

SP for walker

JGM/MD

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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Harry Walker

Supplementary Benefit Appeal Tribunal: Sheffield

Case No: 10/168

1. My decision is that the decision of the social security appeal tribunal 16 July 1984 was erroneous in point of law and is set aside. In this case I regard it as expedient to exercise the power conferred by regulation 27(a)(i) of the Social Security (Adjudication) Regulations 1984 of giving myself the decision which the tribunal should have given, which is that the decision of the benefit officer is confirmed for the reasons given in this decision.
2. On 25 May 1983 the claimant, who was in receipt of a supplementary allowance made a claim for a single payment for an electric cooker and heating appliance. It was or is contended that the gas cooker and heater which the claimant already possessed were useless because the gas supply had been cut off. It was contended further that the gas cooker was unserviceable.
3. The claimant was rejected by the adjudication officer broadly on the ground that the claimant had suitable alternative items. An appeal against this decision was rejected by a supplementary benefit appeal tribunal on 21 September 1983. But the decision of the tribunal was set aside by the Commissioner on the ground that the tribunal had failed to consider the proper matters and the matter then came before a social security appeal tribunal on 16 July 1984. This tribunal again rejected the application and the claimant again appeals to the Commissioner.
4. The new tribunal's findings of fact were as follows:-
 - "(1) On 25.5.83 the claimant applied for Single Payments for an electric cooker and an electric heater.
 - (2) He had been in touch with the Benefit Officer earlier in the year IE on 28 May 1983. On that occasion he reported that his gas supply had been cut off by reason of arrears. He had a gas cooker and a gas fire. D.H.S.S. arranged with the Gas board for the supply to be reconnected on payment of weekly payments by deductions of £6.00 plus arrears of £2.60 making £8.60 per week. D.H.S.S. also granted a single payment of £22.50 for the reconnection fee and paid this over to the Gas Board, though the reconnection was never actually affected (and the fee was repaid).
 - (3) Only 3 weeks deductions were in fact made because the claimant then persuaded the D.H.S.S. to discontinue the deductions.
 - (4) At the date of the claim for the electric cooker and radiator the claimant

possessed a fairly new gas fire which was fully serviceable. He also had a gas cooker which, although old, was also fully serviceable. Neither of them could be used at that date because the gas supply had been discontinued and the connection not restored."

5. The tribunal's reasons for confirming the decision of the benefit officer were expressed as follows:-

- "(1) At the date of the claim 25.5.83 the claimant had a need for a functioning cooker and space heater which could be electrically fuelled if desired SP Regs 3(2)(a)
- (2) He did not possess such items (Ibid. 3(2)(b)(i)) but had had available to him a suitable alternative albeit gas-fuelled cooker and space heater (ibid 3(2)(b)(ii)) and had unreasonably failed to avail himself of such item (Ibid. (3)(2)(b)(iii))
- (3) The claimant unreasonably failed to avail himself of the gas fuelled items in that he did not adhere to the arrangements made earlier in the year for him by the D.H.S.S. which would have ensured the continuance of the gas supply and thus rendered the gas cooker and the gas fire useable.
- (4) It is not considered that the evidence of the condition of the cooker as it was at the date of the claim supported the Claimant's present assertion that it was partly unuseable at that date because such assertion was not made (it is claimed through forgetfulness) at the time of the Visting Officer's call on 21 Apr. 83 when the claimant was indeed seeking to have the gas supply restored and it was subsequently never referred to by the Claimant by letter or by telephone or other communication to the Benefit Officer until the 21 Sep 83 the first Tribunal hearing. The Claimant's recollection of the date on which it became unuseable is, we consider, at fault in this connection."

6. The adjudication officer now concerned has made a submission to the effect that the decision was erroneous in point of law apparently on the main ground that the claimant had led evidence to the effect that the gas cooker was not functioning properly and that a non-functioning gas cooker could not be a suitable alternative item. The submission seemed to me to overlook the fact that the tribunal rejected the evidence that at the date of the claim the cooker was not functioning. And for myself I could not on that account detect any error of law in their decision. In case however the claimant and his advisers had been led by the submission to leave unsaid what they might have said I indicated that I was not entirely satisfied from the submission that the decision was on this ground erroneous in law. And the welfare rights adviser of the claimant's local authority has written submitting that the issue before me is whether someone who has had their gas disconnected is entitled to a single payment for an electric cooker and heater; and that his submission has always been that appliances that are unable to function in the conditions that prevailed in the house at the time of claim do not satisfy the meaning of need as defined in regulation 3 of the Single Payment Regulations.

7. I say at once that I reject the submission in this extreme form, which would have the effect that a person whose gas was cut off for one day would if he made his claim on that day obtain a single payment for an electric cooker. But the claimant can establish that the decision was erroneous without establishing so extreme a proposition and I must look further into the matter and in particular at the grounds on which the claimant asked for and obtained leave to appeal.

8. Regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1981 as it stood as the date of the claim provided a follows:-

"A single payment shall be made only where -

- (a) there is a need for the item in question; and
- (b) in the case in which the payment would be in respect of the purchase of particular item, the assessment unit either -
 - (i) subject to regulation 10(2)(b)(ii) purchase of essential furniture and household equipment), does not already possess that item, or
 - (ii) does not have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item".

9. Since the date of the claim the regulation has been amended so as to make the requirements of (b) cumulative instead of alternative. The tribunal unfortunately referred to the regulation in its present form and having found that the claimant had unreasonably failed to avail himself of the gas cooker upheld the decision of the benefit officer on that ground alone. At the time however the claimant was entitled to succeed if he could establish that one of the alternatives in (b) was satisfied. The tribunal did not find that there was no need in terms of (a) and could not find against him under (b) without finding against him under both sub paragraphs (i) and (ii). Their findings did not exhaust all the possibilities under (b).

10. The first requirement of regulation 3(2) is that there should be a need for the item in question (regulation 3(2)(a)). The item in question qualifies for a potential single payment because under regulation 9(c) it is an item of essential furniture and household equipment. The item listed there is a cooker and not specifically an electric cooker. I do not doubt that if a need is properly established for a listed item with a special characteristic the possession of an item not having that characteristic will not be a bar to a single payment. Thus if someone established a need for two shirts and already has one he may claim a single payment for a second shirt, which will not be refused on the bare ground that he has a shirt but not a second shirt. Similarly if a person lives in an area where there is no electricity and makes a single payment for a calor gas cooker, it will not be turned down on the bare ground that he already has a cooker, because he establishes a need for a cooker with that particular characteristic. But in my judgment a person who lives in an area where both gas and electricity are available can establish a need for a cooker, but not specifically for a gas cooker or an electric cooker, though no doubt if he had neither he would be permitted an element of choice. That was not the claimants position. He had a gas cooker at the date of claim which the tribunal found was then serviceable. And in my judgment his claim in the absence of facts to establish the need specifically for an electric cooker stands as a claim for a cooker, which is liable to be defeated if the claimant already possesses a cooker (albeit a gas cooker). It is as if a claimant who needed to have one coat, but no more than one, and who had a grey coat asked for a single payment for a brown coat. The claim would fail because he already possessed a coat, without its being necessary to consider whether a grey coat was a suitable alternative item to a brown coat.

11. I turn now to the point that at the date of the claim gas had been cut off. This, it is submitted means, that there was a need for an electric cooker, or at all events for a non-gas cooker. I do not agree. It seems to me that the need was to have the gas supply reconnected. Indeed it appears from the findings of the tribunal that an award of a single payment for this purpose was made (possibly under regulation 30) though it proved abortive. But I am quite unable to accept that a person in receipt of a supplementary allowance can of right collect a number of differently fuelled cookers or heaters as he successively (and possibly temporarily exhaust his credit with the suppliers of the various kinds of fuel. In my judgment the claim should be rejected under regulation 3(2)(a) alone.

12. I will mention in addition regulation 3(2)(b). This in its present form in many cases

overlaps with regulation 3(2)(a) because, for instance, if a claimant has available a suitable alternative item he fails to establish a need for the item claimed. In the present case I should, notwithstanding that the gas was cut off, if it had been necessary and relevant to do so, have concluded that the serviceable gas cooker was a suitable alternative item. It is in my judgment not rendered unsuitable by reason of the fact that there is a need for a single payment to restore the fuel supply.

13. I must turn lastly to a point made by the claimant in his application for leave to appeal. The tribunal held that the claimant had unreasonably failed to avail himself of the gas cooker by neglecting to take advantage of the arrangements for reinstatement of supply. The point made by the claimant, if I understand it, is that this was based on a misinterpretation of the regulation in that it was only the original item and not any suitable alternative item to which the provision about failing to avail oneself of "such an item" relates. It is true that the regulation (set out in paragraph 8 above) is not clearly worded and the words "such an item" at the end of regulation 3(2)(b)(ii) may refer either to the item claimed or to the suitable alternative item, or to both of them. I have reached the conclusion that the words referred to both and does so not only in the regulation as it stood at the time of claim but also as it now stands. The point does not matter on the view that I have taken of the construction of the regulation as a whole and I mention it in deference to the submission in the claimant's application for leave to appeal.

14. The claimant's appeal in substance fails.

(Signed) J.G. Monroe
Commissioner

Date: 1st November 1985