

SPs — "floor covering" could be misc. 55
furniture need under reg 10A — to qualify
person must have become tenant or owner within previous
28 days — tenant definition in reg 2 means must have
JJS/6/SH/LS actually moved in within previous 28 days
— but now see CSB/898/1987
CSB/1025/1987
Commissioner's File: CSB/244/1987
C A O File: AO 2143/SB/87
Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION
OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE REPRODUCED
OUT OF
THE DEPARTMENT

1. My decision is that the decision of the social security appeal tribunal was erroneous in point of law. I set it aside and refer the case to a differently constituted social security appeal tribunal for determination in accordance with my directions.
2. The claimant appeals from the decision of the Birkenhead social security appeal tribunal given on 27 November 1986 which disallowed her appeal against a decision of the adjudication officer that she was not entitled to a single payment for floor covering.
3. The claimant is a single woman. At the time of her claim she was aged 18 years and pregnant. She was in receipt of supplementary allowance. Sometime in July or August she became the tenant of an unfurnished flat. She received a single payment for various items of furniture and household equipment following a claim made on 31 July 1986. In connection with this claim a letter of enquiry was sent to her on 26 August 1986 and she replied to this on 28 August 1986. In her reply she made a request for floor covering for the bedroom and living room of her flat. The reply was received in the local office on 1 September 1986. The date of claim for the floor covering was accepted by the Secretary of State as 1 September 1986.
4. The adjudication officer decided that the claim was to be considered under regulation 10A of the Supplementary Benefit (Single Payments) Regulations. His decision was that the claim was not allowable under that regulation because the claimant had not become the tenant of her flat within 28 days immediately preceding the date of claim for floor covering. He considered regulation 30 of the same Regulations and decided that the claimant could not bring herself within the regulation because it did not apply where the claim was made under regulation 10A.
5. The claimant appealed to the tribunal. She attended the hearing and gave evidence. She said that she had made a mistake on the Form B1 when she gave the date of the move to her new address as 5 July 1986 and that it should have been 5 August. She produced a letter from the Merseyside Improved Houses confirming an offer of a tenancy of the flat from 28 July 1986. The findings of the tribunal on questions of fact material to their decision was recorded as follows:-

"Claimant aged 18. Single. Pregnant at date of claim. Date of claim was 1st September 1986. Previous claim made on 31/7/86 did not include floor coverings. Omitted by mistake on claimant's part. Letter from Merseyside Improved Houses confirms offer of tenancy from 28th July 1986. CLMT moved from board & lodging to

unfurnished flat on 5th August and paid rent there up to 4th August. Had a need for floorcoverings at date of claim. Flat centrally heated with hard-board flooring."

The members of the tribunal decided that the claimant was not entitled to a single payment for floor covering. In the reasons for their decision it was recorded that the claimant satisfied regulation 4 of the Single Payments Regulations. She had a need for floor covering but her claim was not made until 1 September. This was more than 21 days after she became the tenant of an unfurnished flat. In the opinion of the members of the tribunal she did not therefore satisfy regulation 10A. Moreover regulation 30 in their view was excluded in relation to miscellaneous furniture and household equipment (such as floor coverings).

6. The claimant appeals against the decision of the tribunal. She prepared the grounds of appeal herself and, on analysis, it would appear that no point of law is taken therein. However there are a number of points which fall for consideration independent of what is said in the grounds of appeal.

7. The appeal turns primarily on regulation 10A of the Supplementary Benefit (Single Payments) Regulations, a new regulation dealing with miscellaneous furniture and equipment needs, for which a set amount is allowed. Prior to 11 August 1986 regulations 9 and 10 the Supplementary Benefit (Single Payments) Regulations 1981 provided for the circumstances in which a single payment was to be made for the purchase, repair or installation of essential furniture and household equipment. Regulation 9 listed what was to be "essential furniture and household equipment" for the purposes of Part 4 of the Regulations. Regulations 9 and 10 fell within Part 4. Polyvinyl chloride (or its equivalent) floor coverings was included in the list. Extensive amendments to Part 4 were made by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 and these Regulations came into force on 11 August of that year. Floor covering was deleted from the list of items of essential furniture and household equipment. The effect of the amendment was that a single payment could no longer be made under the provisions of regulation 10 for floor covering. However a new regulation, regulation 10A, was added and it deals with a single payment in respect of miscellaneous furniture and household equipment other than any item to which regulation 9 applies. Paragraph 1 of the regulation deals with the qualifying conditions and I set it out:-

"10A.(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment need- (other than any item to which regulation 9 applies) where the claimant (his partner has within the 28 days immediately preceding the date of claim) become the tenant or owner of an unfurnished or partly furnished home, notwithstanding that he is not yet in actual occupation of that new home, and one or more of the following applies -

- (a) immediately before he became such a tenant or owner he was either a prisoner or had been a patient for a continuous period of more than one year; or
- (b) the move to the new home was undertaken as part of a planned programme of resettlement and rehabilitation provided by a statutory authority or voluntary organisation and immediately before he became such a tenant or owner he was living either in a resettlement unit or accommodation provided for an analogous purpose by a voluntary organisation, or was living in accommodation provided by a statutory authority as a group home or hostel which provides special care and attention for the mentally ill, the mentally handicapped, the disabled, alcoholics or drug addicts or in accommodation provided for an analogous purpose by a voluntary organisation; or

- (c) one of sub-paragraphs (a) to (g) of regulation 13(1) applied to or in respect of his previous home;
- (d) he is a person who has applied to be recognised as, or is recognised by the Secretary of State for the Home Department as, or is a person whose application has been refused but nevertheless has been granted leave to remain in the United Kingdom, whether or not in accordance with any immigration rule, by the Secretary of State for the Home Department as, a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31 January 1967; or
- (e) the move to the new home was due to the claimant having left his previous home due to fear of domestic violence from his former partner."

Paragraphs 2 and 3 deal with exclusions and amounts payable. It is however the qualifying conditions with which I am concerned.

8. I have to ask myself whether a need for floor covering would fall within a miscellaneous furniture and household equipment need. It clearly is not household equipment. However it does seem to me that where there is such a need it can be said to be a miscellaneous furniture need. The word furniture as used in the regulation must in my judgment be given its ordinary popular meaning. In the Oxford Dictionary the word "furniture" is given the meaning of movable articles in a dwelling house, place of business, or public building and this is described as the prevailing meaning. But as was pointed out in Gray v Fidler (1943) KB 694 articles notoriously within the description of furniture need not be movable. I have borne in mind the dicta of MacKinnon LJ in that case and in particular his analysis of the law as to the nature of furniture and its meaning. I have also borne in mind the dicta of Lord Simon in Property Holding Company Limited and Mischeff [1948] AC 291. It is significant linoleum was found to be furniture in that case, see page 319 of the report. Looking at the question in that way I am satisfied that a carpet would be a movable article in the household and I think the ordinary man would understand it to be part of his furniture. Certain other forms of floor covering are also easily detachable and will come within the meaning of furniture as used in regulation 10A. Floor covering is not essential furniture to which regulation 9 applies and it seems to me it falls for consideration as a miscellaneous item of furniture under regulation 10A. Consequently I am satisfied that the tribunal were correct in dealing with the claim under regulation 10A and further that the members were correct in concluding that regulation 30 could not assist the claimant.

9. One of the qualifying conditions is that the claimant has within the 28 days immediately preceding the date of his claim become the tenant of an unfurnished home the tribunal in the instant case found that the claimant did not satisfy this condition. They found as a fact that the date of the claim was 1 September 1986. They made no finding as to the date when the claimant became the tenant of her new home. The tribunal's conclusion was that the date of the claim was more than 28 days after she had become the tenant of an unfurnished flat. It seems to me that the members of the tribunal ignored the definition of "tenant" provided for in regulation 2 of the Supplementary Benefit (Single Payments) Regulations. The definition is as follows:-

"tenant' means a person other than one to whom regulation 9 or 23 of the Supplementary Benefit (Requirements) Regulations 1983 applies, and who occupies his home under a tenancy, licence or other agreement giving him the right to occupy that

home, a tenancy shall be construed accordingly."

This definition gives a special meaning to the word "tenant" for the purpose of the regulations and I am satisfied that to come within it a person must actually occupy his home in addition to having a right to occupy that home, he must be in actual possession. The members of the tribunal found that the claimant moved from board and lodging accommodation to the flat on 5 August. There was no finding that she took possession of it at an earlier date. If she occupied the flat from 5 August then she just escaped the time bar. The decision of the tribunal was erroneous in point of law for the reasons which I have given. The differently constituted tribunal to whom the case is referred for determination must deal with the qualifying condition relating to time in regulation 10A(1) with the definition of "tenant" contained in regulation 2 in mind. If they find that the claimant is not barred by time then it will be necessary to deal with the other qualifying conditions contained in paragraph (1) and further to deal with the exclusions contained in paragraph (2). It will not in my view be necessary for the tribunal to consider the claim under regulation 30.

10. However I must sound a note of warning. The validity of the Supplementary Ber (Miscellaneous Amendments) Regulations 1986 is being enquired into by a Commissioner in an appeal due to be heard next month. If the Regulations are found to be ultra vires then the tribunal will have to consider the case on the basis of such Regulations as are held to be valid.

(Signed) J J Skinner
Commissioner

Date: 9 September 1987