

MASTER Weekly Allowance for maintenance & insurance (Reg 16
Reg Regs) & Reg 21 SP Regs - irreg. hsg costs.

JNBP/BC

Commissioner's File: CSB/1241/1984

C A O File: AO 2299/85

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

INTERIM DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Social Security Appeal Tribunal: Greater Birmingham

Case No: 28/1910

[ORAL HEARING]

1. My interim decision is that the decision of the social security appeal tribunal ("the tribunal") dated 12 July 1984 is erroneous in law and is set aside. I remit to a differently constituted tribunal the question of the claimant's entitlement to an additional allowance under regulation 16 of the Supplementary Benefit (Requirements) Regulations 1983 for redetermination in accordance with this decision and I retain for further consideration the question of any possible entitlement of the claimant to any single payment under regulation 21 of the Supplementary Benefit (Single Payments) Regulations 1981.

2. This is an appeal brought by the claimant with the leave of another Commissioner against the above-mentioned decision of the tribunal which confirmed the decision of the adjudication officer issued on 11 January 1984 that the claimant was entitled to a weekly allowance of £1.70 in respect of maintenance and insurance for his home as determined by regulation 16 of the Supplementary Benefit (Requirements) Regulations 1983.

3. The Commissioner who granted leave to appeal directed an oral hearing of the appeal. The claimant was present at the hearing and was represented by Mr C Beton, a Community Social Worker of the Stilthouse Neighbourhood Centre. The adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office, Department of Health and Social Security. I am indebted to both representatives for their helpful submissions.

4. The question of the weekly amount payable to the claimant in respect of maintenance and insurance was considered by the adjudication officer together with other aspects of the claimant's entitlement to a supplementary allowance. The claimant appealed to the tribunal against the decision on several aspects of his entitlement but the only question expressly in issue on the present appeal relates to the allowance for maintenance and insurance.

5. In his written submission the adjudication officer now concerned with the case supported the appeal and submitted that it was not possible to tell from the tribunal's findings of fact and reasons for their decision whether or not adequate consideration was given to the relevant regulations, that regulation 19(2)(b) of the Adjudication Regulations was therefore not complied with and that accordingly the decision was erroneous in law. That submission was adopted by Mrs Stockton and I agree with it. It follows that the decision must be set aside. As giving the decision that the tribunal should have given would involve making findings of fact it would not be expedient, or indeed, possible, for me to give that decision myself and the case must therefore be remitted to a differently constituted tribunal (or tribunals, as to which see paragraph 14 below) for determination. In what follows I shall, as far as possible at present, give directions as to how a new tribunal should approach the matter.

6. The claimant stated his ground of appeal to the tribunal as "Insufficient allowance for repairs - insurance". However, it is clear from what he said at the tribunal hearing and from what has been said on the present appeal that his complaint is that he has been given an insufficient weekly allowance under regulation 16 of the Requirements Regulations for maintenance and insurance. He explained to the tribunal that his house would need painting, that the back gate and other timber was rotten and would need replacing and that every room needed decorating. The adjudication officer submitted that, in view of the age of the property, individual items should be claimed for separately as single payments and that it was not appropriate to increase the weekly allowance under regulation 16 because there were no special circumstances. However, the claimant said he still thought that the matter should be dealt with under regulation 16 and not under the Single Payments Regulations. From what was said at the hearing before me it did not appear that the claimant had in fact made any claims for single payments since the tribunal hearing and in the absence of any such claim the new tribunal will primarily be concerned with consideration of the amount of the claimant's weekly allowance under regulation 16 for maintenance and insurance. However, it may be that they will also have to consider whether any single payments should be made under regulation 21 of the Single Payments Regulations. The matter is made more complicated by the fact that changes were made both in regulation 21 and regulation 16 with effect from 26 November 1984 and these changes, at any rate in so far as they affect the amount of the weekly allowance for maintenance and insurance, will have to be reflected in the tribunal's decision which will, of course, have to cover the period up to the date of the decision.

7. At the date of the adjudication officer's decision appealed against and until and including 25 November 1984, regulation 16, so far as relevant for the present provided as follows:-

"16.-(1) Where a person is -

(a) an owner occupier including [what follows is not relevant as it is not in dispute that the claimant was an owner occupier at the relevant time].

(i)

(ii)

(b)

there shall be applicable under this regulation the weekly

amount of £1.70 [increased to £1.80 from 26 November 1984 and to £1.85 from 25 November 1985] for maintenance and insurance or, where the actual costs of maintenance and insurance exceed that amount, such higher amount, if any, as is reasonable having regard to any special circumstances (for example a high fire risk) justifying higher than average expenditure. [My underlining].

(2) For the purposes of this regulation 'maintenance and insurance' means essential routine minor maintenance and insurance of the structure of the home."

With effect from 26 November 1984 the words underlined above were replaced by "cost of insurance exceeds".

8. At the date of the adjudication officer's decision appealed against and until and including 25 November 1984, regulation 21 of the Single Payments Regulations provided as follows:-

"21.-(1) Where in the determination of the claimant's housing requirements no amount is applicable under regulation 16 or 18 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively) for an item solely because charges for that item occur only irregularly (for example charges under a lease for redecoration of common and external areas, or charges for the emptying of a cess-pit or septic tank), a single payment shall be made of an amount equal to the amount of each charge.

(2) For the purposes of this regulation, the provisions of regulation 5 (effect of disregarded capital on amounts payable shall not apply."

With effect from 26 November 1984 there was substituted an entirely different regulation of which the relevant part provides as follows:-

"Housing costs which arise irregularly .

21.-(1) Where in the determination of the claimants' housing requirements under Part IV of the Supplementary Benefit (Requirements) Regulations 1983 -

(a) An amount is applicable under regulation 16 of these regulations in respect of a person to whom either -

(i) paragraph (1)(a) or (1)(b) of that regulation applies [what follows is irrelevant because the claimant is such a person]

(ii)

(b)

a single payment shall be made in accordance with paragraphs (2) and (3).

(2) The amount payable in a case to which paragraph (1) applies shall be -

(a) in a case to which sub-paragraph (a)(i) applies, [the claimant's is such a case] the reasonable cost of any essential routine minor maintenance in excess of the balance, if any, of the amount applicable under regulation 16 of the Supplementary Benefit (Requirements) Regulations 1983 after meeting the actual costs of insurance on a weekly basis, accruing to and not spent on such maintenance by the claimant since the beginning of his award or the preceding period of 52 weeks whichever is the lesser period; or

(b)

(c)

(3) For the purposes of this regulation, the provisions of regulation 5 (effect of disregarded capital on amounts payable) shall not apply."

9. Before 26 November 1984 the possibility of an increased allowance under regulation 16 arose if the combined actual costs of essential routine minor maintenance and insurance exceeded the amount of the standard allowance but thereafter it arose only if the actual cost of insurance alone exceeded that amount. However, it was held in the unreported decision on Commissioner's file CSB/879/1984, and I respectfully agree, that once the door was unlocked the position was the same both before and after 26 November 1984 and that in either case any additional amount awarded could not take into account anything in respect of higher than average expenditure on maintenance or insurance unless there were special circumstances giving rise thereto. However, if the door is not unlocked the position of a claimant is radically altered. However high his justifiable expenditure on maintenance may be and by however little the standard allowance may exceed the cost of insurance, he cannot be awarded any additional allowance under regulation 16, although he may be entitled to a single payment under regulation 21 in its amended form.

10. With the above considerations in mind I turn to consider what findings the new tribunal will have to make. First they will have to make a finding as to the actual costs of maintenance and insurance for the period up to 25 November 1984. As Mrs Stockton conceded, rightly in my view, that "special circumstances" in regulation 16 may relate not only to the property but also to the claimant, the tribunal, in assessing the actual costs of maintenance, will have to take account of any costs incurred by the claimant in paying others to do maintenance job which he could not do himself because of his disability. They will have to have regard to the definition of maintenance which in my view should be interpreted as "essential routine minor maintenance of the structure of the home" with ~~the~~ "structure" interpreted as including the water supply and distribution installation and gas and/or electricity supply and distribution installations. They will also have to give effect to the words "essential" "routine" and "minor". I do not consider that it is necessary for me to say anything about the meaning of "essential". As to "routine", it must, I think, be

intended to refer to maintenance of a day to day character which one expects to have to do repeatedly but not necessarily regularly. As to what is "minor", I consider that that is a question to be answered by the tribunal on a commonsense basis and indeed I do not think that it is possible for me to give any detailed guidance. However, a few examples may assist. Thus, as regards redecoration, I do not consider that anything more than the "touching up" and "patching up" required from time to time between occasions of complete redecoration could properly be regarded as minor. Again, although I think that cost must usually be an important factor in deciding whether or not a maintenance task is minor, it seems to me that the periodic clearing of gutters and replacement of slates or tiles which may involve the use of ladders not normally available to householders and which may therefore be quite expensive, would be likely to be regarded as minor.

11. If the tribunal find that the actual costs of maintenance and insurance up to 25 November 1984, reduced to a weekly basis, exceeded £1.70 they will then have to consider whether there are any special circumstances justifying higher than average expenditure. It will be open to them to find that the claimant's disability was such a special circumstance. If they decide that it was, or that there was any other such special circumstance, they will then have to decide what additional amount, if any, it would be reasonable to award having regard to such special circumstances.

12. The tribunal will then have to consider the period from 26 November 1984 to the date of their decision. If they find that the cost of insurance alone, on a weekly basis, was less than the current standard allowance, it will not be open to them to make any award above that standard allowance. If on the other hand, they find that the cost of insurance was less than the standard allowance it will then be open to them to proceed in the same manner as is described in paragraph 11 above.

13. The procedure outlined in paragraph 11 and 12 above will enable the tribunal to reach a decision as to the claimant's entitlement under regulation 16. It is possible however that a question as to entitlement to a single payment under regulation 21 will then arise. That possibility was referred to at the hearing before me but there was no consideration of any procedural difficulties which may arise from the fact that the claimant has not made any claim for such a payment. Before I give any directions as to how regulation 21 should be dealt with I wish to have a submission from the adjudication officer about the possible applicability of that regulation. For my part, I would consider it reasonable for a claimant, who has asked for an increased allowance under regulation 16, to be treated as having made a claim for any single payment to which he would in the circumstances be entitled but it may be that that is a matter for the Secretary of State.

14. In all the circumstances I consider that the appropriate course is for me now to remit only the question under regulation 16, which is independent of the question under regulation 21, to a new tribunal. After I have considered the further submission by the adjudication officer and any observations thereon on behalf of the claimant I shall be in a position to give a final decision including, if appropriate, directions as to how the same or another tribunal should deal with the question under regulation 21.

15. For the foregoing reasons my interim decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 16 September 1986

COPY
JNBP/BC

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Region: Midlands

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15. For the foregoing reasons my interim decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 16 September 1986