

JBM/SH/MD

Commissioner's File: CSB/366/1985

C A O File: AO 2353/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

*single Payment -
Unreasonably*

disposed of

furniture?

Name: David Burlingham

Social Security Appeal Tribunal: Norwich

Case No: 20/15/14

1. My decision is that the decision of the Norwich social security appeal tribunal dated 11 December 1984 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.
2. This is an appeal to the Commissioner with the leave of the Commissioner by the claimant from the decision of the appeal tribunal confirming the decision of the adjudication officer issued on 28 September 1984 set out in box 1 of Form AT2.
3. The facts and history of the case are referred to in paragraphs 1 to 6 inclusive of the submission dated 7 May 1985 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are set out in paragraph 7 of the submission dated 7 May 1985 of the adjudication officer now concerned. Nothing is to be gained by my setting out those references afresh here.
5. In my judgment the decision of the tribunal is erroneous in point of law in that they have failed to make findings on questions of fact material to a proper determination of the primary question before them that is whether the claimant had acted unreasonably in deliberately disposing of a settee and armchair, and a kitchen table and 2 chairs at the time of his removal in August 1984. The tribunal should have dealt with this matter not upon generalised criteria of reasonable behaviour but by reference to all the relevant circumstances at the time of the act of disposal. The claimant gave evidence that he was at the time of his removal ill and in his appeal to the tribunal he said that he was receiving medication after suffering a nervous breakdown, that he had sole responsibility for his young son, and that having moved a number of large items of furniture by means of a supermarket trolley he was simply unable to move the remaining items. He had put the remaining items into a builders skip in the street as he had nowhere to store them. The tribunal found as a fact that the claimant was unable to get removal expenses.

In stating:-

"We do not accept that there was no reasonable way in which he could have

removed them to new address"

the tribunal have failed to give proper effect to the claimant's evidence before them and the claimant is left guessing as to their reasons.

6. In my judgment the tribunal have further erred in relation to the settee and armchair. In their findings of fact they state:-

"He has borrowed a settee and armchair. "

In giving their reasons for decision they state:-

"In case of settee and armchair he has available suitable alternative items Reg. (3)(2) is therefore not satisfied."

The tribunal have failed to make findings as to either the date on which those items became available to the claimant or the conditions on which the loan was made. I need in this respect only refer to decision R(SB)24/83 and the decisions referred to in it. R(SB)47/83 paragraph 10 also deals with borrowed items. In considering whether there was need at the date of claim the tribunal should have in mind R(SB)26/83 particularly paragraphs 17 - 21 (inclusive)

7. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred to above and they shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

8. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

Date: 7th August 1985.