

CSB 524/1984

MJG/BOS

Storage Charges
- when abroad.

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Feyyaz Soker

Supplementary Benefit Appeal Tribunal: Wimbledon

Case No: 19/135

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 31 October 1983 (relating to a claim for storage charges for the period from 1 October 1982 to 29 January 1983 when the claimant was absent from Great Britain), as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination to a differently constituted social security appeal tribunal for rehearing and redetermination in accordance with the directions in this decision: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451], regulation 27.

2. This appeal by the claimant is one of 4 appeals (on Commissioners' files Nos C.S.B./523/1984, C.S.B./524/1984, C.S.B./525/1984 and C.S.B./526/1984) which on my direction were heard at an oral hearing before me on 9 November 1984. The claimant appeared in person and was accompanied by Mr L C Held and the adjudication officer was represented by Mr C d'Eca of the Solicitor's Office of the Department of Health and Social Security. I am indebted to the claimant and to Mr d'Eca for their assistance to me at the hearing.

3. As explained above, this appeal is one of 4 appeals heard together and although the appeals do relate to separate issues nevertheless they are part of one particular episode in the claimant's life except the appeal on Commissioner's file No C.S.B./523/1984 which deals with an entirely separate issue and on which I have given a separate decision. The underlying facts which underlie this appeal and the appeals on Commissioners' files C.S.B./525/1984 and C.S.B./526/1984 are as follows: The claimant is a man, aged 63 at the material time, who until approximately April 1982 had been a self-employed business consultant. It is clear to me from the correspondence and from the claimant's demeanour and evidence to me at the hearing that he is an educated and skilled man and I am sorry to hear that his business as a self-employed consultant failed. I appreciate the

difficulties and traumas that the present appeals have meant for the claimant but I ought perhaps also to record that in my view, having read the correspondence and heard the claimant at the hearing before me, that I consider that sometimes his extreme conscientiousness stands in his own way and prevents him seeing the 'wood' because of his propensity to have a minute examination of each individual 'tree'.

4. In April 1982 the claimant claimed supplementary benefit for himself and his family. At that time he and his family were living in the wing of a large house in Kent but on 10 August 1982 the claimant moved into furnished accommodation in Streatham for himself, his wife and his daughter. He put his furniture and household goods and effects into storage with a storage company in Rye, Sussex until he could find suitable unfurnished accommodation. In August 1982 he claimed a single payment, to cover the cost of removal of those effects to storage and for the forwarding of 5 cartons of items needed immediately to Streatham. He also claimed an additional weekly requirement for the cost of storage.

5. On 27 September 1982, the claimant and his wife separated. On 1 October 1982 the claimant went to his home country of Turkey to stay for awhile with his mother. Being very depressed at the time and needing to recuperate, the claimant stayed there until 29 January 1983. While the claimant was away, because of the pressing need to pay for accounts due to the firm of removers and storage agents in Rye, Mr Held arranged on the claimant's behalf for the sale of some of the furniture in storage, which assisted in payment of the storage costs. The remaining goods in storage were 'rearranged' so that the claimant's wife took over those of the remaining items which belonged to her, leaving the claimant with the responsibility as from 23 December 1982 for only one container containing his belongings, which remained in storage at a cost of £4.92 per week (the previous cost of all the goods in storage having been £14.64 per week).

6. On or about 29 January 1983 the claimant returned from Turkey and found accommodation for himself at the Young Men's Christian Association at Wimbledon. In June 1983 the claimant received from the Department a single payment of £204.96 for the removal expenses claimed (see paragraph 4 above) and also £118.08 storage charges for the inclusive period from 6 August 1982 (the beginning of storage) to 30 September 1982 (i.e. the day before the claimant departed for Turkey).

7. The present appeal concerns the claim for storage charges for the period when the claimant was absent abroad, i.e. basically from 1 October 1982 to 29 January 1983. His claim for continuing storage charges for the period after his return to this country is the subject of the appeal on Commissioner's file No C.S.B./525/1984, on which I have given a separate decision and his subsequent claim for a further removal charge for bringing his own container out of storage and transferring it to his then abode at the YMCA is the subject of the appeal on Commissioner's file C.S.B./526/1984 as to which I have also given a separate decision. I have based this detailed statement

of facts on a written submission made to the tribunal on behalf of the claimant by the Child Poverty Action Group but I do not understand the essence of the facts as I have recited them above to be in dispute. In any event the Commissioner is not a judge of fact but only of questions of law. The new tribunal that rehears this case must consider my statement of facts as guidance only and must of course make their own findings of fact on all material issues and take evidence on relevant points.

8. This particular appeal, then, concerns the claim for storage charges during the inclusive period from 1 October 1982 to 29 January 1983, when the claimant was absent from the UK, having gone to stay with his mother in Turkey. The case before the tribunal so far as these storage charges were concerned consisted of a consideration of them either as a claim for an additional weekly requirement for storage charges or as a single payment for the amount accrued due up to 29 January 1983. The tribunal was correct to consider a single payment since there is a provision in regulation 24(1) of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No 1528 as amended] for the payment in certain circumstances of a single payment for a debt which has accrued during a period of absence from Great Britain. In fact the tribunal, as far as can be seen, dealt only with this aspect of the matter and not with the additional requirement aspect. In that respect their decision is erroneous in law. I also consider it to be erroneous in law because it did not consider fully availability for employment (see below).

9. Whether the claim be looked at as a claim for an additional weekly requirement or as a claim for a single payment, both depend on the claimant being able to escape the rule in section 1(1) of the Supplementary Benefits Act 1976 that only persons in Great Britain are able to claim supplementary benefit. Sub-section (1A) of that section provides, however, that regulations can provide exceptions to that rule. That prohibition and exception governs both the claim to the additional requirement (because it can only be an addition to an already existing entitlement to supplementary benefit) and to a single payment which is equally dependent on entitlement to weekly supplementary benefit.

10. The essential question therefore for determination is whether the claimant was entitled to supplementary benefit during the whole or any part of the time that he was absent from Great Britain. That depends on whether he can satisfy regulation 3(1) and (2) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, set out as at the material time in paragraph 6 of the written submission dated 1 October 1984 of the adjudication officer now concerned. The practical effect of regulation 3(1) and (2) is to allow a continuance of entitlement to supplementary benefit for a period not exceeding 4 weeks during the absence from Great Britain provided a claimant was in the period immediately preceding the absence entitled to benefit and that the claimant was "not required to register and be available for employment", either by reason of incapacity for work in certain defined circumstances (which do not apply here) or because the claimant is exempt from the requirement of availability under the stated provisions of regulation 6

of the Conditions of Entitlement Regulations (see below). It appears to me from perusal of regulation 3(2) of the Conditions of Entitlement Regulations that that is phrased in such a way as to require the tribunal to make an independent investigation of whether or not a claimant was immediately before departing from Great Britain required to be available for employment under regulation 6, irrespective of whether or not at that particular time the local office regarded him as being in that position. The tribunal was not, as I understand the law, entitled to assume this to be correct and should have investigated whether or not in truth the claimant could claim the benefit of not being required to be available for employment under the relevant heads of regulation 6.

11. In particular the head that might be relevant here is regulation 6(p) which, at the material time, excused a claimant from the need to be available for employment where

"6. (p) He is a person aged not less than 60 who is not registered with the Manpower Services Commission and who, if not required to register and to be available for employment under section 5, would satisfy the conditions for long term rates for normal requirements of persons under pensionable age." (See regulation 7 of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299] as amended.)

The tribunal should have investigated whether or not this particular paragraph could apply to the claimant and if (as may very well be the case) they concluded that it did not, should have explained why. The new tribunal that re-hears this case will no doubt wish to do so.

12. At the hearing the claimant asked me, if I found the tribunal's decision to be erroneous in law, not to send the matter back for rehearing to a differently constituted tribunal but to use my power (under regulation 27 of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451]) where I am "satisfied that it is expedient in the circumstances" to "give the decision the tribunal should have given". However it is not possible for me to do that in this case, since the jurisdiction of the Commissioner in supplementary benefit cases is solely on questions of law and I have no powers to make findings of fact or take evidence. As the original tribunal did not deal with all the factual questions involved or make findings thereon (see above) I have no option but to send the case back for rehearing and redetermination. As with the other cases involved in these 4 appeals, I would request that consideration be given to the rehearing tribunal being chaired by a full-time chairman.

(Signed) M J Goodman
Commissioner

Date: 18 December 1984

Commissioner's File: C.S.B./524/1984
CSBO File: 298/84
Region: London South

MJG/BOS

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(Signed) M J Goodman
Commissioner

Date: 18 December 1984

Commissioner's File: C.S.B./524/1984
CSBO File: 298/84
Region: London South