

26 - furniture - marriage breakdown 2 yrs before

JGMI/DH

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CAO File: AO 3124/85  
LO Southside  
LO Ref No 2791/240185

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO COMMISSIONER FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal dated 15 May 1985 is erroneous in law and is set aside. The claimant's case is referred to a differently constituted tribunal for consideration afresh.

2. On 4 January 1985 the claimant, who was then a single (divorced) man receiving supplementary allowance, made a claim for benefit by way of a single payment for a comprehensive list of household items. The facts before the adjudication officer show that the claimant had recently obtained tenancy of a local authority flat. He had been separated from his wife since 1982 and subsequently divorced and had worked abroad for 2 years. The adjudication officer refused the claim under reference to regulations 10 and 30 of the Supplementary Benefit (Single Payments) Regulations 1981 and the claimant appealed to a social security appeal tribunal.

3. Regulation 10(1)(a) of the Single Payments Regulations contains the following provisions:-

"10.-(1) This paragraph shall apply where either -

(a) the claimant or his partner has recently become the tenant or owner of an unfurnished or partly furnished home notwithstanding that he is not yet in actual occupation of the new home and one or more of the following applies:

(i) one of sub-paragraphs (a) to (g) of regulation 13(1) applied to or in respect of his previous home, or

(ii) the assessment unit includes a dependant, or a member who is over pensionable age, pregnant, chronically sick or mentally or physically disabled.

....."

Regulation/

Regulation 13(1) of the Single Payments Regulations contains the following provisions:-

"13.-(1) A single payment shall be made, other than to a claimant to whom paragraph (2) applies, in respect of the cost of the removal within the United Kingdom of the household goods and personal effects of any member of the same household as the claimant where the assessment unit and any other member of the household is moving to a new home and either-

(a) .....

(b) having regard to the age, state of health or any physical disability of any member of the assessment unit, the size of the assessment unit and whether any other person lives in the home, the existing home is unsuitable either in size or structure or because it is too far removed from close relatives;

(c) the change of home is in consequence of the death of, or divorce from, the claimant's partner or any other breakdown of the marriage or relationship.

....."

4. Before the tribunal the claimant contended that he could satisfy the provisions of regulation 10(1)(a)(i) quoted above on 2 grounds, namely that the existing home in which he was living prior to being allocated his present home was overcrowded - see regulation 13(1)(b), and also because the change of home was in consequence of marriage breakdown as mentioned in regulation 13(1)(c). He also contended that he satisfied the provisions of regulation 10(1)(a)(ii) on 2 grounds, namely that he was chronically sick and his assessment unit should be regarded as including a dependant, namely the daughter who stayed with him at weekends. (He also contended that his removal from his existing home was forced by the departure of the tenant who gave him accommodation. That factor is not however reflected in the provisions of the regulations.) The tribunal rejected all of the claimant's contentions and confirmed the decision of the adjudication officer. The claimant, having obtained leave, has appealed to the Commissioner contending that the decision of the tribunal is erroneous in law.

5. In my judgment the tribunal's decision is erroneous in law. The tribunal failed to make findings on the claimant's first contention that his previous home was overcrowded i.e. unsuitable in size for the purposes of regulation 10(1)(a)(i) and regulation 13(1)(b). The adjudication officer now concerned with the case submits that the tribunal also made inadequate findings in regard to the claimant's contention that his change of home was due to marriage breakdown for the purposes of regulation 13(1)(c). I do not accept that submission. The tribunal expressly found that the claimant's change of home was not attributable to his divorce 2 years previously for the purposes of regulation 13(1)(c). The "change of home" referred to in that sub-paragraph is clearly intended to refer to the change from a claimant's immediately preceding home to his new home. The tribunal

were undoubtedly entitled, if not bound, to find that that change of home was not attributable to the break up of the claimant's marriage and his divorce some 2 years before. It is also submitted by the adjudication officer that the tribunal erred in rejecting the claimant's contention that he should be regarded as "chronically sick" for the purposes of regulation 10(1)(a)(ii). There was evidence before the tribunal that the claimant had suffered a back injury in 1963. As a result he had a recurrence of back ache and sciatica usually, according to his doctor, about once a year depending on the kind of work he was doing on a building site. In the light of that evidence the finding of the tribunal that the onset of sciatica "usually once a year" could not constitute chronic sickness, a finding which they made under reference to a relevant decision R(SB) 41/84, cannot in my judgment be said to be either inadequate or erroneous. The tribunal were in my judgment entitled to reach that conclusion on the basis of the ordinary meaning of the expression "chronically sick". However the claimant also gave evidence to the tribunal that his daughter stayed with him at weekends. I accept the submission of the adjudication officer that that evidence should have alerted the tribunal to the possibility that the claimant could satisfy the provisions of regulation 10(1)(a)(ii) in that his daughter might be able to be treated as a "dependant" as defined in regulation 2 of the Single Payments Regulations and paragraph 3(2) of Schedule I to the Supplementary Benefits Act 1976. I agree that the tribunal erred by not dealing with this possibility.

6. The decision of the tribunal must be set aside as erroneous in law. ~~Factual matters remain to be explored and the claimant's case must be referred to a differently constituted tribunal for consideration afresh.~~ The new tribunal will require to consider the question whether need is established for the various specific items claimed by the claimant - a matter upon which the previous tribunal did not express a concluded view. The tribunal will also require to reconsider whether the claimant can satisfy any of the conditions of regulation 10(1)(a) and record their findings and reasons thereon. In relation to the possibility of the claimant establishing that he should be treated as having a dependant for the purposes of regulation 10(1)(a)(ii) the tribunal should have regard to the unreported decision on Commissioner's file CSB 943/1984 a copy of which is in the papers. Reference may also be made to R(SB) 28/84. It should also be noted that the claimant maintains that his health is a matter relevant to regulation 13(1)(b) as well as regulation 10(1)(a)(ii), although it is not at present clear to me why there should be thought to be a connection between the claimant's intermittent back trouble and any unsuitability of his previous home. The possible application of regulation 30 of the Single Payments Regulations should also be dealt with if, but only if, evidence is brought raising that question.

7. The appeal of the claimant is allowed.

(signed) J G Mitchell  
Commissioner  
Date: 27 February 1987