SUPPLEMENTARY BENEFIT

Status of claimant's uncorroborated evidence—single payments.

A man in receipt of supplementary benefit, made a claim for single payments in respect of clothing on the ground that he has gained weight rapidly as he had put on 4 stone in 12 months. The adjudication officer refused a single payment on the basis that the claimant had failed to satisfy regulations 27 and 30 of the Supplementary Benefits (Single Payments) Regulations 1982 as there was no evidence of a rapid weight gain. The claimant appealed this decision to the tribunal who in turn confirmed the decision. The claimant appealed to the Commissioner.

Held that:

1. at the time a single payment is made the adjudication officer should determine and record the following:

(i) what is claimed and

(ii) whether or not the adjudication officer accepts that the claimant has established the need for the item or items claimed in accordance with regulation 3 of the Single Payments Regulations,

it is only by so doing that the adjudication officer can effectively determine what circumstances require investigation and determination and what may be ignored as irrelevant (paragraph 7);

2. regulation 27(1)(a) of the Single Payments Regulations merely gives examples which are not exhaustive but regulation 27 should be construed and applied in the light of the fact that supplementary allowance is intended to provide for replacement clothing (paragraph 8);

3. under regulation 27(a)(i), what is "rapid" loss or gain falls for determination in accordance with the ordinary use of that word (paragraph 9);

4. as the reference to rapid weight gain or loss is only by way of example a weight loss or gain which is other than rapid is not precluded from regulation 27 of the Single Payments Regulations (paragraph 9);

5. there is no rule in English law that corroboration of the claimant's own evidence is necessary. R(I) 2/51 commended (paragraph 14);

6. when an adjudication authority rejects a claimant's evidence it must identify the grounds for such rejection (paragraph 15);

7. regulation 27(1)(a) does not require that a need arising otherwise than by normal wear and tear must be a need arising from some medical condition (paragraph 16).

The appeal was allowed.

1. (1) This is a claimant's appeal from the decision dated 5 February 1985 of a social security appeal tribunal ("the tribunal") brought by my leave and upon the contention that the tribunal's decision was given in error of law. By their decision the tribunal dismissed the claimant's appeal against the decision of an adjudication officer issued on 3 December 1984 rejecting the claimant's claim made on 19 November 1984 for a single payment (or single payments) in respect of an unspecified item (or items) of clothing.

(2) The adjudication officer now concerned now in the course of written submissions (which are, if I may say so, of exemplary clarity and cogency) concedes that the tribunal's decision was given in error of law in several respects of which I will refer later below; and I agree. The claimant has requested an oral hearing of the present appeal but I am refusing that request as I am satisfied that the appeal can properly be determined without one.

(3) The appeal succeeds. I set aside the tribunal's decision as given in error of law in the respects later below indicated and direct that the claimant's appeal from the adjudication officer's decision be re-heard

by a differently constituted tribunal. I do not consider it expedient in the circumstances of the case to give myself the decision which the tribunal should have given, as in my view a proper determination requires the ascertainment and finding of additional facts.

2. (1) The claimant, a married man in his 50's, was at all material times living with his wife and one dependent daughter and in receipt of supplementary benefit. It is not contended that he had any reckonable capital resources. On 19 November 1984 he instituted a claim readily identifiable as constituting a claim for a single payment or single payments in respect of an item or items of clothing and advanced upon the ground that he had rapidly put on weight. It did not, however, specify any particular item or items of clothing as that or those of which he claimed to have need. The circumstances in which he was claiming were inquired into, and he indicated that he was claiming on the basis of need arisen because he had put on 4 stone in weight and his clothes did not fit him any more and, a little later, that he had gained the weight over a period of 12 months.

(2) The claimant was interviewed at the local office on 3 December 1984, and then stated that he had no idea why he had gained weight, and was unaware of any medical condition occasioning the weight gain. He further stated that he had only got one coat, which just about fitted him but was too short in the sleeves and tight around his back, and that he had bought no clothing for himself during the past 12 months. The last clothing he had bought, he said, was 3 coats and 3 pairs of trousers more than 12 months previously; and there was some suggestion that he would check with his doctor to see if there was any medical reason for his weight gain and report the results of so doing. He also indicated that the majority of his weight increase had been manifested round his stomach.

(3) As the adjudication officer's decision was issued on the same date as the claimant was interviewed, it would appear that a decision on the claim was not in fact deferred to see what if anything came of the claimant's (stated) intention to approach his doctor.

(4) The claimant appealed against that decision to the tribunal. In the written submissions by the adjudication officer to the tribunal it was indicated (and I have no reason to doubt) that in giving his decision the adjudication officer had had regard to regulations 27 and 30 of the Supplementary Benefits (Single Payments) Regulations 1981. It was in like manner indicated to the tribunal that as to regulation 30 the adjudication officer had concluded that there was no evidence of any serious damage or serious risk to the health or safety of any member of the assessment unit which would be prevented by the award of a single payment "because [the claimant] was in good health and there would be no serious damage or serious risk to his health"; and it was similarly indicated as regards regulation 27 that the adjudication officer had decided that regulation 27 did not apply "because the claimant's need for clothing for himself arose through normal wear and tear and in the normal course of events;" and that submission continued:—

> "The adjudication officer considered the examples in regulation 27 of the circumstances in which a need might arise otherwise than through normal wear and tear but decided that the reasons given by [the claimant] in his claim did not fit these or any like circumstances. There was no evidence of a rapid weight gain" (emphasis supplied by me). "The adjudication officer was unable to accept that there had been such rapid gain in weight

without supportive evidence or that medical evidence would not be available in such circumstances. In the opinion of the adjudication officer, [the claimant's] need for clothing stemmed *more* from his not having purchased clothing for over 12 months than from his increase in weight. The adjudication officer therefore decided that the claimant was not entitled to a single payment under regulation 27."

3. In the chairman's note of the evidence given at the tribunal's hearing of the appeal it is recorded that the claimant gave evidence that he had been to his doctor who could not give him any reason as to why he was putting on weight; that his weight had increased over the preceding 12 months from $12\frac{1}{2}$ stone to 17 stone; that he was 6ft. $2\frac{1}{2}$" in height; and that his clothes were getting so tight that sometimes he felt dizzy. The chairman's note also records that the claimant did not produce any details in support of two visits he had made to his doctor or produce any letter from his doctor in support of his claim.

4. The tribunal's findings of fact were:—

"Claimant states that on two occasions he visited his doctor about his weight gain but that on neither occasion did he (the doctor) check the claimant's weight. He produced an appointment to attend at a Hospital Clinic but with no accompanying details as to why".

The tribunal's stated reasons for decision were:—

"Reg 27 Single Payment Regulations is not satisfied; the claimant produced no adequate evidence that he had gained 4 stone over the last 12 months."

5. In his present grounds for appeal the claimant indicates that at the time when he attended the tribunal he had had an appointment with the hospital the next day to see if he was putting on weight due to ill health, about which he told them; but that the tribunal were not willing to wait for the outcome of the results of his examination by a specialist. And he claims that he felt the tribunal to be hostile towards his claim—

"I felt as if I was on trial for some criminal offence".

6. I think it open to question whether it "got through" to the tribunal that his hospital appointment was specifically directed to investigating whether there might be medical grounds for his asserted rapid increase in weight. But whilst it is unfortunate that the claimant should have formed the impression he did as to the tribunal's attitude to him, my decision on other grounds to direct a re-hearing relieves me of the necessity of pursuing that further—and I am not to be taken as ruling substantively upon whether or not the claimant had or had not justified grounds for complaint in this quarter.

7. (1) It has been repeatedly indicated by Commissioners' decisions that as a proper foundation for adjudicating upon a supplementary benefit claim, the success or failure of which essentially depends upon the application to the relevant circumstances of the case of detailed and complex legislation, there is no substitute for a close contemplation of those provisions of the legislation which—with or without prompting—occur to the adjudicating authority as of possible materiality. All else apart, it is only by so doing that the adjudicating authority can effectively determine what circumstances require investigation and determination and what may be ignored as irrelevant. And whilst I do not suggest that this is a mandatory approach (there may, for example, be some over-riding general issue

of such conclusive impact as to make more detailed investigation unnecessary), where a claimant has instituted a claim for a single payment it is no bad idea to determine and record in the first instance what it is that he is claiming for and whether or not the adjudication authority accepts that, in accordance with the provisions of regulation 3 of the Single Payments Regulations, the claimant establishes need for the item or items claimed. That serves the dual purposes of focussing the mind of the adjudicating authority on the issues in the case and of avoiding the necessity for a hearing in order to ascertain and express findings upon additional material facts should that adjudicating authority's own decision be reversed upon some matter of law.

(2) As to what is properly the scope of a particular claim, that essentially depends on how it is framed. Looking at that it may be proper to interpret it as claiming for all items under a particular generic head for which he may be eligible (in which event this can be indicated and responded to in the reasons for decision) or it may be interpreted as a claim for a specific item or items. But the tribunal's decision in the present is silent as to this basic aspect of the case.

(3) So also, whilst the adjudication officer's written submissions to the tribunal should have alerted them to the neccesity for them to give consideration to the claim in the context of regulation 30 of the Single Payments Regulations, they have entirely omitted reference to that regulation in the record of their decision; and that omission alone would in my judgment require that I set aside their decision as given in error of law, in that their specific reference to regulation 27 carries the necessary implication that they had not in fact entertained regulation 30.

8. (1) However, their record of decision in my judgment demonstrates also that even in the context of regulation 27, to which clearly they did give some consideration, a fundamental error of law has arisen. But before turning to that I will first pause to indicate briefly that regulation 27 is the regulation by which, where it is determined that need for an item of new or replacement clothing or footwear is established, are prescribed the qualifying conditions under which (alone) a single payment may be made for any such items; and then goes on to provide, in conjunction with provisions in Schedule 2 to those regulations, the items in respect of which a single payment may be made and the amount in which if made it will be paid; and indicates also that other qualifying conditions are applicable where the items claimed for and for which need if established are working clothes and footwear, as separate provision as to those is made under regulation 23(2)(b)—but such exception does not appear to have any practical bearing in the present case.

In the circumstances of the present case what the claimant needed to establish in order to qualify for a single payment in respect of any item as to which he established need at the date of claim was first that such need had arisen otherwise than by normal wear and tear, and secondly that such need was not one which had arisen "in the normal course of events (for example where an item of clothing or footwear is outgrown)".

(2) Regulation 27(1)(a) so prescribing includes—preceded by the words 'for example where need has arisen because of'—various examples which are in context clearly to be regarded as exemplifying an arising of need otherwise than by normal wear and tear, one of which is 'rapid weight loss or gain'. Those are, however, no more than

examples—and though they are of helpful assistance, such examples are not properly to be taken as exhaustive of the circumstances which may substantiate the arising of need otherwise than by normal wear and tear. But regulation 27 is, of course, to be construed and applied in due recognition that an award of weekly supplementary allowance is itself intended to provide for the replacement of clothing items where required by reason of normal wear and tear or otherwise in the normal course of events.

9. What is a 'rapid' weight loss or gain is not prescribed and falls for determination by the adjudicating authorities in accordance with the ordinary use of that word. But, because the reference to rapid weight loss or gain is only by way of example, a weight loss or gain, the fact as to which is established but which is not to be regarded as 'rapid', is not necessarily precluded from counting as a need which has arisen otherwise than by normal wear and tear or in the normal course of events.

10. From the terms in which the claim was instituted in the present case it is clear that the claimant was seeking a single payment or single payments in respect of one or more items as to which he contended that he had a need and that such need had arisen otherwise than by normal wear and tear, namely by reason of weight gain over an antecedent period of 12 months of some 4 stone.

11. It was accordingly fundamental to the case before them for the tribunal to determine and make findings of fact as to whether or not the claimant had incurred a gain in weight over the 12 months preceding his claim (or had done so over some and what other potentially relevant period) and if so how much was the gain, and whether or not it was 'rapid'—because if so it would be the more readily determinable whether or not the claimant satisfied the qualifying conditions, because of the reference to rapid gain in weight in the examples in regulation 27. And, if satisfied that the claimant had made out an affirmative case thus far, the tribunal then needed to go on and make findings material to the admission or exclusion or otherwise of the claim by reference to the subsequent provision in regulation 27(1)(a) as to items the need for which "has arisen in the normal course of events".

12. It can be gleaned from the tribunal's reasons for decision that they were not satisfied that the claimant had gained 4 stone over the last 12 months; but they made no findings on the several other constituent aspects of the qualifying conditions to which I have above referred. And their reasons for decision, given even the most benevolent interpretation, can be regarded as covering only part of the ground. It would in my judgment be another sufficient foundation for setting aside their decision as given in error of law that, as the adjudication officer now concerned concedes, the tribunal accordingly failed to discharge to a due standard their obligations under regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 as to stating findings of fact requisite for their decision. But I would myself add that they have additionally failed to discharge their obligations as to stating reasons for decision. But those failures, whilst a sufficient foundation for my present decision, are not the end of the matters of which I need to draw attention.

13. (1) It will be recalled from what I have already indicated that the adjudication officer's written submissions to the tribunal included a submission that there was "no evidence of a rapid weight gain", and coupled with that an intimation that such officer was "unable to accept that there had been such rapid gain in weight without support-

ive evidence or that medical evidence would not be available in such circumstances".

(2) I read that submission as intended disjunctively i.e. "was unable to accept .... without supportive evidence" and "was unable to accept that medical evidence would not be available in such circumstances". And it will be recalled also that the same submission went on to indicate the opinion of the adjudication officer that the claimant's need for clothing "stemmed more from his not having purchased clothing for over 12 months than from his increase in weight".

(3) That submission—in its entirety and as to its several components—was in my judgment based upon fundamental misconceptions. There are, of course, cases in which an adjudicating authority is well entitled "not to believe a word a claimant says". But there is no general rule that what a claimant says is not evidence, nor is there any rule that what a claimant says is not to be accepted as evidence substantiating his claim unless corroborated from some other source. But it is in my reading of the submission evident that this adjudication officer thought that (or at least part of that); and that the tribunal did also.

14. Corroboration of a claimant's own evidence is of course, a reinforcement of the evidence the claimant himself gives—but it is *not* a necessary probative requirement. I am grateful to the adjudication officer now concerned for recalling to my attention the most helpful exposition in this regard provided in decision R(I)2/51, which, although expressed immediately in the context of a different social security benefit, I have no hesitation in commending to all concerned with adjudicating upon supplementary benefit claims. It is to be found in paragraphs 6 and 7 of that decision and is as follows:—

"6. The burden of proving that the hernia resulted from an accident arising out of and in the course of his employment rested on the claimant. He was not, however, bound to prove this beyond all reasonable doubt; he was entitled to the decision if upon considering the evidence as a whole the Tribunal were of the opinion that the balance of probability was in favour of the conclusion that the hernia did result from such an accident.

7. The Tribunal may reach this conclusion even though the only evidence is that of the claimant himself. There is no rule of English law that corroboration of the claimant's own evidence is necessary. In some cases a Tribunal may rightly think that they cannot act on the claimant's uncorroborated evidence either because it is self-contradictory or inherently improbable or because the claimant's demeanour does not inspire confidence in his truthfulness. (It is seldom safe to reject evidence solely for this last reason and in the present case there is no criticism of the claimant's demeanour; indeed it appears that the Tribunal did not hear evidence from the claimant himself, for they only record a statement by a representative of his association). There was nothing self-contradictory about the claimant's statements and there was uncontradicted medical evidence that the hernia was likely to have happened in the manner stated by the claimant: nor was there any positive evidence that it happened in any other way. The Tribunal ought therefore to have accepted the claimant's explanation of the cause of the injury unless there was some circumstance which rendered it inherently improbable. The only matters which might be said to render the claimant's statement improbable are (1) the

claimant's failure to report the accident; (2) his failure to mention it to any workmate; and (3) his remaining at work for a week ...."

15. Put at lowest, the tribunal in the present case were not entitled to dismiss the claimant's evidence without proper explanation of their reasons for such rejection. But it is in my judgment tolerably clear that they went beyond that and misdirected themselves as to there being a need, which there was not (at large at least), for corroboration of the claimant's own evidence by medical evidence. I have in the last sentence used the qualifying term "at large" because in a given case it may be appropriate to reject as evidence to be accepted of itself a claimant's uncorroborated evidence, upon one or other of the grounds indicated in paragraph 7 of decision R(I)2/51. But if an adjudicating authority is going to do that it must in my judgment go on also to identify with reasonable particularity the grounds for such rejection. They must say, according to the circumstances, something in the nature of "The claimant gave evidence before us as to his having incurred a weight gain of 4 stone over the 12 months preceding the date of the claim. But we reject his evidence—which was not the subject of any corroborating evidence—as we do not believe him. He has failed to satisfy us that he incurred any significant weight gain in such period and gave unsatisfactory explanations to inquiries by the tribunal as to why, if that had been the case, he had not consulted his doctor in case it was indicative of some abnormal medical factor".

16. Two further matters I must also mention:

(1) First I should stress that whilst the presence or absence of medical evidence (or evidence at least of having consulted a doctor), though the necessity for such is not prescribed may in given circumstances be of relevance in assessing the credibility of a claimant's own evidence, it is no part of the prescription under regulation 27(1)(a) that a need arising otherwise than by normal wear and tear must be a need arising from some medically attributable condition. Put crudely, a claimant who incurs a rapid gain in weight by reason of self-indulgence is no less eligible in terms of regulation 27 than is a claimant whose identical gain in weight results from some medical condition.

(2) Secondly, whilst I am not prepared to hold the tribunal in further error of law as to this, since the matter lay within the discretion of the tribunal, it does appear that at the date of the tribunal's hearing the claimant sought to indicate that he was seeing a consultant the following day in some relevant context; and that the tribunal did not, as they might have, adjourn, or even entertain the possibility of adjourning, their proceedings upon terms as to the claimant producing medical evidence on a future occasion. They appear, although provided with by the claimant with his notice of appointment, to have rejected the question of adjournment out of hand because the notice of appointment did not specifically identify the medical circumstances on account of which the appointment had been arranged. But, to put it no higher, it would have been helpful—if it was the view of the tribunal that this was a 'red herring'—to embody in the record of their decision some addition to the reference made in their findings to the claimant's production of his appointment card, as to the grounds upon which they considered adjournment inappropriate. So also they could usefully have amplified their stated reasons as to the claimant having 'produced no adequate evidence' by indicating the respects in which they considered the evidence he had produced inadequate.

17. The tribunal rehearing the appeal are to be furnished with a copy of my present decision as some assistance to them in pitfalls to be avoided. But

all questions of fact will be again at large before them. I direct only that they give close consideration to the material regulations and embody in the record of their decision findings of fact and reasons for decision from which the claimant and the adjudication officer concerned can ascertain why it is that, as the case may be, their respective contentions have or have not prevailed. And it will I think be helpful to them—and certainly to any higher adjudicating authority in the event that an appeal should be taken from their decision—if their findings could start with specific findings as to the subject matter/s of the claim.

18. My decision is as indicated in paragraph 1(3) above.

(Signed) I Edwards-Jones
Commissioner