

Penny - for info - Comm. Manroc's case an

floor-covering + Reg 10 A

Carpet - Reg 10A and Reg 30 SP Regs. - all items not following with reg 9 came under 10A - see also 193/1987 - and are excluded from reg 30.

Commissioner's File: CSB/194/1987
C A O File: AO 3143/SB/86
Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Renwick

Social Security Appeal Tribunal: South Tyne

Case No: 003/02

1. My decision is that the decision of the social security appeal tribunal dated 10 November 1986 was erroneous in point of law and it is set aside. In exercise of the power conferred on me by section 101(5)(a)(i) of the Social Security Act 1975 as amended I give the decision that the tribunal should have given, that is to say a decision that no single payment is to be made to the claimant on his claim received on 27 August 1986 for a single payment for floor-covering.

2. The claimant on or about 27 August 1986 made a claim for a payment in respect of floor-covering. Under the Supplementary Benefit (Single Payments Regulations 1981 [SI 1981 No 1528] (the 1981 Regulations) as they stood immediately before their amendment in August 1986 a single payment for floor-covering could potentially have been made under regulation 10 of those Regulations (read together with the definition of "essential furniture and household equipment" in regulation 9) if among other things the conditions in regulation 10 were satisfied, or if not under regulation 30 if the exacting conditions of that regulation were satisfied. However on 11 August 1986 there came into force the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No 1259] (the 1986 Regulations). These regulations amended the 1981 Regulations in a variety of ways in particular by introducing a new regulation 9 containing a modified list of items of "essential furniture and household equipment" not including floor-covering, by introducing a new regulation 10A providing for single payments for "miscellaneous furniture and household equipment needs", and by excepting from regulation 30 claims for miscellaneous furniture and household equipment needs. As these changes had come into force by the time of the present claim the adjudication officer disallowed the claims so far as based on regulation 10A on the ground that the conditions of regulation 10A and in particular the condition that it applied only if the claimant or his partner had within 28 days immediately preceding the date of claim become tenant or owner of unfurnished or partly furnished premises were not satisfied; and so far as it was based on regulation 30 on the ground that it was a claim for a miscellaneous furniture or household equipment need.

3. The appeal tribunal found that the claimant had moved to his present home in March 1986 but made no finding as to the date when he became tenant or owner. It is not however suggested that either of them became tenant or owner within the 28 days preceding the claim received in August 1986 with the result that the claim could not be allowed under

regulation 10A. The adjudication officer held that the claim could not be allowed under regulation 10A on this account. He held that it was a claim for miscellaneous furniture and household equipment needs and for that reason could not be allowed under regulation 30.

4. The claimant appealed to the appeal tribunal who concluded that the claim could not succeed under regulation 10A because it was not a claim for a miscellaneous furniture and household equipment need. They held further that not being such a claim it was not excepted from regulation 30 by the new amendment. They found that the exacting conditions of regulation 30 were satisfied and they awarded a single payment for floor-covering.

5. The adjudication officer now appeals to the Commissioner. He does not suggest that there was not a need for the items; but he contends that the need is one for which now no provision is made by the Single Payments Regulations. He maintains, contrary to the view of the appeal tribunal that the need for floor-covering was a miscellaneous furniture and household equipment need. I have reached the conclusion that his contention is correct. I can understand the opinion of the tribunal that floor-covering is neither furniture nor equipment. It may well be that in some contexts floor-covering would be said to be furniture and in others not (see Wilkes v Goodwin [1923] 2 KB 86). In the present case there is in my judgment a clear indication that the draftsman intended a need for floor-covering to be included in the category of miscellaneous furniture and equipment needs. The original 1981 regulation 9(h) included polyvinyl chloride (or equivalent) floor-covering in the category of essential furniture and household equipment, for which a single payment could be awarded if the conditions in regulation 10 were satisfied. The 1986 Regulations took this out of regulation 9; but I consider that the draftsman intended that the need for among other items anything that had been but now ceased to be included in the category of essential furniture and household equipment should be a miscellaneous furniture and household equipment need which could be satisfied only if the conditions of the new regulation 10A were satisfied and which were wholly to be excepted from regulation 30. It follows in my judgment that the tribunal were wrong in awarding a payment under regulation 30. Moreover for the reasons given above no payment could be awarded under regulation 10A. I give the decision in paragraph 1 accordingly.

(Signed)

J G Monroe
Commissioner

Date: 3 August 1987