per week; plus personal expenses of £9.55; less her mineworker's widow's pension of £9.00 per week, leaving a total of £185.55. That figure included the claimant's retirement pension of £41.40 per week, which is taken into account in full in the assessment of entitlement to income support. The sum awarded, plus the mineworker's pension, therefore came to £194.55, which was exactly what she was required to pay to KM Nursing Home at that time.

4. The claimant appealed, saying that the adjudication officer's decision left her "nothing for essentials" such as denture cleaning materials and clothing. On 17 August 1988 the claimant did not attend the tribunal hearing, at which she was represented by her -law, Mr F, who has continued to make representations on her behalf. The tribunal found as facts the claimant's age, her move to KM Nursing Home, the charges payable there, and her complaint that "all her income is used to pay the ... fees ... ". Further they found that -

"[the claimant] receives a retirement pension of £41.40 per week and a Mineworker's Widows Pension of £36 per lunar month and income support."

The tribunal gave as their reasons for their decision that they had -

" ... referred to Regulation 7 of the Income Support General Regulations and found that paragraph 7(f) applied ... ",

that they then -

" ... considered Regulation 13 of the General Regulations and found that ... "

the claimant was entitled to personal allowances of £9.55, and, finally, that they "noted her

nineworker's widow's pension" and -

" ... in view of this decided that the amount of her income support should be £185.55 (£194.55 less £9) per week."

4. Something has clearly gone awry with the tribunal's decision. Regulation 7 deals with the "Meaning of employment" and the other regulation they refer to, regulation 13, deals with "Circumstances in which persons in relevant education may be entitled to income support". Plainly the claimant is neither employed nor undergoing education, and presumably the tribunal were in fact referring to paragraph 7(f) of Schedule 4 to the regulation, which provides for the "appropriate amount" in respect of "any condition not falling within sub-paragraphs (a) to (e)" to be £185.00 per week, and to paragraph 13 of Schedule 4, which sets out the allowance for personal expenses. The adjudication officer now concerned with the case clearly makes those assumptions in his submission dated 20 July 1989 and criticises the decision on other grounds; principally that, as expressed, and whatever the tribunal may have meant to say, the decision appears to award the claimant income support of £185.55 per week exclusive of her retirement pension, and also that they failed to make sufficient findings of fact or give adequate reasons for their decision.

5. I have no real doubt that the tribunal's reference to "regulation" was a slip of the pen for "paragraph". However, without some mention of Schedule 4, which was also omitted, it is hard to see how anyone not familiar with the legislation could be expected to make the necessary deductions. In my judgment a layman, such as the claimant, even with access to the regulations, would be left totally in the dark as to the reasons for the rejection of the appeal. I also agree with the adjudication officer's submission; at best the way the decision is expressed is ambiguous and, if interpreted as he suggests, would plainly produce a result contrary to law. For those, and the other reasons put forward in the submission of 20 July 1989, with which I agree, I find that the tribunal's decision fails to comply with the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986, is consequently erroneous in law and is set aside.

7. I was invited to consider determining the case myself. That would have entailed further evidence and, on reflection, I came to the conclusion that it would be most expeditious to remit the matter for rehearing by another tribunal. That does not preclude review by the adjudication officer which, as it seems to me that the issues in this case are easily susceptible of resolution once the relevant evidence has been produced, may be considered a convenient course; but that, naturally, will depend upon exactly what further information is forthcoming.

8. Evidence of the types of care provided by KM Nursing Home and of the type of care actually received by the claimant will be essential. In the event of there being several levels of care available then that which is given to the claimant will determine the amount of benefit to which she is entitled. Such questions, as I held in CSB/104/87 (which dealt, inter alia, with dual registration), are essentially ones of fact. In any event, in view of the claimant's age and the fact that some 18 months have elapsed since her move to KM Nursing Home, I trust that this matter will be resolved without delay, by fixing an early rehearing date or otherwise.

9. The claimant's appeal is allowed.

(Signed) M H Johnson  
Commissioner

Date: 2 October 1989