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Commissioner's File: CSSB/395/1987

Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW****DECISION OF THE SOCIAL SECURITY COMMISSIONER****Name:** James Ashcroft**Social Security Appeal Tribunal:** Glasgow South**Case No:** 300/13

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal dated 10 February 1987 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.
2. At the material time the claimant was single and aged 39. He was in receipt of supplementary benefit and had no capital. He lived alone in a local authority house of which he had been granted a tenancy on 28 August 1986. Previously the claimant had resided with his brother who was a householder. The claimant was in good health.
3. On 18 August 1986 the claimant claimed a single payment for the purchase of household items which included - a bed, a cooker, an electric fire, a fireguard, a hot water cylinder jacket, a table, a chair, an easy chair, a wardrobe, a chest of drawers, a sideboard, an iron, a cooker guard, light fittings, towels, four pairs of curtains, four curtain rails, garden tools, floor covering for the whole house, and minor items eg cutlery, pots and pans and a full set of bedding.
4. The adjudication officer accepted that the claimant was entitled to a single payment for miscellaneous furniture and household equipment needs under regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981, as amended. A payment of £75 was made to the claimant in accordance with Schedule 1B. However, the claimant was dissatisfied with the amount awarded and appealed to the tribunal.
5. The claimant and his representative attended the hearing of the appeal before the tribunal on 10 February 1987. Initially the claimant's representative stated that the date of claim should be 6 August 1986 but it was later agreed that the date of claim was 18 August 1986, the date on which the claim was received by the Department. The claimant's representative submitted that regulation 10A and Schedule 1B were unreasonable and ultra vires. In the event the tribunal awarded a single payment for a fireguard and an electric fire for the bedroom but otherwise dismissed the appeal. The findings of fact read:-

- "1. Date of claim was 18.8.86.
2. Items claimed are miscellaneous furniture and household equipment and so covered by regulation 10A.
3. Fireguard and electric fire for bedroom were essential items in terms of regulation 9.
4. Validity of current regulations is accepted."

The reasons for decision read:-

"Regulations 9 and 10 of Supplementary Benefit (Single Payments) Regulations applied."

The claimant now appeals to the Commissioner on a point of law leave having been granted by the tribunal chairman.

6. It is submitted on behalf of the claimant that the tribunal's decision was erroneous in law because they failed to indicate on what grounds they reached the conclusion that the "validity of current regulations is accepted". This was crucial to the claimant's claim. I agree. There was a clear breach of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 and I have no alternative but to set aside the decision.

7. It is further submitted on behalf of the claimant that in any event the tribunal had no jurisdiction to decide the vires of statutory instruments. Since the date of the tribunal decision there has been a decision by a Tribunal of Commissioners R(SB)10/88 which analysed the effect and scope of regulation 10A(1) of the Single Payments Regulations 1981, as amended and decided further issues which are relevant to this appeal. With effect from 11 August 1986 the Single Payments Regulations 1981 were amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No. 1259]. The said Tribunal of Commissioners held that the statutory authorities (the adjudication officer the social security appeal tribunal and the Commissioner) (had jurisdiction to determine whether or not a statutory instrument was invalid and ultra vires) (see paragraph 16 and 17). Further in a majority decision the said Tribunal of Commissioners held that the Amending Regulations were not ultra vires (see paragraph 33).

8. I now have to consider the claimant's claims for single payments for various items. In R(SB)10/88, the effect of the Amending Regulations were explained in the following terms (paragraph 35):-

"35. (1) The scheme of the 1986 Regulations as regards furniture and household equipment needs is (as already pointed out) different. There is a reduced list of items which are defined, in the new regulation 9, as essential furniture and household equipment. To qualify for a single payment in respect of a listed item one of six alternative qualifying conditions must be satisfied, each of which is subject to the satisfaction of additional conditions. The first qualifying condition is set out in the new regulation 10(1)(a) and relates to a case where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home. It is only a claimant who, or whose partner, satisfies this first alternative condition (and additional conditions) who can claim any additional payment for unlisted items on the basis of satisfaction of the prescribed conditions.

(2) The new regulation 10A provides, in effect, that persons who also satisfy the first qualifying condition in the new regulation 10(i)(a) may qualify for

an additional payment for "miscellaneous furniture and household needs (other than any item to which regulation 9 applies).

Thus a person who comes from furnished property and within the prescribed 28 days takes an unfurnished (or partly furnished) home and who has nothing in the way of furniture or household equipment finds himself in this position. Subject to prescribed conditions (which vary from item to item) and to establishing a need for the item in question, he can obtain the cost of the items listed in the new regulation 9, namely bed bases and mattresses, waterproof protective sheets, a cooker, space heating appliances, fireguards, a washing-machine, a vacuum cleaner, refrigerator, a hot water cylinder, safety gates, a push-chair and a high-chair. No other items are now listed under regulation 9. If a claimant can then show that he has

"miscellaneous furniture and household equipment needs [our underlining] (other than any item to which regulation 9 applies)"

then, subject to satisfying the other conditions in the regulations, he will receive a sum of money which is proportionate to the number of members in his assessment unit (£75 for himself and £50 for each additional member) for those needs."

9. Regulations 9 and 10 of the Amending Regulations go together to provide for the circumstances in which a payment will be made for the purchase, repair or installation of essential furniture and household equipment. Regulation 9 sets out the items defined as essential furniture and household equipment. Regulation 10 sets out the conditions in which a payment will be made. It will be seen that from the items claimed by the claimant a single bed base and mattress, a cooker, an electric fire, a fireguard, and a hot water cylinder jacket fall within the definition in regulation 9 of "essential furniture and household equipment". The tribunal rightly considered the fireguard and electric fire under this regulation but failed to give adequate reasons for their conclusion that the claimant satisfied the conditions of entitlement. Further they failed to explain why no award was made in respect of the other items which fell within regulation 9. The tribunal's decision was erroneous on this ground also. The new tribunal should consider whether the criterion of "need" in terms of regulation 3(2) is satisfied in respect of each item claimed and listed under regulation 9 and then proceed to consider whether the claimant satisfies the conditions of regulation 10. If the new tribunal considered that the claimant is unable to satisfy the conditions of regulation 10, they should proceed to consider regulation 30, where a single payment can be made to meet an exceptional need in a case where "such a payment is the only means by which serious damage or risk to the health or safety of any member of the assessment unit may be prevented". It should be noted that any single payment under regulation 30 is discretionary and is subject to the criterion of "need" first being established.

10. A single payment for bedding may be awarded under regulation 12 of the Single Payments Regulations as amended subject however to the criterion of "need" first being satisfied in respect of each item. "A sufficient stock of bedding" is defined in regulation 12(3). The tribunal failed to record any findings or decision in respect of this item and it will be for the new tribunal to determine whether the claimant satisfies the conditions for an award. If he does not, they should proceed to consider regulation 30 and determine the issue in the light of my remarks in paragraph 9 above.

11. I come now to the remainder of the items claimed by the claimant. It is not in dispute that the claimant satisfied the conditions for an award under regulation 10A. The tribunal in those circumstances was right to conclude that the claimant had received the maximum amount payable under Schedule 1B of the Amending Regulations as he was the only member of his assessment unit. Accordingly no further sum can be awarded in respect of those items.

12. For the reasons stated the tribunal's decision was erroneous in law and I give the

decision set out in paragraph 1. It will be for the new tribunal to determine the issues by reference to regulations 9, 10, 10A, 12 and 30 of the Amending Regulations. They should ensure that the findings of fact and reasons for decision comply with the statutory requirements.

13. The claimant's appeal is allowed.

(Signed)

**R F M Heggs
Commissioner**

Date: 16 June 1988