

IEJ/JCB

CSB 234/1983
CSB 270/1983

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: William Edwin Collins

Supplementary Benefit Appeal Tribunal: Hereford

Case Nos: 6/125 and 126

1. For reasons of convenience this document embodies a separate decision upon each of two separate appeals.
2. The first of those appeals ("the first appeal") relates to the decision of a supplementary benefit appeal tribunal ("the tribunal") dated 6 January 1983 in regard to a benefit officer's decision dated 30 September 1982 rejecting the claimant's claim for a payment by way of supplementary benefit in respect of travelling expenses incurred by his wife on 8 September 1982. The second ("the second appeal") is against a further decision by the same tribunal on the same date in regard to a benefit officer's decision also dated 30 September 1982 rejecting the claim by the claimant for a payment by way of supplementary benefit in respect of travelling expenses for a journey to be made by the claimant's wife on 2 October 1982.
3. Both the present appeals are brought by my leave upon the contention that the tribunal's decision in point was erroneous in law. On both appeals the benefit officer now concerned concedes that the tribunal's decisions were in error of law.
4. My decision upon the first appeal is that the tribunal's decision be set aside as given in error of law in the respects under-mentioned and that the claimant's appeal from the benefit officer's decision of 30 September 1982 in regard to the claim for travelling expenses for a journey on 8 September 1982 be re-heard by a differently constituted tribunal from that which heard it previously.
5. My decision on the second appeal also is that the tribunal's decision on that appeal be set aside and that the claimant's appeal from the benefit officer's decision of 30 September 1982 in regard to the claim for travelling expenses for a journey to be made on 2 October 1982 be re-heard by a differently constituted tribunal from that which heard it previously. The tribunal re-hearing the second appeal need not be differently constituted from that re-hearing the first appeal (though it may, if more convenient, be different in that respect). However, I direct that unless the claimant otherwise

consents in writing prior to the re-hearing of the second appeal it be not re-heard on the same date as the re-hearing of the first appeal. I so direct in order that, in the light of the earlier history, the claimant may have full opportunity to direct his attention on the same occasion solely to the issues arising upon one only of his two appeals.

6. The further directions set out as an Appendix to this document are to be observed upon the re-hearings of each of the two appeals.

7. The material background circumstances common to both appeals are that at all material times the claimant, married and living with his wife in local authority accommodation, was in his early 50's and in receipt of supplementary allowance. They were also in the distressing circumstances, not uncommon in persons of their age group, of having to cope with the problems of advancing age and ill health affecting a close relative, namely the claimant's mother in law, whose home was at that time several hours journey distant from theirs.

8. As regards the journey on 8 September 1982 arrangements had become necessary, and had been made, for the claimant's wife to meet at the home of her mother a hospital social worker concerned with her mother's case, for discussion in regard to her mother's welfare at a time when her mother was not currently an in-patient at any hospital but it was considered by the claimant's wife that her mother had become incapable of managing her own affairs.

9. As regards the journey on 2 October 1982 this also was to be made by the claimant's wife in connection with her mother's welfare, and was a journey to the city in which her mother's home was situated for the purpose of discussing her mother's affairs, by prior appointment, with her mother's Member of Parliament.

10. The benefit officer in each case entertained the claim first under regulation 22 of the Supplementary Benefit (Single Payments) Regulations 1981 ("the SP Regulations") and secondly under regulation 30 of the SP Regulations, and in each case arrived at the conclusion, reflected by his decision upon it, that the claim made by the claimant in respect of the expenses of the journey to which it related did not fall within the scope of either regulation. The claimant appealed to the tribunal against both the benefit officer's decisions.

11. Both the appeals were listed by the tribunal for hearing on the same date, but the documentation which was pursuant to rule 5 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 sent to the claimant in reference to the hearing was, in error, inadequately titled to bring home to the claimant that both appeals were to be dealt with on the notified date, and he came to the tribunal expecting to have to present his case only in respect of the first appeal. Both were in fact dealt with on the appointed date despite his complaint about this; and I am satisfied that (whether or not - as has been suggested, but I find it unnecessary to verify - he applied for and was refused an adjournment) this constituted in the circumstances a breach of the rules of natural justice, in that

he was not only, through no fault of his own, unprepared to deal with the second appeal, but was - by the circumstance of both being dealt with concurrently - "put off his stroke" in his presentation of his case in regard to the first appeal. In the circumstances, this alone constitutes a sufficient foundation for my decision to set aside both the decisions of the tribunal. Having done so, I have had next to consider whether I should seek to give myself the decisions which the tribunal should have given. I have given anxious consideration as to whether I should not do that, in the circumstance that - there being no dispute upon what have appeared to me to be the only facts which could be of potential relevance to the respective claims - it has appeared to me that there is in fact no provision under supplementary benefits legislation under which the claimant could succeed upon a claim for the travelling expenses the subject of either claim. But I cannot rule out the possibility that on a re-hearing of either appeal, or both, there might not emerge facts which throw a different light upon the matter in issue, and so I am refraining from giving any decision in substitution for the relevant decision of the tribunal. I will say no more as to that than that whilst all issues will be again entirely at large before the tribunal on each appeal, should the decisions given be again adverse to the claimant the re-hearings will at least have afforded an opportunity for correcting orally certain misapprehensions on the part of the claimant with regard to the provisions of the legislation in regard to the subject matter of his claims which are apparent from the case papers now before me, and which - it may very well be - my own written decision embodied in this present document will not effectively enlighten him upon.

12. Whilst it is unnecessary for me to deal in detail with this aspect in view of the sufficient grounds for setting aside the tribunal's decision which I have already expressed, there is, for the reasons cogently identified in the written submissions upon each of the appeals by the benefit officer now concerned, a further error or law on the part of the tribunal in regard to each of the appeals: namely their failure to comply sufficiently with the obligations imposed by rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as to stating their reasons for decision, in that the claimant could not from the stated reasons ascertain adequately in either case the grounds upon which the contentions he had advanced had failed to prevail.

13. Regulation 22 of the SP Regulations sets out successively a series of different sets of circumstances in which a single payment may be awarded in respect of travelling expenses incurred by a member of an assessment unit. Shortly stated, it is in my judgment clear beyond doubt that upon the facts before the tribunal hearing respectively the first and the second appeals, the claimant could not successfully bring his claim within the compass of any of those heads so as to justify an award. In justice to the claimant, I do not believe that he himself asserted that they did. He put his case on different grounds to which I will come in the next separately numbered paragraph below. There was accordingly, in my judgment, upon the facts before them no error of law perpetrated by the tribunal in so far as their decision on either of the appeals was, as they indicated

it to be in each case, that regulation 22 did not assist the claimant. So also - and again I do not regard the claimant as having contended otherwise - the tribunal were in each case in my judgment perpetrating no error of law in so far as they held that the claim did not succeed under regulation 30 of the Regulations, in particular because - as the record of their decision upon each appeal shows that they appreciated - regulation 30 imposes qualifying requirements which include a requirement that a payment of the character sought 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" and:-

- (a) the claimant's mother in law was not herself a member of the assessment unit of which the claimant and his wife were members;
- (b) there was no suggestion to the tribunal on either appeal that the payment claimed was the only means by which serious damage or serious risk to the health or safety of the claimant or his wife might be prevented.

14. What in fact the claimant based his case upon in both appeals was his own reading of a provision in the Supplementary Benefits Handbook, 1981 edition, a copy of which he had obtained from the Stationery Office on a date which in the case file he has variously identified as 3 8 81 and 3 8 82 and which contains under the Chapter heading "Assessment of Benefit: Additional Requirements", and the paragraph heading "Domestic Help", the sentence "when help is provided by a close relative, an AR" /additional requirement/ "is considered only if the relative incurs the expenses, (e.g. fares to the claimant's house) which he cannot afford". Save for one misprint the same text appears in the now current edition of the Handbook with the paragraph heading now referenced to paragraph 15 of Schedule 4 to the Requirements Regulations 1983, which corresponds to paragraph 14 of Schedule 3 to the earlier Supplementary Benefit (Requirements) Regulations 1980, which latter was the head of claim contemplated by the paragraph titled "Domestic Help" in the 1981 Handbook.

15. (1) Whether it was by reference to the sentence I have identified, or from some other provision of the same paragraph (paragraph 5.21 in the 1981 handbook) I do not know, but the claimant clearly formed the impression somehow that his claims for the travelling expenses the subject of the respective appeals could be brought within the provision of the legislation of which the paragraph was descriptive. As the facts stood on the respective appeals before the tribunal it is again, in my judgment, clear beyond doubt that the claimant was mistaken in that understanding, and that upon such facts neither of his claims could remotely be brought within the scope of the provisions of the legislation as to an "additional requirement in regard to domestic help".

(2) The sentence I have identified has to be read in the context of the paragraph as a whole, and in any event the Handbook contains under the head "important notes" a caution - at its outset - that it is not a complete or authoritative statement of the law. But, be that as it may, it is in my judgment clear beyond doubt that:-

(A) Paragraph 14 of Schedule 3 to the 1980 Requirements Regulations (which were those operative at all times material to the two appeals) is made operative by regulation 11(2) of those Regulations, which materially provides:-

"(2) The weekly amount of the additional requirements of a claimant, including the requirements of any partner or dependent of his, shall be determined -

(a) ;

(b) in relation to items other than heating, in accordance with Regulation 13 and Part II of Schedule 3;

(B) regulation 13 of the same regulations (headed "Items other than heating") materially provides that the weekly amount specified in column two of paragraph 14 in Schedule 3 shall be applicable to the claimant where the condition in column (1) of the paragraph is satisfied;

(C) those provisions, in combination with the text of paragraph 14 itself, have the clear effect that (amongst other qualifying requirements) a payment referable to paragraph 14 can be made only in reference to assistance to the claimant, his partner (e.g. lawful wife) or dependant with the ordinary domestic tasks - and the claimant's mother in law was not herself the claimant, was not his partner, was not a member of the assessment unit of which the claimant was a member, and was not - so far as the evidence before the tribunal went - a dependant of the claimant as defined by the relevant legislation.

Nor did it, on the evidence in either case, appear that the claim had anything to do with assistance to anyone with "ordinary domestic tasks".

(3) The reality is that the claimant has misinformed himself as to the scope of paragraph 14 and as to the true thrust of the passage in the handbook on which he relied.

- (4) As it is also apparent from another observation by the claimant in connection with the present appeals that he has misread the true thrust of another provision in the Handbook, in consequence of which he has formed the view that the DHSS are under obligation to notify claimants of their eligibility for entitlement to benefit, I must, for his own benefit, both correct him in that respect and suggest for the future that in matters concerning supplementary benefit he seeks confirmation and advice from the Department's local office before acting in reliance upon his own interpretation of what may be found in the Handbook.
16. (1) I should for completeness here add that the claimant's observations in regards to his present appeal additionally raise a number of complaints which have in my judgment no relevance to the issues with which I am concerned but which may be thought to merit administrative consideration by the Department - both particular in reference to more recent circumstances as to which it is conceivable that what he says may reflect a wish on his part to institute a supplementary benefit claim or claims by his mother-in-law "in her own right" but acting by him in the capacity of her duly authorised agent in that behalf.
- (2) With an ageing national population it may be thought to merit consideration whether the Single Payments Regulations should be so amended as to enable persons in respect of whom supplementary allowance is payable to claim, under appropriate qualifications, the cost of travelling expenses to assist an elderly close relative in circumstances of personal crisis of such relative. But that is not a matter within my jurisdiction.
17. My decisions are as indicated in paragraphs 4 and 5 above.

(Signed) I Edwards-Jones
Commissioner

(Date) 8 March 1984

Commissioner's File: C.S.B. 234 and 270/1983
CSBO File: 221 and 280/83
Region: Midlands

APPENDIX

1. As regards both the first appeal and the second appeal the tribunal concerned with its re-hearing is to be furnished with a copy of my present decision, in the hope that it will indicate to them pitfalls to be avoided.

2. In stating their reasons for decision the tribunal re-hearing the first appeal, and/or the second appeal (as the case may be) shall separately identify each regulation taken into contemplation in arriving at their decision and shall express separately in reference to it their reasons for decision, in terms which sufficiently enable the claimant to ascertain why (as the case may be) his claim has succeeded or failed in reference thereto and why (as the case may be) any contentions he has advanced in regard to it have or have not prevailed.