

Single Payments — curtains & carpets not simple draught proofing measures.

MHJ/6/LS.

Commissioner's File: CSB/437/1987

C A O File: AO Not known

Region: Wales & South 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:

Social Security Appeal Tribunal:

Case No:

[ORAL HEARING]

1. My decision is that the decision of the Plymouth social security appeal tribunal dated 19 February 1987 is erroneous in point of law, and accordingly I set it aside. However, it is expedient that I should give the decision which the tribunal should have given, which is that the claimant is not entitled to a single payment for carpets, curtains and curtain track.
2. The claimant appeals to the Commissioner, with leave of the chairman of the tribunal, against the decision of the aforesaid tribunal disallowing his appeal against the decision of the adjudication officer, issued on 16 September 1986, refusing the claimant a single payment for carpets, curtains and curtain track.
3. The claimant requested and I granted an oral hearing of his appeal. This took place on 21 September 1987, when the claimant attended and represented himself. The adjudication officer was represented by Mr E. O. F. Stocker instructed by the Solicitor's Office of the Department of Health and Social Security. I appreciated the claimant's difficulty in dealing unaided with the construction of somewhat complicated regulations, and I am indebted to Mr Stocker for the clear, objective and concise manner in which he put his case which, I hope, will have assisted the claimant to understand the reasons why his appeal must necessarily fail.
4. The claimant, who is a man in his mid-30s, has one artificial leg and suffers from severe osteo-arthritis. He, his wife and their two young daughters lived in a house owned by his wife which, unfortunately, was repossessed by the mortgagees. On 16 October 1986 the family moved into unfurnished rented local authority accommodation. Naturally they had a certain amount of furniture and household effects from their previous home, but they had left the carpets (which had apparently been in place when the property was purchased) and also the curtains. The claimant's evidence, which I accept, is that it was not practicable to remove the carpets and that the curtains would not have fitted as their present flat has extremely large windows. It was in those circumstances that the claimant applied for a single payment.
5. There can be no doubt that the claimant had a need for the items in question, and accordingly satisfied that requirement of regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981. Regulation 9 of those regulations defines "Essential furniture — and household equipment", and does not include either carpets or curtains. It is therefore

necessary to look at regulation 10A, which came into force on 11 August 1986, and which deals with "Miscellaneous furniture and household equipment needs". Regulation 10A provides that -

"(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies) where the claimant or his partner has within 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 -";

Pausing there for a moment, it is plain that the claimant fulfilled that requirement and it is then necessary to consider which, if any, of the following sub-paragraphs apply to his case but, before doing so, one must see if the claimant satisfies the "further conditions of paragraph (2)", which are conjunctive and, therefore, all have to be fulfilled. There is no doubt that the claimant satisfies sub-paragraphs (a), (b)(ii), (c), (e) and (f), and I need not set these out. Sub-paragraphs (b)(i) and (d)(i) apply "in a case to which paragraph 1(c) applies", namely that "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", which was plainly not the case and accordingly those sub-paragraphs are not relevant and do not require consideration. However, sub-paragraph (d)(ii) of paragraph 2 of regulation 10A (which, incidentally, should clearly be preceded by the word "or" and not "and"), provides that, in any case to which paragraph 1(e) does not apply -

"... neither the claimant nor his partner was the tenant of unfurnished accommodation at his previous home or the owner of his previous home."

There is no doubt that the claimant's wife was the owner of their previous home and, consequently, he is precluded from relying upon regulation 10A.

6. The claimant, not surprisingly, emphasised his disabilities and the ill health of his wife and children. Unfortunately for him that cannot avail him as regulation 30 of the Single Payments Regulations, which deals with discretionary payments in cases where there is "serious damage or serious risk to the health or safety of any member of the assessment unit", expressly excludes (by amendment which also came into force on 11 August 1986) any case in which the "claim is for miscellaneous furniture and household equipment needs", that is to say any claim under regulation 10A.

7. There are two further matters I must mention. Firstly, Mr Stocker very fairly mentioned for my consideration the argument that curtains, and possibly carpets, might fall within the draughtproofing provisions of regulation 18 of the Single Payments Regulations, which provides that a single payment shall be made for the cost of "necessary materials" -

"Where the home is draughty and the draughts would be reduced by simple measures (for example, draught-stripping of windows and doors, but not double-glazing or loft or cavity wall insulation)."

It is, I think arguable, that curtains and carpets do not in fact reduce draughts although by diffusing them, they may appear to do so. However, even assuming that they would, it seems to me clear from the context that neither can properly come within this regulation. The regulation itself comes within Part V of the Single Payment Regulations, which is headed "Housing Expenses" and deals with such matters as removal expenses, legal fees, essential repairs and maintenance and fuel meters, whereas regulation 10A is in Part IV, "Household Expenses" which, as one might expect, is concerned with furniture and household equipment and bedding, and it seems to me that that is where carpets and curtains properly belong. Further, and perhaps more importantly, in my judgment neither carpets nor curtains can be described as "simple measures" to reduce draughts, particularly in view of the

examples given in the regulation which clearly envisage some permanent but inexpensive treatment and specifically exclude the more elaborate procedures of loft and wall insulation.

8. Finally, I should say that I am aware that the question of the validity of regulation 10A is currently being considered by a Tribunal of Commissioners. However, as things stand at present, I must assume that the regulation was properly made. Should regulation 10A be ultra vires then, of course, the bar upon this claim being considered under regulation 30 would be removed and, if and when that situation should arise the matter would then be considered afresh by the Department, along with any other cases which had been caught by the proviso to the regulation.

9. In the circumstances the claimant's appeal is dismissed and my decision is set out in paragraph 1.

(Signed) M H Johnson
Commissioner

Date: 7 October 1987