

DGR/SH/6

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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Arnold Bolsover

Social Security Appeal Tribunal: Sheffield

Case No: 10/068-01

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 2 July 1985 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 2 July 1985. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was present, was represented by Dr. Paul Martinez, Senior Welfare Rights Officer of the City of Sheffield, whilst the adjudication officer was represented by Mrs G Huka of the Solicitor's Office of the Department of Health and Social Security.
3. On any footing the claimant had made a claim for a single payment for a bed and floor-covering not later than 28 March 1983. However, he had purchased these items on 1 March 1983, so that unless he had in fact claimed at an earlier date than 28 March 1983, and in fact before 1 March 1983, his claim must necessarily be defeated by reason of his failure to establish a need within regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528]. The claimant's case was that he made a claim for a single payment for the items in question on 28 February 1983. He gave evidence to the tribunal that on that date he went to the local office and said words to the following effect:-

"I have come to claim furniture and carpet bed and curtains and so on."

He had at that date received notification that he had been granted a council tenancy. However, he was told to return when he had received his rent book. Although he conceded to the tribunal that he had not made a formal claim until 28 March 1983, he nevertheless contended that the words he had used on 28 February 1983 were sufficient to constitute a

claim as at that date.

4. The tribunal rejected this contention, making a finding that:-

"He did not specifically ask for a bed and floor-covering on 28.2.83."

It is now complained that the tribunal did not indicate why his evidence was not accepted. Of course, it may be that the tribunal simply did not believe him. They were not compelled to believe what he told them. They may have been unimpressed by his demeanour or had some other reason for discounting his evidence. However, they have failed to explain what induced them to reject it, and in those circumstances the claimant has been left in the dark. Accordingly, there has been a breach of regulation 19(2)(b) of the Adjudication Regulations, and I must necessarily direct that the appeal be reheard by a differently constituted tribunal.

5. However, in the written submissions the adjudication officer argued that in any event the claimant must necessarily fail, because even on the basis that he made an adequate claim on 28 February 1983, he was not "a claimant" within the meaning of regulation 4 of the Supplementary Benefit (Single Payments) Regulations 1981. It followed that he could not on any footing establish title to a single payment.

6. Regulation 4 reads as follows:-

"4. In these regulations claimant means a person who claims a single payment and in respect of the day on which that claim is made either -

(a) he is entitled to a pension or allowance; or

(b) he would be entitled to a pension or allowance if he -

(i) made a claim for it, and

(ii) satisfied the conditions for claiming and payment of that pension or allowance prescribed pursuant to section 14 of the Act,

but..."

7. In the present case, it is not in dispute that as at 28 February 1983 the claimant, who was then in receipt of invalidity benefit, was not entitled to a pension or allowance. But was he then able to satisfy paragraph (b) of regulation 4. In the event, as soon as he made a claim for supplementary benefit, he was awarded it. At that time the housing benefit provisions operated, and although he was in receipt of invalidity benefit, which exceeded the basic sum payable by way of supplementary benefit, his liability for rent resulted in his requirements exceeding his resources and in his being entitled to benefit. The real difficulty in this case is the effect of paragraph (ii). In his written submissions to the Commissioner the adjudication officer argued that, had a claim for supplementary allowance actually been made on 28 February 1983, the claimant would not have been entitled to a payment of allowance until the first Wednesday following that date, namely 2 March 1983 which would have been too late for his claim for a single payment. The claimant was as at 28 February 1983 in receipt of another social security benefit, namely invalidity benefit, and the effect of regulation 7(1)(a) and 2(a) of the Supplementary Benefit (Determination of Questions) Regulations 1980 was to prevent payment of supplementary benefit being made before the Wednesday following 28 February 1983, the Wednesday being the pay-day for the claimant's invalidity benefit. Accordingly, in the submission of the adjudication officer, the claimant was unable at a date before 1 March 1983 to satisfy the conditions for "payment" within regulation 4(b)(ii). Therefore the claimant could not bring himself within regulation 4.

8. Dr. Martinez pointed out the absurdity of a situation where, if the above construction was correct, a person who did not come within regulation 4(i) but who was already in receipt of a social security benefit, could not successfully claim a single payment unless the pay-day relevant to the social security benefit in question happened by a happy chance to be the very day on which the claim for a single payment was made. Moreover, the position was all the more bizarre when it was realised that in any particular case the pay-day for invalidity benefit depended upon the last two numbers of the national insurance number of the person concerned. Those who had a number between 00 and 24 had as their pay-day Monday, those with a number between 25 and 49 Tuesday, those with a number between 50 and 74 Wednesday, and those with a number between 75 and 99 Thursday. Accordingly, if the construction contended for by the adjudication officer in his written submissions was right, then whether a person could bring himself within regulation 4 would depend upon the accident of the last two figures of his national insurance number. Dr. Martinez argued that this cannot have been the intention of Parliament.

9. I agree. I consider that in the context the word payment must be deemed to be preceded by the word "eventual". I take the view that the words "the conditions for claiming and payment" must mean in effect "the conditions for an award". The claimant has to establish that he would at the relevant time have been able to make title to benefit, but the date of actual payment is immaterial. In other words, what he has to establish is the right to be paid, regardless of the actual date on which the payment was to be effective. This interpretation was also accepted by Mrs Huka.

10. Accordingly, I do not think that the fact that the claimant could not be paid supplementary benefit until Wednesday 2 March 1983, ie. after he had purchased the items in question, is fatal to his case. In my judgment, the written submission of the adjudication officer is without force.

11. My decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 9 June 1986