

Nava 8 - clothing savings cannot be used to remove

DR/JOB need for an urgent needs payment

UN Payments - deductions from benefit for clothing she ^{26/88} should not have been paid over to claimant so as to avoid her need for an UNP on the loss of her purse.

Commissioner's File: CSSB/257/87
LO: Springburn
LO Ref No: 1152/156996

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF SOCIAL SECURITY COMMISSIONER

Name:
Social Security Appeal Tribunal: Glasgow West
Case No: 191/08

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 3 November 1986 is erroneous in point of law and is therefore set aside. The decision which the tribunal should have given is that the claimant was entitled to an urgent needs payment for the period from 14 April 1986 to 20 April 1986 amounting to £24.16.

2. The claimant, who was born on 13 September 1951, was at the time under consideration a single parent with two dependent children. She had been separated from her husband since April 1985. She was in receipt of supplementary benefit. The sum of £4 was withheld weekly from the supplementary benefit due to her because of the provisions of regulation 15 of the Supplementary Benefit (Claims and Payments) Regulations 1981. Said regulation 15 provides as follows:-

- "15.-(1) Where a beneficiary -
 - (a) has been awarded a pension or allowance; and
 - (b) in the opinion of a benefit officer has failed to budget for items to which the category of normal requirements relates but for which the need arises at irregular or extended intervals,

the benefit officer may determine that payment of so much of that pension or allowance as he considers appropriate in the circumstances is withheld weekly for the duration of the award.

- (2) Where -
 - (a) the benefit officer has made such a determination; and
 - (b) he is satisfied that the need for any item to which paragraph (1)(b) relates has arisen,

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he shall direct that the amount which has been withheld in accordance with that determination, or so much of it as he considers appropriate in the circumstances, is paid to the beneficiary."

The said deduction of £4 made weekly was made in order to provide for clothing. By 14 April 1986 the said deductions amounted to £56.

3. On 14 April 1986 the claimant called at the local office of the Department of Health and Social Security to report that she had lost her purse containing £42.60. She stated that she was destitute and in need of money in those circumstances. Although there is no proper information before me regarding the purpose for which she needed any money it would appear to be not in dispute that she required it to purchase food for herself and her children, and I am prepared to proceed upon that basis. The local adjudication officer gave consideration to the question whether the claimant was entitled to an urgent needs payment under the Supplementary Benefit (Urgent Cases) Regulations 1981. He was aware that the claimant had saved the above-mentioned amount of £56 from the deductions made from her supplementary allowance to provide for clothing. He decided to hand over the said sum of £56 to the claimant, and he refused an urgent needs payment. He apparently gave his decision refusing an urgent needs payment on 14 April 1986.

4. The claimant appealed against the said decision of the local adjudication officer maintaining that she ought to have been granted an urgent needs payment and that she required the said sum of £56 to purchase shoes and other essential items of clothing. It is not in dispute that if the claimant had been found entitled to an urgent needs payment she would have received the sum of £24.16. The tribunal refused the claimant's appeal and upheld the decision of the local adjudication officer. The reasons for their decision were as follows:-

"The tribunal take the view that the sum of £56 was "readily available" to Mrs Dorey in terms of Urgent Cases Regulations 3(1) - this was self evident because it had been paid to her immediately. The tribunal, however, had to consider whether the Adjudication Officer had acted properly in terms of Claims and Payments Regulation 15 in paying over this money to her. They have come to the conclusion that Regulation 15(1)(b) must be intended to provide for a wide range of items to be budgeted for (and not confined to a specific item such as clothes), including possibly unforeseen circumstances, such as loss of money, and these circumstances having arisen, the Adjudication Officer was entitled to pay over the money in terms of paragraph (2)(b). (They wish to compare the case of a person not on supplementary benefit - if a similar loss occurred he would then have to make good this loss from his own savings, thus the money collected by Department of Health and Social Security could, in this case, be regarded as "savings")."

5. The claimant applied for leave to appeal to a Commissioner from the tribunal's said decision, and that application was granted by the chairman of the tribunal. I am now concerned with the appeal. The

claimant's/

claimant's representative requested an oral hearing, and that request was granted. An oral hearing took place before me, and I heard full and helpful submissions from the claimant's representative and the legal representative of the adjudication officer now concerned with the case.

6. The claimant's representative submitted that the weekly deduction of £4 from the claimant's benefit had been made in order to provide for clothing which was a need which arose at irregular or extended intervals; that before the adjudication officer could hand over the amount of these deductions or proportion thereof he had to be satisfied that the need for clothing had arisen; that in any event the adjudication officer was only entitled to release to the claimant the said deductions for items which arose at irregular or extended intervals; that the payment requested by the claimant on 14 April 1986 was for food which although within the category of normal requirements was not an item which arose at irregular or extended intervals; and that the provisions of said regulation 15 did not warrant the adjudication officer handing over the said sum of £56 to the claimant. In those circumstances the claimant's representative contended that I should decide that an urgent needs payment had been payable to the claimant amounting to £24.16. He further submitted that the fact that the said amount of £56 had been paid to the claimant should be regarded as in the nature of an overpayment and did not now preclude payment of the said urgent needs payment which had been properly payable to the claimant. I would mention in this connection that the claimant's representative intimated at the hearing before me that the claimant had in fact requested a single payment for clothing, and her claim in that connection had been refused. I have, however, no details of that claim or the decision thereon.

7. The adjudication officer now concerned with the case submits in his written submission that the provisions of said regulation 15 did not preclude the local adjudication officer making available to the claimant the said sum of £56 which had been deducted from her past payments of benefit, and that in those circumstances the claimant was not entitled to an urgent needs payment. At the hearing before me it was submitted by the legal representative of the adjudication officer now concerned with the case that if the said sum of £56 could properly be regarded as a resource of the claimant which should not be disregarded, then whether or not it was rightly given to the claimant on 14 April 1986 the fact remains that that resource was made readily available to the claimant and therefore no urgent needs payment was payable to her.

8. I have decided to accept the above-mentioned submissions which were made on behalf of the claimant by her representative at the hearing before me. In my opinion the provisions of said regulation 15 did not warrant the local adjudication officer releasing the said sum of £56 which had been deducted for the specific purpose of dealing with clothing expenditure which was an item of expenditure which arose at irregular intervals. In any event I am of the opinion that the said sum of £56 could only be released for items of expenditure which arose at irregular intervals and food was not such an item. In those circumstances I have reached the view that the claimant was entitled to an urgent needs payment which it is agreed would have amounted to £24.16. I have therefore reached the decision set forth in paragraph 1 above.

9. At the hearing before me the legal representative of the adjudication officer raised a new issue which had not been mentioned in the papers relating to the claimant's appeal. He referred to the provisions of regulation 3(1)(b), and 2(1) of the said Urgent Cases Regulations and regulations 5 and 6(i) of the Supplementary Benefit (Resources) Regulations 1981. He pointed out that the question arose whether the weekly deductions which had been made from the claimant's supplementary benefit under said regulation 15 of the said Claims and Payments Regulations could be regarded as capital resources to be disregarded as savings under said regulation 6(i) of the said Resources Regulations which is in the following terms:-

6(i) any sum attributable to savings made out of income for the purpose of meeting any periodically recurring liability in respect of such personal living expenses and expenses of the home as are reasonable in the opinion of the benefit officer, including in particular charges for:-

- (i) rent
- (ii) rates
- (iii) fuel
- (iv) telephone rental or calls

for such a period and up to such an amount as are reasonable in the opinion of the benefit officer, having regard respectively to the time when the liability falls to be met and its expected amount;"

It was submitted on behalf of the adjudication officer that if these said deductions which had been made under said regulation 15 of the said Claims and Payments Regulations could be regarded as savings coming within the provisions of said regulation 6(i) of the said Resources Regulations, they could be disregarded as capital resources which would enable the claimant to be found entitled to an urgent needs payment. Having already reached the decision that the claimant was in fact in my opinion entitled to an urgent needs payment it is unnecessary for me to reach a decision on this further matter raised by the adjudication officer's representative concerning which he stated that he was making an open submission. As already stated this issue was first raised at the hearing before me, and before reaching a final conclusion on it I would prefer to have fuller and more definite submissions on it. I would, however, state that my present view on this issue is that said deductions under regulation 15 of the Claims and Payments Regulations for clothing should not be regarded as savings made out of income for the purpose of meeting any periodically recurring liability in respect of such personal living expenses and expenses of the home within the meaning of said regulation 6(i).

10. The appeal brought on the claimant's behalf is allowed.

(signed) Douglas Reith
Commissioner

Date: 24 March 1988