

ATH/SH/6

Commissioner's File: CIS/410/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow this appeal by the claimant. The decision of the social security appeal tribunal dated 21 February 1990 was erroneous in law and I set it aside. I substitute my own decision under section 101(5)(a)(i) of the Social Security Act 1975. My own decision is that the claimant is entitled to income support at the rate of £58.83 per week. My decision is, therefore, the same as that of the social security appeal tribunal. Although I have allowed the appeal the claimant does not obtain any financial advantage.

2. The claimant is a married man who lives with his wife in local authority accommodation. Prior to the introduction of income support, he was in receipt of supplementary benefit. On 11 April 1988 income support replaced supplementary benefit. The claimant complained that the amount of his income support was insufficient. By a decision issued on 11 October 1989 the adjudication officer decided that the claimant was entitled to income support at the weekly rate of £58.83 and that he had been entitled to that amount since 11 April 1988 when income support replaced supplementary benefit. The claimant appealed. On 21 February 1990 the social security appeal tribunal decided that the claimant was entitled to income support at £58.83 per week. The claimant appeals with leave of the tribunal chairman.

3. In their findings of fact in Form AT3, box 2 the appeal tribunal stated that the claimant was entitled to supplementary benefit at £57.53 and was entitled to a transitional addition which reduced by the same amount as the basic benefit increased. They stated that the claimant "did not dispute the other figures but claimed that his benefit was not keeping pace with the cost of living". In their reasons for their decision in Form AT3, box 4 they stated:-

"Under regulation 14 of the Transitional Regulations, the transitional addition is reduced by the same amount as the basic benefit increases, so that the gross amount of income support does not change."

4. In his grounds of appeal the claimant states that his wife is ill with angina and arthritis of the spine and that he has blood pressure and angina; and that after paying poll tax, water rates, and electric and gas bills he is left with £20 to live on and that sum is insufficient for his needs. The present adjudication officer in the written submission dated 11 October 1990 supports the appeal and submits that "the claimant is left uncertain as to why his basic income support is at the level stated". However he adds in paragraph 3 of his submission:-

"On the evidence submitted, the original adjudication officer's submission is correct in every detail and there is nothing I can add to it. The decision must, I submit, therefore be that entitlement to £58.83 at the material time is confirmed, for the reasons given in the appeal papers at pages 3-9."

5. In his submission to the appeal tribunal in Form AT2 (at pages T3-T5 of the case papers), the adjudication officer referred to the relevant Regulations and it is not necessary for me to set them out again in this decision.

6. According to Form AT2 under Summary of Facts, paragraph 2, the claimant was in receipt of supplementary benefit at the weekly rate of £57.53. That amount included £6.15 by way of additional requirements for heating and laundry and £2.03 for water charges.

7. On 11 April 1988 income support replaced supplementary benefit. The amount of the claimant's income support under the Regulations was assessed at the weekly rate of £51.45. That was less than the amount of supplementary benefit. He was entitled, therefore, to a transitional addition. The amount of the transitional addition depended upon a comparison between his income for the "first benefit week" i.e. the week beginning on 4 April 1988, and the income for the "second benefit week" i.e. the week beginning on 11 April 1988.

8. The claimant's income for the "first benefit week" was the amount of supplementary benefit, i.e. £57.53, together with the amount of "Housing Benefit in the form of a rate rebate" i.e. the sum of £1.30. £57.53 plus £1.30 totalled £58.83. That was the amount of his total benefit for the "first benefit week" i.e. the week beginning 4 April 1988.

9. For the "second benefit week" i.e. the week beginning 11 April 1988, the amount of income support was assessed, as I have said, at £51.45. The claimant was, therefore, entitled to £7.38 by way of a transitional addition, making a total of

£58.83. The claimant was, therefore, entitled to income support at the weekly rate of £58.83.

10. On 10 April 1989 the amount of the claimant's income support was increased from £51.45 to £54.80. The transitional addition was accordingly reduced from £7.38 to £4.03 per week because regulation 14(1) of the Transitional Regulations required that reduction to be made. The regulation required that reduction to be made in order that the amount of income support should remain the same, namely £58.83 a week.

11. The claimant wanted a grant for clothing for his wife. However, when supplementary benefit was replaced by income support, single payments under the Supplementary Benefit (Single Payments) Regulations were abolished. Accordingly, the claimant was granted a social fund loan. And according to Form AT2, Summary of Facts, paragraph 16 (at page T5 of the case papers) since 17 August 1989 £2.74 has been deducted each week in repayment of the social fund loan. The claimant is, therefore, receiving £56.09 per week until the social fund loan is repaid.

12. The claimant will be dissatisfied with this decision. The amount of income support is laid down by Parliament in the Regulations which are referred to in the adjudication officer's submission to the appeal tribunal in Form AT2. Neither I nor the social security appeal tribunal nor the adjudication officer have any discretion in deciding the amount of income support payable to a claimant. In other words, the amount of income support must be determined in accordance with the Regulations and cannot be increased whatever one's sympathies may be for the claimant. For those reasons my decision is as set out in paragraph 1 above.

(Signed) A.T. Hoolahan
Commissioner

(Date) 5 March 1992