

CSB 126/1981

JSW/EFM

SUPPLEMENTARY BENEFIT ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

RSE 5/81

Decision C.S.B. 6/81 reported

1. This appeal by a benefit officer is against a decision of a supplementary benefit appeal tribunal awarding a claimant £12 as a single payment for shoes. Whether or not the decision was erroneous in law, I cannot but feel that such a trifling matter should not be appealed to a Commissioner. It is a question of proportion between the cost and time involved compared with the small amount of an award. I acknowledge that I gave leave for the appeal to be brought since the jurisdiction is a new one and I intend no criticism of the benefit officer. It is also a different matter when a claimant is denied an award to which he may be entitled in law.

2. The claimant appealed against a decision of a supplementary benefit officer refusing a single payment for footwear and curtains. The appeal tribunal confirmed the refusal of a grant for curtains but allowed £12 for shoes. Their decision was unanimous. Their findings on questions of fact material to decision included -

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"His shoes let in water and the tribunal consider that this is a serious risk to his health and that a single payment is the only means by which the risk will be removed".

Their reasons for decision were -

"The appellant does not satisfy the criteria laid down in regulations and a payment for curtains cannot be made. The Tribunal considers that the appellant is in need of a new pair of shoes to prevent the serious risk to his health by wearing shoes that let in water."

3. The benefit officer's grounds of appeal and submissions are those set out in the application for leave to appeal as follows:-

- (i) It is contended that the tribunal failed to reach a finding of fact on a material consideration as required by regulations 30(a) of the Supplementary Benefit (Single Payments) Regulations 1980 (S.I. 1980 No. 985) (referred to as the "Single Payments regulations") namely, whether the claimant had failed to satisfy the conditions for a payment under any regulation in Parts II to VII, and in that respect the tribunal failed to consider adequately or at all the provisions of regulation 27 of the Single Payments regulations.

(ii) There was no evidence to support the tribunal's conclusion that there would be serious damage or serious risk to the claimant's health if a grant were not given for shoes.

(iii) On the facts as found no reasonable tribunal could have concluded that a single payment for shoes should be made under regulations 30 of the Single Payments regulations.

It is contended that there is no indication that the tribunal applied their minds to whether the conditions of regulation 30(a) or (b) were satisfied and that, had they done so, they would have considered regulation 27 and should have reached findings of fact upon whether the need for shoes arose otherwise than by normal wear and tear or in the normal course of events. It is submitted that had they done so the tribunal would, in the absence of evidence to the contrary, have concluded that the need arose by normal wear and tear and that condition (a) of regulation 30 would have been found to be satisfied, had it been properly considered.

4. It is further submitted that the tribunal have not fulfilled their duty to record their findings on material questions of fact under regulation 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (S.I. 1980 1605). This is stated to have been a failure to identify the risk to health on which they base their award, failure to record the considerations which led them to conclude that any such risk was "serious", failure to state their

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reasons for concluding that the refusal of a single payment must inevitably subject the claimant to such a risk when there was no evidence that he was other than a healthy young man. It is further submitted that had there been a serious risk to health, the tribunal failed to consider under regulation 30 other means by which he might have replaced his footwear, namely by means of a clothing club or other credit facilities.

5. It is not necessary to set out all the statutory provisions referred to other than as follows -

(1) Single Payments Regulations

"27(1) A payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing and -

(a) that need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -

(i) pregnancy, the birth of a child,
or rapid weight loss or gain,

- (ii) heavy wear and tear on clothing or footwear resulting from any mental or physical illness, handicap or disability (except where an additional requirement is applicable),
- (iii) the accidental loss of, damage to or destruction of an essential item of clothing or footwear,
- (iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear,

but not where the need has arisen in the normal course of events (for example where an item of clothing or footwear is outgrown); or

- (b) that need arises because he is admitted to hospital or a similar institution as a patient or to a re-establishment course as a resident and for the purposes of his stay there.

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(2)

(3)

Discretionary Payments

30. Where a claimant is entitled to a pension or allowance and he -

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented."

(2) Appeals Regulations

"7 (1)

(2) The tribunal shall -

(a) record every determination in writing; and

(b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and

(c) if a determination is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting.

(3)"

6. At the hearing before the tribunal, the claimant produced curtains and two pairs of shoes from a plastic bag. The claimant said that the shoes let in water. The presenting officer states that one of the members gave the shoes a cursory glance from a distance of about 4 ft and pronounced them "split" while the other members showed no interest and did not examine the shoes. The presenting officer

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states that he viewed the shoes from about the same distance as the member and could not detect any splits, only superficial surface cracks such as occur in normal wear and he considered the shoes were waterproof. Those are all matters of fact.

7. In my judgment, it is not necessary for a tribunal to record labouriously all the statutory provisions which they considered in eliminating them from affecting their determination of the appeal. A form is provided, LT 235, on which to record their proceedings which gives a ready indication of what is required. They are not expected or required to record their reasons and findings in the detail or style of a reasoned judgment such as might be expected of a court. The statement of facts, relevant provisions of Acts and Regulations and reasons for the benefit officer's decision draws their attention to relevant material for consideration. The tribunal's attention was directed to regulations 9, 27 and 30 of the Single Payments regulations. It is to be assumed that a tribunal are familiar with the statutory provisions with which they have to deal unless the record of their proceedings indicates that they misunderstood or misapplied them. The submission on the appeal to the Commissioner is merely inferential that they neither considered them nor applied them correctly.

8. The tribunal evidently concluded that on matters of fact regulation 27(1) of the Single Payments regulations did not apply

and directed their attention to discretionary payments, the provisions for which are contained in regulation 30 in Part VIII of the regulations. That regulation, as it seems to me, is designed to introduce flexibility into the provisions when, in a deserving case, a claimant does not satisfy any of the specific provisions for a payment under Parts II to VII of the regulations or for which no provision is made in the regulations. It is not an absolute discretion and must be applied judicially with proper regard to its limitations. The reference in regulation 30 to the opinion of a benefit officer also extends to the opinion of the tribunal on an appeal, who may disagree with the benefit officer. Whether or not such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented is essentially a question of fact and degree for the opinion of the tribunal.

9. An appeal tribunal have the advantage of seeing and hearing a claimant when he or she appears at a hearing. That is an important feature of adjudication. The demeanour of a claimant or witness and the general impression gained from seeing and hearing him contributes greatly to reaching a conclusion of fact. Shoes that let in water seem to me to present an obvious risk to health. The tribunal considered the risk to be serious and so stated. Damp is an insidious cause of ill health. It is not necessary for a tribunal to spell out in terms of their decision in every case a precise damage or a serious risk to health, or whether or not a claimant appears to be in good or bad health, or whether or not other means

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are available for replacing articles, but it may be necessary to do so in the circumstances of a particular case, for example, if a claimant suffers from a condition which is likely to be damaged or seriously affected by other adverse circumstances. It is, I think, essential since regulation 30 deals with discretionary payments, to keep its application flexible and regulation 7(2)(b) of the Appeals regulations does not require a detailed enumeration of facts and reasons.

10. In my opinion, the tribunal have complied adequately with the provisions of regulation 7(2)(b) of the Appeals regulations requiring them to state their reasons and material findings of fact. It is clear what they found, what they meant and what they intended. Their findings and reasons are concise and clear even although they did not record fully chapter and verse for their conclusions, which I do not regard as necessary in order to comply with the regulation. It is not possible to lay down a general rule for recording findings and reasons since that depends on the nature of the evidence and of the case before them. I have already stated that a tribunal are not expected to record a reasoned judgment such as might be expected of a court. So long as their findings of fact relevant to their decision are clear as also their reasons for leading them to their conclusion, that is compliance with the regulation. Findings and reasons need not be lengthy: indeed brevity clearly indicating them is often to be preferred to a lengthy and possibly ambiguous record.

11. In conclusion, I think this appeal has led to a useful review of factors affecting decisions of appeal tribunals, albeit the amount in issue is trivial. The claimant did not respond to the benefit officer's submission and an oral hearing was not requested. In my judgment, for the reasons stated, the unanimous decision of the tribunal was not erroneous in point of law.

12. I confirm the decision of the appeal tribunal and dismiss the appeal.

(Signed) J S Watson
Commissioner

Date: 17 July 1981

Commissioner's File: C.S.B. 126/1981
C S B O File: SBO 149/81