

Reg 6(1)(g) - disregard of compensation paid for damage to home.

RAS/10/LS

Commissioner's File: CSB/850/1987

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Maureen Fairfield (Mrs)

Social Security Appeal Tribunal: Mansfield

Case No: 23/14

[ORAL HEARING]

1. Mrs Maureen F. has been very ill for some years. On 29 September 1986 she made a claim for a supplementary allowance. By then she and her husband still had £10,000.00 left of about £22,000.00 that had been paid by the National Coal Board in October 1984 as compensation for mining subsidence. According to Mrs F. £4,000.00 had been spent for general repair work on the house, another £5,450.00 for work to the kitchen and windows and £2,000.00 had been used to purchase a motor car. An adjudication officer decided that the £10,000.00 was a capital resource which was not to be disregarded under regulation 6(1)(g)(i) of the Supplementary Benefit (Resources) Regulations 1981. So she did not get her supplementary allowance. Her appeal to a social security appeal tribunal was unsuccessful. This present appeal is against the tribunal's decision. Mr M. Rowland of Counsel appeared for her at the hearing of her case; Mr N. J. Storey of the Solicitor's Office Department of Health and Social Security appeared for the adjudication officer.

2. Regulation 6(1)(g)(i) of the Resources Regulations provides -

"(1) In calculating a claimant's capital resources the following shall be disregarded:-

(g) for a period not normally exceeding 6 months from the date of receipt, any sum which -

(i) has been paid to the claimant or his partner in consequence of damage to, or the loss of, the home or any personal possession and which is to be used for its repair or replacement ... "

The reasons which the tribunal gave for their decision that the £10,000.00 was not to be disregarded under that provision were -

"Regulation 6(1)(g) of the Resources Regulations provides that for up to a period of NOT NORMALLY exceeding six months FROM THE DATE OF RECEIPT certain capital resources may be disregarded in respect of sums paid for damages to a claimant's home and WHICH IS TO BE USED FOR ITS REPAIR OR REPLACEMENT.

The use of the words "not normally" shows that the period of six months can be extended if thought appropriate in all the circumstances.

In the present case, whilst the tribunal have every sympathy with the claimant and her serious ill health, it is clear from the claimant's own evidence that only about half of the money so far expended has been expended on repairs to their property, and in these circumstances since not all the capital has not been used for repair and replacement, then the conditions of Regulation 6(1)(g) are not satisfied."

And it seems from the last sentence of their reasons that the tribunal took the view that because some of the compensation money had been used otherwise than for repairing Mrs F.s' home she could not have the benefit of regulation 6(1)(g)(i). That, as Mr Rowland contended and Mr Storey agreed, is simply not right. What is to be disregarded is any sum which falls within the provision if it is reasonable to disregard it. If it is reasonable to do so you then look to see whether, as a further matter of discretion, the sum in question may be disregarded notwithstanding that more than six months has elapsed since its receipt. The fact that some part of the sum originally received has been spent otherwise than on repairs is irrelevant to whether it is reasonable to disregard what is left and whether it is appropriate to take a longer period than six months. It could be relevant to whether, as regulation 6(1)(g)(i) requires, it is accepted that the sum in question is to be used for repairs. I suppose if there was a case, which is not the present case, where a substantial part of the compensation money was spent say for holidays, it could be perfectly reasonable to conclude that any sum remaining is in fact not going to be used for repairs. If that is what the tribunal had in mind in this case then they should have made appropriate findings and given reasons which fully explained why they took the view they did. There is no doubt that for the reasons to which I have referred the tribunal's decision is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal. They must exercise the two discretions contained in the provision. No doubt Mrs F.'s ill health and any difficulties there have been in having the repairs carried out will be of crucial significance to whether a longer period than six months should be allowed.

(Signed) R A Sanders
Commissioner

Date: 29 March 1988