

CSB/177/1981

JGM/GJH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

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→ R(SB) 14/82

1. My decision is:-
  - (a) that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 12 February 1981 to increase the amount for rent in the claimant's supplementary allowance to £4.60 was given without jurisdiction and is set aside accordingly.
  - (b) that the decision of the appeal tribunal of the same date, confirming that no payment could be made for shoes, stands.
2. The claimant who was a person entitled to a supplementary allowance, wrote a letter received in the supplementary benefit office on 5 January 1981 applying for a payment for a pair of shoes for her daughter, saying that her old ones were too small, **unwearable** and worn out and that the daughter had only a pair of boots and a pair of plimsolls. The benefit officer treated this as a claim for a single payment for shoes, and gave a decision refusing the payment. The claimant appealed to the appeal tribunal who gave two decisions, one increasing the amount of the supplementary allowance to £4.60 for rent and the other confirming the refusal of the payment for shoes.
3. The benefit officer has appealed against that part of the decision which awarded the additional payment for rent substantially on the ground that the question was not one that had been decided by the benefit officer and was thus not before the appeal tribunal at all. There is no appeal against the other part of the decision which is only before me if and so far as I am seised of the whole matter once there has been an appeal to me on any part of a decision of an appeal tribunal. I held an oral hearing of the appeal at which the benefit officer was represented by Mr R A Birch of the Solicitor's Office of the Department of Health and

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Social Security. The claimant was not present, but she wrote a letter to the effect that she did not understand the case and that, as far as she was concerned, she had claimed a special needs payment for shoes which was turned down.

4. The main question relates to the jurisdiction of the appeal tribunal which, as laid down in section 15 of the Supplementary Benefits Act 1976, as amended by Schedule 2 to the Social Security Act 1980, is to confirm the determination [of the benefit officer] appealed against or to substitute for any determination appealed against any determination which a benefit officer could have made. As was pointed out in Commissioner's Decision CSSB 1/81 there is nothing in the enactments relating to supplementary benefit corresponding to section 102 of the Social Security Act under which local tribunals and Commissioners can under that Act give decisions on matters which arise for the first time before them without the insurance officer having given an original decision on them. In my judgment an appeal tribunal have no jurisdiction to deal with a matter which was not before the benefit officer. It may be (though I do not on this appeal need to decide the point) that such tribunal can only deal with matters before the benefit officer actually dealt with in his decision. The only matter before the benefit officer is that which was the subject of a claim or what could be and was properly treated as a claim. The Supplementary Benefits Act 1976 (the 1976 Act) contains no provision comparable with section 79(1) of the Social Security Act 1975 which makes a claim in a presented form a condition precedent to a title to benefit. Under section 1 of the 1976 Act a person is expressed to be entitled to supplementary benefit if he satisfies the substantive (as opposed to the procedural) conditions of title. A claim is of course necessary in order to place the matter before the benefit officer at all, but the requirement of a claim is a matter of procedure and not of substantive law. It follows in my judgment that the strict requirements of the regulations relating to claims, though compliance with them may probably be insisted on by benefit officers, can readily be waived. This matter is of considerable importance as I learnt at the hearing that compliance with the strict requirements of the regulations is not, at any rate in relation to claims for single payments, being insisted on.

5. Regulation 3(1) of the Supplementary Benefit (Claims and Payments) Regulations 1980 [SI 1980 No 1579] (the CP regulations) provides that every claim is to be made in writing to the Secretary of State for Social Services either on a form approved for the purpose by him and supplied without charge or in such manner as he may accept as sufficient. Regulation 3(5) among other things qualifies this to the extent that a claim under section 3 of the Act (i.e. a claim for single payments) may be accepted by the Secretary of State in any particular case or class of cases even if it is not in writing. One would be forgiven if on a reading of these provisions one supposed that the Secretary of State would have in fact approved forms for use by claimants in the claiming of every kind of supplementary benefit; and that the normal claim would be made on such a form. In fact however the Secretary of State has approved form SB1 for general use in the claiming of a supplementary allowance or supplementary pension and form B1 for use in claiming such allowance by unemployed persons (to whom section 5 of the Act applies); but he has not approved any form for the making of claims for single payments. It is thus possible to make a claim for a single payment (in

the absence of waiver of the strict requirements) only by making a claim, oral or written, which the Secretary of State will accept.

6. In practice the claim, however informal, is in strictness regarded in terms of regulation 3 of the CP Regulations as made to the Secretary of State; and I am informed that it is first seen by a person authorised to approve claims on behalf of the Secretary of State and then (in the case of an oral claim after having been put into writing by the person so authorised) referred under regulation 2 of the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No 1643] (the DQ regulations) to the benefit officer for determination. Mr Birch submitted that this constituted the necessary approval by the Secretary of State. This may well be so, but if it were of the essence of the matter that the claim should be so approved, I should have expected to find in the case papers in this and other cases that have come before me some written indication for the benefit of the appeal tribunal to show that such approval had been given. I do not however think that it is in general necessary to look for evidence of such approval if the formalities can be (as I have held that they can be) and have been waived. In the present case for instance the claimant's letter received on 5 January 1981 was clearly intended as a claim. I was informed that the benefit officer in rejecting it would have given his decision in the form on the reverse side of form BO 3D and that the claimant would have been notified of the decision on that form which opens with the words "I am writing to tell you that the Supplementary Benefit Officer has considered your claim for ....." Once this has happened with the approval of the benefit officer the requirements of the regulation must have been waived. The claimant's letter above-mentioned operated as the only claim before the benefit officer and on that claim he properly made his determination. It cannot be argued that anything else was before him. Equally nothing else was before the appeal tribunal and they had no jurisdiction to make an award of £4.60 for rent. Such an award could only be made in the first instance by a benefit officer either on a claim (referred to him under regulation 2 of the DQ regulations) or on an application for review which would fall to be considered by him in the first instance under regulation 4 of those regulations.

7. I have therefore to consider what course is open to me now that I find the determination to have been in this respect beyond the jurisdiction of the appeal tribunal and for that reason erroneous in point of law. My attention was drawn to Decision CSB 8/81 (not reported) where it was pointed out (at paragraph 16) that under rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [SI 1980 No 1605] there is no express power for a Commissioner to set aside a decision (though the Commissioner would have inferred such a power) and in particular that there was no power to set aside part only of a decision leaving the balance intact. The Commissioner overcame this latter difficulty by directing that the case should be referred to a differently constituted tribunal with directions to award afresh that which had been awarded by the unimpeachable part of the decision appealed from and to rehear so much of the decision as was not covered by the first direction. The latter part of the decision is of course in line with the normal practice where a decision is set aside as a whole with a direction for rehearing as in Decision CSB 9/81 (not reported). It appears to me however to be superfluous, when a decision is set aside as having been given in excess of jurisdiction, that it should have to be referred back to a differently constituted tribunal to refuse to deal with the matter for want of jurisdiction. In the circumstances it can

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in my judgment simply be set aside, even where it is only one of the matters determined by the appeal tribunal. Some such course was adopted by the Commissioner in relation to an appeal from a medical appeal tribunal in paragraph 14 of Decision CI 15/63 (not reported).

8. In this last connection I have given consideration to the question whether, the benefit officer having appealed against one limb of the decision of the appeal tribunal, I am seised of the whole matter and thus bound to deal with the part of the decision against which neither the claimant nor the benefit officer has appealed. I need not decide whether I am, because I am satisfied that either way the decision stands. If I am not seised of the matter I cannot deal with it and the decision will stand automatically. If I am, then I see no ground for disturbing this part of the decision. The claim was for a payment for shoes. If the relevant conditions for an award of such a payment are satisfied, a payment can be made for shoes under either regulation 27 or regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980 [SI 1980 No 985]. Of these regulations the latter applies only where 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. The appeal tribunal in confirming the decision refusing a payment for shoes for the claimant's daughter dealt fully in their findings and reasons with the point that the payment could not be made under regulation 27 but (although the question of risk to health seems to have been raised by a member of the tribunal at the hearing) make no mention of regulation 30. I do not find the decision erroneous on that account. It is clear that the claimant was not claiming that there was a risk to health and in my judgment the reasons for the decision are adequately stated in the decision.

(Signed) J G Monroe  
Commissioner

Date: 2 November 1981

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