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Commissioner's File: CIS/381/90

**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 dated 23 January 1990 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant is said to have been diagnosed as suffering from chronic schizophrenia and Parkinson's disease. For several years he was in Whitchurch Hospital. In May 1989 he went to live at The Grange which is what is described in the relevant legislation as an unregistered residential care home. The Grange apparently specialised in looking after people with mental problems who had been in trouble with the law. The claimant was awarded income support from 30 May 1989. That was at the rate of £100.65 after taking account of £49.40 invalidity benefit and adding £10.05 for personal expenses. The question for the tribunal was whether he was receiving income support at the appropriate rate. The tribunal confirmed the adjudication officer's decision. The claimant now appeals to the Commissioner.

3. The provisions which determine the appropriate amount of income support for those in residential homes are in Schedule 4 to the Income Support (General) Regulations 1987. The paragraphs of that Schedule which appear to be relevant to this case are -

"6.-(1) Subject to sub-paragraph (2) and paragraphs 8 to 11, where the accommodation provided for the claimant is a residential care home for persons in need of personal care by virtue of -

- (a) old age, the appropriate amount shall be £140.00 per week;
- (b) past or present mental disorder but excluding mental handicap, the appropriate amount shall be £140.00 per week;
- (c) past or present drug or alcohol dependence, the

appropriate amount shall be £140.00 per week;

- (d) mental handicap, the appropriate amount shall be £165.00 per week;
- (e) physical disablement, the appropriate amount shall be -
  - (i) in the case of a person to whom paragraph 8 applies, £200.00 per week, or
  - (ii) in any other case £140.00 per week; or
- (f) any condition not falling within sub-paragraphs (a) to (e) above, the appropriate amount shall be £140.00 per week.

9. The appropriate amount applicable to a claimant in a residential care home or nursing home shall, subject to paragraph 10, be determined -

- (a) where the home is a residential care home registered under Part I of the Registered Homes Act 1984, by reference to the particulars recorded in the register kept by the relevant registration authority for the purposes of that Act; or
- (b) where the home is a residential care home not so registered or a nursing home, by reference to the type of care which, taking into account the facilities and accommodation provided, the home is providing to the claimant.

10.-(1) Where more than one amount would otherwise be applicable, in accordance with paragraph 9, to a claimant in a residential care home or a nursing home, the appropriate amount in any case shall be determined in accordance with the following sub-paragraphs.

(2) Where the home is a residential care home registered under Part I of the Registered Homes Act 1984 and where the personal care that the claimant is receiving corresponds to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the amount, in paragraph 6 or 8, as the case may be, as is consistent with that personal care.

(3) Where the home is a residential care home which is so registered but where the personal care that the claimant is receiving does not correspond to the care received by a category of residents for whom the register indicates that the home provides accommodation, the appropriate amount shall be the lesser or least amount, in

paragraphs 6 or 8, as the case may be, as is consistent with those categories.

(4) In any case not falling within sub-paragraph (2) or (3), the appropriate amount shall be whichever amount of the amounts applicable in accordance with paragraph 6 or 7 or 9 is, having regard to the types of personal care that the home provides, most consistent with the personal care being received by the claimant in that accommodation."

The adjudication officer and the tribunal had determined that the amount appropriate to the claimant was £140.00 in accordance with paragraph 6(b). It was the claimant's case that he was entitled to £165.00 per week as specified in paragraph 6(d) because, on the evidence by virtue of paragraphs 9(b) and 10(1) more than one of the amounts in paragraph 6 was applicable in accordance with paragraph 9, and paragraph 6(d) was appropriate to the claimant by virtue of paragraph 10(4) which directs regard "to the types of personal care that the home provides, most consistent with the personal care being received by the claimant in that accommodation".

4. The current adjudication officer accepts that the tribunal did not sufficiently explain why the claimant's argument had failed and I have no doubt that I must allow this appeal because of the insufficiency of the reasons given by the tribunal for their conclusion. I should perhaps say that the tribunal might have been led astray by the fact that paragraph 10 of Schedule 4 was not reproduced in the original adjudication officer's submission as being not relevant; it is of course of crucial importance to the claimant's argument.

5. I allow the claimant's appeal for the reasons to which I have referred. The new tribunal must make clear findings of fact having regard to the relevant provisions of Schedule 4. If on the evidence and having regard to paragraph 9(b) the tribunal decide paragraph 10(1) applies they must then pay careful attention to the test provided by paragraph 10(4).

(Signed) R A Sanders  
Commissioner

Date: 10 February 1992