

RECEIVED

21 JAN 1982

DEPT. OF HEALTH
& SOCIAL SERVICES
SOLICITOR'S OFFICE

JM/JCB

CSB 281/1981

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision C.S.B. 35/81

Single payments. Furniture. Washable equipment.

1. This is a benefit officer's appeal, brought by my leave, against a decision of the Supplementary Benefits Appeal Tribunal dated 18 March 1981 which reversed a decision of the benefit officer issued on 9 February 1981.

2. The claimant is a single unemployed man who lives in a Salvation Army hostel. At the material time he paid £28.10 per week for full board and lodgings. He received a supplementary allowance of £35.20 per week, of which £28.10 related to his board and lodging expenses. Facilities, in the form of 4 cookers, are available in the hostel for residents who wish to prepare and cook their own meals. Such residents are charged for accommodation only. It is up to them, however, to provide their own cooking utensils, plates and cutlery.

3. On 30 January 1981 the claimant made a claim for a single payment to cover the purchase of cooking utensils, plates and crockery such as would enable him to cook his own meals in the hostel. The benefit officer disallowed this claim. The claimant appealed to the appeal tribunal. The appeal tribunal went to some pains to ascertain the factual situation. Unanimously it awarded a single payment of £20 in respect of the cost of two saucepans, a frying pan, a knife, a fork, a spoon, two plates and a cereal bowl.

4. It is desirable that I should set out in full the reasons set out by the chairman on form LT235:

"There is a choice to residents at the hostel, in the matter of whether they take meals, as provided, or undertake their own cooking. The appellant has elected to do his own cooking but other than the stoves available, has no utensils or any [sic] available to him. This tribunal considers that an essential need exists for basic items of utensils, as provided for in regulation 9(4)(1) of the Supplementary Benefit (Single

Payments) Regulations 1980 [S.I. 1980, No 985] (such as those now made the subject of an award) and that the authority is contained in the provisions of regulation 9(3) of the Supplementary Benefit (Single Payments) Regulations 1980."

5. The complex and closely interrelated drafting of the Single Payments Regulations is proving to be full of pitfalls for appeal tribunals. The regulations cannot be adequately applied without the most careful scrutiny. Each phrase, indeed each word, must be carefully considered before any given regulation, paragraph or sub-paragraph is applied to the facts of a particular case. This is especially true of regulation 9. Paragraph (4) sets out a long list of items of furniture and other household equipment. No payment can be awarded in respect of any of these items, however, unless the claimant can satisfy -

- (a) the general provisions set out in regulations 3 to 6;
- (b) the particular provisions set out in paragraphs (1), (2) and (3) of regulation 9; and
- (c) in respect of certain of the items listed under paragraph (4) (i.e. (f), (i), (j), (k), (l) and (m)), special provisions peculiar to these respective items.

It is a legislative labyrinth through which the appeal tribunal must pick its path with consummate care.

6. Regulation 3(2) of the Single Payments Regulations provides as follows:-

"(2) A single payment shall be made only where -

- (a) there is a need for the item in question;
and
- (b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

As I have pointed out in paragraph 5 above, this is one of the general provisions which govern all awards of single payments. It is not clear to me whether the appeal tribunal in the instant case had regard to this regulation. Certainly form LP235 makes no express reference thereto. In my view it was desirable that the appeal tribunal should have recorded a finding of fact upon the question whether it was unreasonable for the claimant to cease to avail himself of the full board facilities offered by the hostel. I say no more on this aspect of the case. It is an issue of fact outwith my jurisdiction. As appears below, the claimant's appeal will have to be heard and determined

de novo by a differently constituted tribunal. It will be for that tribunal to reach its own findings in respect of the application of regulation 3(2).

7. The appeal tribunal expressly founded on regulations 9(3) and 9(4)(1). Regulation 9(3) was amended with effect from 27 July 1981. I set it out in the form obtaining at the time relevant to this appeal:

"(3) A single payment shall be made for the purchase of any item of essential furniture and equipment to which paragraph (4) applies where -

(a) the item is one which -

(i) the claimant does not possess, or

(ii) he does possess but which is defective or unsafe and the cost of repair to which regulation 10 would otherwise apply would exceed the cost of replacement; and

(b) either -

(i) one of the conditions in paragraph (2)(b) is satisfied, or

(ii) the item is a cooking or heating appliance, or

(iii) the claimant is a person who entered the home without the permission of the owner but to whom permission to occupy the home has been granted as a temporary expedient, and the item is a bed."

Regulation 9(4)(1) reads as follows:

"minor items such as cleaning implements, cooking utensils, crockery and cutlery, but only where paragraph (1) applies;"

(My underlining.)

8. At the material time regulation 9(1) provided as follows:

"(1) Where a claimant has recently become the tenant or owner of an unfurnished or partly furnished home, a single payment shall be made for the purchase of any item of furniture and equipment to which paragraph (4) applies which either -

(a) he does not possess; or

(b) he does possess, but which is defective or unsafe and the cost of repair to which regulation 10 would otherwise apply would exceed the cost of replacement,

and one or more of the conditions in paragraph (2) is satisfied."

For reasons which appear below, it is not necessary for me to set out all the conditions in paragraph (2). I must, however, set out paragraph (2)(b) because that is expressly referred to in paragraph (3)(b)(i) (see paragraph 7 above):

"(2)(b) a member of the assessment unit is over pensionable age, aged 15 or less, pregnant or chronically sick or mentally or physically disabled;."

9. How then does all this apply to the case in hand? In the first place, regulation 9(3) is irrelevant. An award in respect of cooking utensils or crockery or cutlery cannot be made unless the claimant can bring himself under regulation 9(1). In founding upon regulation 9(3) the appeal tribunal erred in law. I must add, however, that even if regulation 9(3) were relevant, the claimant's case would not fall within it. He cannot satisfy any of the conditions in paragraph (2)(b); the items the subject of the tribunal's award cannot possibly be regarded as cooking or heating appliances; nor are they a bed. Accordingly, the claimant complies with none of the criteria prescribed in paragraph (3)(b).

10. Regulation 9(1) only applies: "Where a claimant has recently become the tenant or owner of an unfurnished or partly furnished home ...". The papers give no indication of how long the claimant had resided at the hostel before he made his claim. It probably does not matter, however, although the tribunal to which this case is remitted will, no doubt, wish to make its own inquiries into the question. The overwhelming inference would appear to be that the claimant was neither a tenant nor an owner, but a licensee. It is for this reason that I did not think it necessary to set out paragraph (2) in full. On present appearances the claimant cannot get past the opening clause of paragraph (1).

11. To sum up; I find that the appeal tribunal erred in law in that -

(a) it regarded regulation 9(3) as justifying its award;
and

(b) it failed to consider and to apply regulation 9(1).

12. My decision, accordingly, is as follows:

- (1) The appeal of the benefit officer is allowed.
- (2) The appeal tribunal's decision of 18 March 1981 is set aside.
- (3) The case is referred to a differently constituted tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 12th January, 1982

Commissioner's File: C.S.B. 281/1981
CSBO File: SBO 331/81