

Claim under Reg 10A. Tribunal failed to make sufficient findings of fact in considering whether reg 13(i)(b) applied. Fact that claimant had own bedroom in previous accommodation didn't mean it was not overcrowded.

RFMH/SH/18

Commissioner's File: CSB/819/1987

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Christopher C

Social Security Appeal Tribunal: Rochdale

Case No: 064/08

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 14 April 1987 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.
2. At the material time the claimant was single and aged 18. He had been in receipt of supplementary benefit since 13 June 1986 and had no capital. On 15 December 1986 he obtained the tenancy of an unfurnished local authority flat. His previous accommodation was a three bedroomed home shared by four members of a family. He left because he did not "get on" with them. The claimant reported no health problems. On 19 December 1986 he claimed a single payment for carpets, towels, a three-piece suite, curtains, pots, pans, a kettle, an iron, cutlery and other items which are not the subject of this appeal. In due course the adjudication officer rejected the claim. The claimant appealed to the tribunal. In his grounds of appeal he stated that he had left prison on 9 June or July 1986 and had been homeless for about a month. Further he had an appointment at the hospital on 29 January 1987 about his legs.
3. In his written observations on the claimant's appeal, the adjudication officer submitted that the claim was for miscellaneous furniture and household equipment needs which, fell to be determined by reference to regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981, as amended. As the claimant did not satisfy the conditions of either regulations 10A or 30, a single payment could not properly be made.
4. The claimant and his representative attended the hearing of the appeal before the tribunal on 14 April 1987. In the event the tribunal dismissed the appeal in respect of the items listed in paragraph 2 above on the ground that the claimant did not satisfy the conditions of regulation 10A(1) "and in particular any of the removal criteria". Their findings of fact in respect of the claimant's previous home, so far as relevant to the present appeal, read as follows:-

"..this was a three bedroomed property the claimant having his own bedroom. The claimant left this property and moved to ... because in his own words "I was not getting on with the other people I was living with". The claimant's previous

accommodation was not overcrowded nor was it unsuitable in size or structure .."

The claimant now appeals to the Commissioner on a point of law, leave having been granted by the tribunal chairman.

5. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present case there was a breach of the statutory requirements in that there are inadequate findings of fact to support the conclusion that the claimant did not satisfy the conditions for an award under regulation 10A. As a result the tribunal's decision was erroneous in law and I have no alternative but to set it aside. I should put on record that the adjudication officer now concerned supports the appeal on this ground.

6. With effect from 11 August 1986 the Single Payments Regulations 1981 were amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No 1259]. In Decision R(SB)10/88 a Tribunal of Commissioners analysed the effect and scope of regulation 10A(1) which is the main point in issue in the present case. The effect of the Amending Regulations were explained in the following terms (paragraph 35):-

"35. (1) The scheme of the 1986 Regulations as regards furniture and household equipment needs is (as already pointed out) different. There is a reduced list of items which are defined, in the new regulation 9, as essential furniture and household equipment. To qualify for a single payment in respect of a listed item one of six alternative qualifying conditions must be satisfied, each of which is subject to the satisfaction of additional conditions. The first qualifying condition is set out in the new regulation 10(1)(a) and relates to a case where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home. It is only a claimant who, or whose partner, satisfied this first alternative condition (and additional conditions) who can claim any additional payment for unlisted items on the basis of satisfaction of the prescribed conditions.

(2) The new regulation 10A provides, in effect, that persons who also satisfy the first qualifying condition in the new regulation 10(1)(a) may qualify for an additional payment for "miscellaneous furniture and household needs (other than any item to which regulation 9 applies). "Thus a person who comes from furnished property and within the prescribed 28 days takes an unfurnished (or partly furnished) home and who has nothing in the way of furniture or household equipment finds himself in this position. If the claimant can then show that he has:-

"Miscellaneous furniture and household equipment needs [our underlining] (other than any item to which regulation 9 applies)"

then, subject to satisfying the other conditions in the regulations, he will receive a sum of money which is proportionate to the number of members in his assessment unit (£75 for himself and £50 for each additional member) for those needs.

7. In the present case it is not in dispute that the claimant's claim was a claim for "miscellaneous furniture and household equipment needs" and that the claim fell to be considered under regulation 10A of the Single Payments Regulations. That being so regulation 30 cannot assist the claimant for regulation 13 of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 inserted the words:-

"Except where a claim is for miscellaneous furniture and household equipment needs."

at the beginning of paragraph 1 of regulation 30. (see R(SB)10/88 paragraph 40). Accordingly the claimant's claim will only succeed if he can satisfy the conditions in regulation 10A. It is not in dispute that the claimant satisfied the first qualifying condition in regulation 10A(1) because he had within the 28 days immediately preceding the date of claim become the tenant of an unfurnished home. Accordingly the tribunal were required to consider whether he satisfied one or more of the additional conditions contained in paragraphs (a) to (e). The claimant based his claim on paragraph (c) which provides that "one of sub-paragraph (a) to (g) of regulation 13(1) applied to or in respect of his previous home;". The claimant relied in particular on regulation 13(1)(b) which provides:-

"Having regard to the age, state of health or any physical disability of any member of the assessment unit, the size of the assessment unit and whether any other person lives in the home, the existing home is unsuitable either in size or structure or because it is too far removed from close relatives;"

8. In considering regulation 13(1)(b) the tribunal had to decide whether the claimant's previous home was unsuitable in one of three respects - size, structure, or distance from close relatives - having regard to all the factors "age, state of health or any physical disability of any member of the assessment unit". In the present case the assessment unit consisted only of the claimant. They found as fact that the claimant was in good health, although the chairman's note of evidence records that the claimant suffered from deformity of the bones and a circulatory disorder for which he was due to see a consultant orthopaedic surgeon. On the question of suitability, the tribunal were required to consider the previous home. "Home" is defined in regulation 2(1) as the accommodation occupied by the household containing the assessment unit. Accordingly if the claimant was living as a member of someone else's household as it seems from the evidence, the accommodation occupied by the whole house was relevant. The tribunal took the view that because the claimant gave as one of his reasons for leaving his previous address that he was not "getting on" with the family with whom he resided and because he had his own bedroom the conditions of regulation 13(1)(b) were not satisfied. They failed to make findings of fact from the evidence given by the claimant as to who lived in the house and where they all slept. The fact that the claimant had a bedroom on his own is not conclusive that the accommodation was not overcrowded. The new tribunal should consider whether one of the paragraphs set out in regulation 13(1)(a) to (g) applied in respect of a claimant's home in determining whether or not the claimant satisfied conditions in regulation 10A(1)(c). If he did not, the new tribunal should consider whether he satisfied any one of the other conditions referred to in regulation 10A(1).

9. Regulation 10A(1) is subject to the further conditions contained in paragraph (2). If the new tribunal conclude that the claimant satisfied the conditions for an award under regulation 10A(1) they should proceed to consider whether he also satisfied the conditions in 10A(2). It should be noted that these are cumulative and not in the alternative.

10. The new tribunal should record all necessary material findings of fact and apply the law to those facts in accordance with my guidelines. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 27 May 1988