

JGM/PM

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION OF SUPPLEMENTARY
BENEFIT APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 23 June 1981 is erroneous in law and is set aside. My substituted decision is that for the reasons given hereafter the claimant is not entitled to a single payment in respect of household furnishings and his appeal against the decision of the supplementary benefit officer dated 22 April 1981 is refused.

2. This is an appeal by the supplementary benefit officer, with leave, against the decision of a supplementary benefit appeal tribunal dated 23 June 1981 whereby the tribunal allowed the claimant's appeal against a decision of the supplementary benefit officer refusing a claim by the claimant for a single payment for household furnishings. The claimant lives with a Mrs. Lamb and her 5 children. The claim was made after their return from an abortive visit to London where they had hoped to obtain accommodation and work for the claimant through an uncle of the claimant. Prior to embarking on this venture which was speculative and wholly unsuccessful, the claimant and Mrs. Lamb disposed of household furnishings in a council house at Wishaw. It was held both by the supplementary benefit officer and by the supplementary benefit appeal tribunal that they had unreasonably disposed of these items within the meaning of Regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1980 then in force. That finding was manifestly justifiable. It was for this reason that the supplementary benefit officer refused a claim for a single payment. On the claimant's appeal the supplementary benefit appeal tribunal, while agreeing that the claimant had unreasonably disposed of furniture beds and bedding, nevertheless awarded a single payment under Regulation 30 of the Single Payments Regulations to cover the requirements for beds and bedding of the children only. In their reasons, the Tribunal state:-

"The Tribunal agree that appellant has unreasonably disposed of furniture, beds and bedding but that there is a serious risk to the health of the children if beds and bedding are not provided and that a single payment is the only means by which the risk can be avoided."

The supplementary benefit officer has appealed to the Commissioner and submits that the decision of the supplementary benefit appeal tribunal is erroneous in law.

3. Regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1980 contains the following provisions:-

- "3.-(1) In these regulations 'single payment' means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Part II to VIII of these regulations apply.
- (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."

Regulation 30 of the same Regulations provides:-

"30.-(1) Where a claimant is entitled to a pension or allowance and he--

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented."

4. The supplementary benefit officer submits that the decision of the Tribunal was erroneous in point of law and in particular that the Tribunal misconstrued Regulation 3 of the Single Payments Regulations and misapplied Regulation 30. They misconstrued Regulation 3 because they failed to appreciate that satisfaction of that Regulation was an overriding condition of any award of a single payment, even under Regulation 30, and they misapplied Regulation 30 by invoking it when on their own findings the requirements of Regulation 3(2)(b) were not satisfied in that the claimant had unreasonably disposed of the items in question. I agree with the submission of the supplementary benefit officer as summarised above in its entirety. Notwithstanding the understandable desire of the appeal tribunal to make an award under Regulation 30 for the protection of the children of the household the tribunal were not entitled to do so having regard to the provisions of Regulation 3(2). In the circumstances their decision must be set aside as erroneous in law. I am satisfied that it is expedient in the circumstances that I give the decision which the tribunal should have given

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and my substituted decision is as set out in paragraph 1 of this decision.

5. A procedural point has arisen in connection with this case which calls for some comment. When the benefit officer applied for leave to appeal to the Commissioner against the decision of the supplementary benefit appeal tribunal, he sent a standard letter to the claimant dated 5 October 1981 on form IT 302. That letter after informing the claimant that the benefit officer has decided to apply for leave to appeal and enclosing a copy of the application concludes with two paragraphs in the following terms:-

"There are two points that I should explain about my application for leave to appeal. First, I am not asking for an oral hearing of the application. This means that the Commissioner will normally make his decision on the papers alone unless he himself decides that there should be an oral hearing. Second, if the Commissioner gives me leave to appeal, he can go on immediately to decide the appeal. He can only do this, however, if you and I both agree that he should. As you will see from my application, I have given my agreement.

The Commissioner's Office will be writing to you in due course to tell you about the the Commissioner's decision on my application for leave. If he grants me leave to appeal, his office will ask whether you agree to his going on immediately to decide the appeal and they will also ask you then if you wish to make any comments on my reasons for appealing, which will be the same as in my application."

Treating an application as an appeal with joint consent was a useful device in point of law cases coming to the Commissioner under Social Security Legislation in the past. In the case of a claimant's application for leave to appeal, the Secretary of State for Social Services responded with a submission setting out his views, and in the case of an application by the Secretary of State the claimant was given the opportunity to comment upon his application before the Commissioner considered the case at all. The Commissioner could then, if appropriate, deal with the application and appeal together on joint consent of parties. Under the current procedure in supplementary benefit (and indeed other point of law cases) however, the Commissioner has to deal with applications for leave from either side on a purely ex parte basis. At the ex parte stage the other party has no standing. This inevitably results in two-stage treatment of the case which renders meaningless the consent to the combined operation which is suggested in the second last paragraph of letter IT 302. The sole exception would seem to be in a case where an oral hearing is granted on an application for leave to

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appeal and the necessary submission of comments together with the necessary consent can be requested and obtained before the oral hearing takes place. That is not however the situation dealt with in letter IT 302. It is also inappropriate for that letter to call for comments from the claimant on the supplementary benefit officer's appeal in advance of its receipt and on an assumption that the written reasons for appeal will be identical to the terms of the supplementary benefit officer's application for leave. Indeed it may not always be desirable that the benefit officer should confine himself in advance to arguing the appeal upon precisely the same basis as the application. The proper time to invite the claimant's comments on the supplementary benefit officer's appeal is when the appeal is submitted, (even if the appeal merely adopts the reasons in the application). Furthermore it is for the supplementary benefit officer and not the Commissioner to invite these comments and in this respect also the last sentence of the letter is inappropriate. Finally, IT 302 in its present form is liable to cause confusion over oral hearings. Although the supplementary benefit officer in that standard letter states that he does not ask for an oral hearing on the application, he asks the claimant to agree to have the application treated as the appeal. When, as frequently happens, he then asks for an oral hearing upon the appeal itself, some claimants are understandably bewildered. I understand that it is appreciated by the supplementary benefit officer that the letter on form IT 302 is as it stands unsatisfactory in its terms and that steps are currently being taken to have a revised form prepared. No doubt the foregoing comments will be borne in mind in this connection.

6. The appeal of the supplementary benefit officer is allowed.

(signed) J.G. Mitchell
Commissioner
Date: 22 July 1982

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