

VGHH/SH

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Ethel Howell (Mrs)

Supplementary Benefit Appeal Tribunal: Barking

Case No: 07/09

CIB 1301/1983

[ORAL HEARING]

Cooker Reconditioned v. Secondhand

Decision

1. My decision is that the decision of the supplementary benefit appeal tribunal ("SBAT") dated 25 August 1983 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

Representation

2. I held an oral hearing of this appeal. The claimant, who did not appear, was represented by Miss Sally Bigwood, Welfare Rights Officer of the Welfare Rights Office, Basildon Council. The adjudication officer now concerned was represented by Mrs G M V Leslie, Barrister.

The supplementary benefit officer's decision

3. By decision dated 21 January 1983 a supplementary benefit officer awarded the claimant a single payment of £50 for a reconditioned cooker. The claimant appealed against this decision saying that she would like the full price that she had had to pay for the cooker, £271.81.

4. In his written submission on the appeal, the supplementary benefit officer stated that the facts before him were that the claimant, aged 70, was a widow who received retirement and supplementary pensions. She was the tenant of a 4 roomed gas centrally heated house, which was the property of Basildon Development Corporation. On 18 January 1983, a request was received for a single payment for a cooker, to replace the claimant's cooker, which had 3 rings burned out and which was considered uneconomic to repair. In giving reasons for his decision, the officer quoted regulation 10(2) and (3) of the Single Payments Regulations (which provide, among other matters, for the award of the cost of a reconditioned cooker, if such is available). (He should also have referred to

regulation 10(5) of the amended regulations which allows for delivery and installation of a cooker.) He stated that he had decided that a single payment of £50 should be made for a reconditioned cooker and also a further payment for fitting the cooker. The amount to be paid in respect of a reconditioned cooker was "obtained from a list in the office which shows the price for which such items may be obtained locally".

The SBAT proceedings

5. The SBAT heard evidence at a hearing on 7 June 1983. According to the chairman's note, the claimant stated that she had tried to find a reasonably priced reconditioned cooker and the one she had purchased was the cheapest one she could find. The price was £271.81. Her representative "contended that ... the address provided by the DHSS deals only in second hand cookers" but "The presenting officer stated that her information is that reconditioned are sold at this address". A letter was produced from Northern Gas dated 13 April 1982 giving an average price of £220 for reconditioned cookers and from Eastern Electricity dated 12 July 1982 giving a price of £30 to £70 for second hand cookers and £150 to £250 for a reconditioned cooker.

6. The SBAT decided to adjourn. They recorded as material findings of fact:

"[The claimant] is aged 70 and in receipt of supplementary pension.

She claimed a single payment on 18 January 1983 for a cooker - this being a written claim - confirming a verbal claim made on 14 January 1983.

It was established there was a need as hers was in disrepair and uneconomic to repair.

A single payment of £50 was allowed.

[The claimant] paid £271.81 for a reconditioned cooker and requests a single payment for the balance.

There is a dispute between the parties concerned as to whether a reconditioned cooker can be obtained locally for £50 or not less than £271.81."

Their recorded reasons were:

"The tribunal adjourn the hearing to enable the appellant to contact the local DHSS office and find out where a reconditioned cooker is available for £50."

7. At the resumed hearing on 25 August 1983, the SBAT had before them a written statement from the DHSS that reconditioned cookers could be obtained in Pitsea for £60 and for £70 to £80 in the Westcliff area, including in each case delivery and fitting. Letters were produced by the claimant's representative from a Cooker Centre in Pitsea giving a price of £150 for reconditioned cookers and from

another supplier in Westcliffe-on-Sea, near Southend, which is dated 12 August 1982 and gives a price of £125 for supplying and fitting reconditioned cookers.

8. The SBAT gave its decision on 25 August 1983. Their recorded findings of fact, decision and reasons were:

"Findings of Tribunal on question of fact material to decision.

[The claimant] is a widow aged 70 who is in receipt of Supplementary Pension and has no savings. On 18 January 1983 [the claimant] made a written claim for a cooker confirming a verbal claim made on 14 January 1983. £50 single payment for a cooker was allowed on 21 January 1983 and a further £21.28 was allowed on 15 February 1983 for installation. Appellant purchased cooker on credit sale agreement for £271.81 on 17 January 1983. The SBO established there was a need for a cooker as [the claimant's] original one was in disrepair and uneconomic to repair.

Tribunal's unanimous decision.

To award a single payment of a further £53.72.

Reasons for decision (including Acts and Regulations and reported Commissioners' Decisions considered by the Tribunal).

The only evidence that has been supplied in writing of the price of reconditioned cookers available in the Basildon area has been from [the claimant]. The tribunal therefore accept that reconditioned cookers are not available including delivery and fitting for less than £125.00. The tribunal note [the claimant] has already been awarded £71.28 for the cooker and installation and therefore award the balance of £53.72."

Was the SBAT decision erroneous in law?

9. The SBAT decision was clearly erroneous in law. Having decided that the claimant had a need for a cooker and that she was entitled to a single payment for that item, the SBAT had to determine the amount to be awarded. That amount, it is stipulated by the Single Payments Regulations, is to be:-

- (1) "such amount as is necessary to purchase an item of reasonably quality": see regulation 3(3)(b)
- (2) "the cost of a reconditioned item, if such item is available": regulation 10(3)(c)
- (3) if such item is not available, "such amount as is necessary to purchase a new item": regulation 10(3)(d).

Paragraph (a) of regulation 10(3) refers to new and to second-hand items, paragraph (b) refers only to second-hand items, paragraph (c) refers only to reconditioned items and covers not only cookers but all gas and electrical appliances, and paragraph (d) refers only to new items. The claimant had given evidence that the cheapest reconditioned cooker available to her at the date of purchase was that purchased by her from the local Gas Board for £271.18. It was essential for the SBAT, in finding the facts, to indicate whether they accepted or rejected her evidence. If they accepted her evidence, her claim for the price should either have been successful or the SBAT should have explained exactly why it was not. If her evidence was rejected, the SBAT should have so held and should have indicated why. In giving reasons for their decision the SBAT should have explained why they decided, apparently on the basis of a letter written in August 1982 from a supplier in Westcliff-on-Sea, some 12 miles from Basildon (where the claimant lives) that a reconditioned cooker was available to a claimant in Basildon at that price in the month of January 1983. It was also necessary for them to indicate why they rejected the statements from the Department of Health and Social Security that reconditioned cookers could be purchased for a much smaller sum at or near Basildon. Did they accept the evidence of the investigations by the claimant's representative, which seem to show that such cookers on the Department of Health and Social Security list were second hand? Or did they reject it and prefer the Department of Health and Social Security assertions. Positive findings, supported by reasons, should have been made on this point.

Is it expedient to give the decision that the SBAT should have given?

10. (1) It is neither expedient nor possible for me to give the decision that the SBAT should have given because the necessary findings of fact have not been made: see paragraph 9 above. The case must accordingly be referred to a social security appeal tribunal which should, in accordance with the usual practice, be entirely differently constituted. That tribunal should make findings of fact and give reasons on all the points referred to in paragraph 9 above.
- (2) It is important for the tribunal to consider the question of availability at the date of claim. The award is to be for a reconditioned cooker "if available". This means available to the claimant and must take into account where she lives, her age and other objective circumstances.
- (3) The amount awarded must be for a reconditioned cooker and this is crucial. The difference between the meaning of the word "recondition" and "second hand" is explained in many dictionaries.

In Minster Trust Ltd v Traps Tractors Ltd and Others [1954] 3 All E.R. 136 at page 144 Devlin J. (as he then was), after stating that the word "recondition" was not to be found in any dictionary (as was apparently then the case, said "Re-condition" obviously means "to put back into condition"; not of course, into brand-new condition, but to renew the machine in the sense of giving it a new lease of life. It means more than overhauling or repairing ... Reconditioning requires, I think, that the machine should be thoroughly examined - usually that means "stripping down" - to see what renewable parts are worn, and all such parts which are substantially worn should be renewed". The dictionaries give similar definitions. They also define "second hand" as (among other definitions) "acquired after being used by another" (Webster's Collegiate Dictionary) "used by a previous owner" (Longman's Dictionary) "already used by a previous owner" (Chambers' Twentieth Century Dictionary); "previously owned or used" (Collins English Dictionary) "bought after use by a previous owner" (Oxford Paperback Dictionary). "Reconditioned" clearly does not simply mean "made safe". One firm, according to the case papers, has suggested, that cookers (apparently abandoned cookers) on vacated council properties might be used by them and, "if working as new" called reconditioned. I do not agree. Mr Justice Devlin's description of what is meant by "reconditioned" should be adopted when considering whether cookers available to the claimant (see (2) above) at a lower price than that paid by her were "reconditioned" in terms of regulation 10(3)(c) of the Single Payments Regulations.

11. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 14 December 1984

Commissioner's File: CSB/1301/1983
C SBO File: 1536/83
Region: London North