



Commissioner's File: CSB/302/1988

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**

Name: Julie Kim Evans

Social Security Appeal Tribunal: Rochdale

Case No: 615/00691

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 21 September 1987 was erroneous in so far as a single payment for a bed was refused, and on that point I set it aside. I direct that the appeal be reheard on this issue by a differently constituted tribunal who will have regard to the matters mentioned below. As regards the claim for a single payment for a cooker and floor-coverings, the tribunal did not err in point of law, and to this extent the appeal fails.
2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 21 September 1987.
3. The question for determination by the tribunal was whether the claimant (who was 19 years old and in receipt of supplementary benefit) was entitled to a single payment for a cooker, a bed, bedding and floor-coverings. In the event, the tribunal allowed a single payment for bedding, but refused one in respect of the other items.
4. The claimant's representative properly conceded that, as regards the cooker and bed, which were included in the items listed in regulation 9 of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528], regulation 10 thereof did not apply, and that, if the claimant was to succeed at all she had to rely on regulation 30. As regards floor-coverings, the representative accepted that no application for a single payment had ever been made in respect of this item under regulation 10A, and accordingly once again if the claimant was to succeed at all, she had to rely on regulation 30.
5. As regards the cooker the tribunal decided that there was no serious risk to the claimant's health if she continued without one. I do not see why the tribunal were not entitled to reach this conclusion. The lack of hot food may be boring and tiresome to the claimant, but that is a long way from establishing that there might be a serious risk to her health. Whether there might be a serious health risk through lack of a single payment to purchase a cooker called for a value judgment on the part of the tribunal, and they were, in my view, entitled to reach the conclusion they did. Accordingly, in refusing a single payment for that item, the tribunal did not err in point of law.
6. As regards the bed, the tribunal decided that the claimant did have "continuing use" thereof. However, I do not see how this conclusion was justified. The evidence was that the bed available to the claimant at the date of claim had been returned by the date of the hearing, and accordingly that it was only available on a short-term basis. Moreover, the mere fact that she had subsequently been able to borrow a different bed had no relevance to the circumstances at the date of claim (R(SB) 26/83). On no footing were the tribunal entitled to reach the conclusion they did, at least without further explanation.

7. However, the adjudication officer now concerned, in his submissions dated 20 July 1989, which were in response to his attention having been drawn to the two recent decisions of a Tribunal of Commissioners CSB/730/87 and CSB/947/88, contended that, in any event, as a result of those decisions, the claim for a single payment for a bed could not be considered under regulation 30. He based this conclusion on paragraph 8 of Decision CSB/730/87, which reads as follows:-

"8. Lord Lowry L.C.J. later continued [in Carleton v. Department of Health and Social Services, a decision of the Court of Appeal in Northern Ireland] -

'The question posed for our decision by the Commissioner is -

"Did I err in law in holding that there are now only two types of items relating to household furniture and equipment, namely, essential and miscellaneous?"

I would answer that question "No", but would also add the words "because Regulation 30 no longer permits a payment to be made under it in respect of furniture or household equipment". Accordingly I would dismiss the appeal.'

It will be noticed that Lord Lowry L.C.J. did not limit the non-applicability of Regulation 30 to 'miscellaneous furniture and household equipment needs' within Regulation 10A, but held that Regulation 30 no longer applied in relation to all forms of furniture and household equipment. Counsel in the case subsequently drew his Lordship's attention to the apparent ambit of this part of his judgment. On a later occasion when the proceedings were again before the Court Lord Lowry L.C.J. said this:-

"It has been suggested that, when indicating at the end of my judgment the form of answer which I would propose to give to the first question, I may have made a slip by omitting the word "miscellaneous" before the word "furniture" in the phrase "because Regulation 13 no longer permits a payment to be made under it in respect of furniture or household equipment".

I think it will be helpful if I say that the omission was not accidental, since my view, in which the other members of this court concurred, is that Regulation 30 does not apply to any furniture or household equipment.'

It is we think clear from Lord Lowry's initial judgment (in which it will be noted he referred to 'the scheme of the regulations' by reference to Regulations 9 and 10A), from the answer framed by him to the question posed by the Commissioner in the case stated, and from his subsequent confirmation of what he had earlier said, that the conclusion (effectively of the Court) extended to all items of furniture and household equipment, whether essential under regulation 9 (and subject to the conditions in Regulation 10) or miscellaneous needs within Regulation 10A ...."

8. The adjudication officer now concerned would seem to infer, from what was said by the Tribunal of Commissioners in the above quoted paragraph, that the Tribunal shared Lord Lowry's view in Carleton v. Department of Health and Social Services that Regulation 30 was inapplicable both to essential furniture and miscellaneous furniture and household equipment needs, or, if this was not how they themselves interpreted the relevant provisions, that they nevertheless regarded themselves as bound by the Court of Appeal in Northern Ireland. Such an inference is not justified. For immediately after the passage quoted above the Tribunal of Commissioners went on to say:-

"In the appeal before us we are only concerned with miscellaneous furniture and household equipment needs falling within regulation 10A."

Accordingly, whilst the Tribunal of Commissioners were reciting exactly what was the view of Lord Lowry, in which the other members of the Court of Appeal in Northern Ireland concurred, they expressly stated that they were only concerned with miscellaneous furniture and household equipment needs. In other words, they were expressing no view as to the correctness or otherwise of Lord Lowry's observations, and this for the simple reason that

the particular matter with which they had to deal did not involve essential furniture within regulation 9.

9. However, the appeal now before me does involve an item of essential furniture within regulation 9, and accordingly it is necessary for me to determine the effect of Lord Lowry's observation. The first point that should be made is that Lord Lowry's statement was itself obiter. It was unnecessary for the determination of the matter before the Court. Further, it was made without benefit of full (or possibly any) argument, and no reasoning was given in its support. Accordingly, the guidance provided by this obiter dictum is of very doubtful value, and I do not consider that in these circumstances I am in any way under a duty, out of comity in accordance with the principles set out in CSB/730/87, to follow that dictum. The plain fact is that the express words qualifying the application of regulation 30:-

'Except where a claim is for miscellaneous furniture and household equipment needs.'

make no reference to a claim for essential furniture within regulation 9. Indeed, the specific reference to 'miscellaneous furniture and household equipment needs' would, in my judgment, indicate that 'essential' furniture was not to be included in the exception. Accordingly, in my judgment, consideration of a single payment for essential furniture is not precluded under regulation 30. It follows that I do not accept the submission of the adjudication officer dated 20 July 1989. In so far as the social security appeal tribunal in their decision disallowed a single payment for a bed I must set aside their decision and direct that the appeal be reheard by a differently constituted tribunal who will have regard to what has been said above in paragraph 6.

10. Finally as regards floor-coverings, these constitute "miscellaneous furniture and household equipment" within regulation 10A and as such cannot be considered under regulation 30. The reasoning for this conclusion is elaborately set out in CSB/730/87. Accordingly when the tribunal said:-

"Floor-coverings do come within regulation 10A and could not be considered under regulation 30."

they did not err in point of law.

11. My decision is as set out in paragraph 1.

(Signed)

D G Rice  
Commissioner

Date: 11 August 1989