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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER Coal Fire – suitable alternative

Name: (Mrs) SG 8/1981

Supplementary Benefit Appeal Tribunal: Greater Birmingham

Case No: 39/770

/ORAL HEARING/

1. For the reasons set out below I am satisfied that the decision of the supplementary benefit appeal tribunal given on 20 May 1981 was not erroneous in point of law, and accordingly this appeal fails.

2. The claimant, who at the date of claim was an 82 year old widow living in local authority accommodation, requested a single payment to purchase 2 gas heaters and an electric immersion heater. At the time she had an open coal fire, to which 2 radiators were connected, and this system also served to heat the water. However, the benefit officer rejected the claim on the ground that the claimant already had available to her a suitable heating and hot water system. There was therefore no need for a single payment.

3. The claimant appealed to the supplementary benefit appeal tribunal, who unanimously upheld the benefit officer. Unfortunately, there is no record in the papers of the chairman's note of evidence, and the findings of the tribunal on questions of fact and the reasons for their decision are brief in the extreme. The findings read as follows: "The appellant has a coal fire with a backboiler which heats two radiators. Representation was made that this is unsuitable in view of the appellant's age and infirmity". The reasons for the tribunal's decision were expressed as follows:-

> "Regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1980 has been correctly applied".

The claimant sought leave to appeal against this decision, and I granted such leave on 3 March 1982. I also directed an oral hearing of the appeal itself. At that hearing the claimant was represented by Miss J Allbeson of the Child Poverty Action Group, and the supplementary benefit officer by Mr R Birch of the solicitor's office of the Department of Health and Social Security. I am indebted to both of them for their assistance.

4. At the material time the relevant regulations were those contained in the Supplementary Benefit (Single Payments) Regulations 1980 /S.I. 1980 No. 1579/, but as these have been replaced by the Supplementary Benefit (Single Payments) Regulations 1981/S.I. 1981 No. 1528/, which reproduce the previous provisions with immaterial differences of form arrangement and numbering, I will for convenience refer to the later regulations. Regulation 3(2) provides as follows:

> "A single payment shall be made only where -
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> (a) there is a need for the item in question; and
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> (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."

Of course, a single payment will only be made in the case of a prescribed item.

5. Regulation 10(1)(a)(ii) and (2) of the aforementioned regulations provides as follows:-

> "10(1) This paragraph shall apply where either -
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> (a) the claimant has recently become the tenant or owner of an unfurnished or partly furnished home and one or more of the following applies:-
>
> (i) ...
>
> (ii) a member of the assessment unit is over pensionable age, ...
>
> (2) In a case to which paragraph (1) applies a single payment shall be made for the purchase of any item of essential furniture or household equipment which the claimant either -
>
> (a) does not possess; or
>
> (b) does possess, but which is defective or unsafe and the cost of repair to which paragraph (4) would otherwise apply would exceed the cost of the replacement ... "

It is not in dispute that the claimant falls within the scope of regulation 10(1)(a)(ii),

6. "Essential furniture and household equipment" is defined in regulation 9 and includes "space-heating appliances, but excluding items which are part of a central heating system within the meaning of paragraph 3 of Schedule 3 to the Requirements Regulations."

7. In the present case, gas fires are clearly space-heating appliances. However, an immersion heater does not fall within this description, nor, as far as I can see, within any of the items designated in regulation 9 as "essential furniture and household equipment",so that on no footing is the claimant entitled to single payment in respect thereof. But what of the gas fires?

8. Now, a difficult point arises as to what is exactly meant by "item" in regulation 3(2). At first sight it might be thought that the word "item" in this context must indicate one of the items specified in regulation 9, which in the present instance will mean "a space-heating appliance". If this construction is adopted, then in the present case the claimant will not be entitled to receive a payment for the purchase of a space-heating appliance, if she already possesses one, and as she clearly has a coal fire, which is a space-heating appliance, then she already has the item in respect of which she seeks a single payment, and her claim must necessarily fail. However, I do not think that this construction is the proper one to apply. The objection is that, if this construction is right, it is difficult to give any meaning to the subsequent words "or have available to it a suitable alternative item". It is difficult, if not impossible, to contemplate what is the alternative to a space-heating appliance, or, for that matter, the alternative to any of the other items set out in regulation 9. It would seem, then, that the draftsman is using the word 'item' in regulation 3(2) in a different sense from that in regulation 9. He would appear to be treating "item" as any species of the genus specified in regulation 9. (The same approach would appear to have been adopted in regulation 10(2)). Thus, there are all manner of types of space-heating appliances, and provided that the purchase of one such type is in contemplation, then regulation 3(2) will apply.

9. Accordingly, in the present case as the claimant is seeking a single payment for the purchase of 2 gas fire heaters, her claim will be defeated if she already possesses such gas fires or have "available to /her/ a suitable alternative item". On this construction, as the claimant clearly does not already possess 2 gas heaters, it is necessary to consider whether she has available to her a suitable alternative type of **space-heating appliance. Incidentally, it is perhaps** surprising that the relevant statutory provision does not speak of the assessment unit's possessing a suitable alternative item, but instead speaks of such item being available to the assessment unit. However, as the latter expression is wider than the former, nothing would seem to turn on this particular point. In the present case, the claimant had, at the time of the claim, and as far as I know, still has, a coal fire, and the question that has to be resolved is whether or not that is a suitable alternative to the 2 gas fires for which the claimant seeks a single payment.

10. Before being able to resolve this problem it is necessary to determine whether "suitable" should be construed subjectively or objectively. I have little doubt that from an objective standpoint premises, which are heated with a coal fire, are just as well heated as premises which rely on a gas fire. The two kinds of heating are equally effective. However, this may not be the sole issue if "suitable" is to be judged subjectively. In the present case it is argued that owing to the claimant's age a coal fire is not suitable in her particular circumstances. It is contended that "suitable" should be construed subjectively, and that in the claimant's case on the facts she does not have available to her a suitable alternative form of heating.

11. I am satisfied - and on this point Mr Birch and Miss Allbeson are in agreement - that in the relevant regulation "suitable" is to be construed subjectively. The intention of the legislature is that qualified claimants should have heating adequate to their own individual needs. The supplementary benefit legislation is directed to satisfying the requirements of claimants, and the approach must broadly be subjective rather than objective, although, of course, it cannot be pursued to such absurd lengths that personal idiosyncracies are catered for to the exclusion of all objective criteria based on reasonableness. Accordingly, the claimant's entitlement to a single payment for the purchase of the 2 gas fires depends upon her satisfying the tribunal that the coal fire was not suitable in her particular case.

12. Unfortunately, the chairman did not include among the papers his record of the evidence given and the arguments put forward, but a note has been produced by the presenting officer as to what was in fact submitted. I have no reason to suppose that this note is otherwise than accurate. In brief, the representative of the claimant argued that the existing heating system was unsafe because of the claimant's age and health. She had to break up and cart coal across the yard, which was difficult and dangerous in wet or icy weather, and she had difficulty in lighting the fire and keeping it lit. However, he conceded that her sight had improved. The presenting officer apparently submitted that "a fit youngster, used to modern central heating, would not know how to go about lighting and keeping lit a coal fire. On the other hand the /claimant/ had a lifetime's experience of doing just that. Despite her age she was active, competent and independent". In the event the tribunal accepted the arguments of the presenting officer.

13. Whether or not the existing heating system was suitable for the claimant was, of course, a matter of fact for the tribunal alone to decide. However, Miss Allbeson complained that the tribunal had made no specific findings of fact directly relating to this issue, and that they had given as the reasons for their decision the stark comment "Regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1980 has been correctly applied". She contended that the claimant had been left in the dark as to the reason why she had failed. In this connection she cited Decisions R(A) 1/72 and R(SB) 5/82 (paragraph 6).

14. Whilst I readily concede that it is normally quite unsatisfactory for a tribunal to fail to make the requisite findings of fact on which to base their ultimate conclusion, and blandly to assert that the relevant regulation has or has not been correctly applied without explaining why this conclusion has been arrived at, this will not invariably be fatal to the validity of the decision. The whole context, in which the decision complained of was made must always be considered, including, in particular, the nature of the evidence given and the basis of, and the circumstances surrounding, the **benefit officer's** original decision. In the present instance, it is quite clear from the so-called findings of the tribunal - they were, of course, not findings at all, but a mere statement of what took place - that representations were made that the existing heating system was "unsuitable in view of the appellant's age and infirmity". Regulation 3(2) refers to the question of suitability of an alternative heating system available to a claimant, and manifestly from the nature of the evidence (and the reasons given by the benefit officer for his decision) the question fought out before the tribunal was whether or not as a matter of fact the existing system was suitable for the claimant. In saying that regulation 3(2) had been correctly applied, manifestly the tribunal took the view that the contention of the presenting officer was right and that of the claimant's representative was wrong. It must have been perfectly obvious to the claimant, who was present at the hearing and heard what was said, that when the tribunal reached the decision they did, and expressed it in the way they did, they had preferred the presenting officer's assessment of the claimant's condition and the suitability of her existing heating system. I do not, then, really think that she was left in the dark. I do not believe that it was **essential for the tribunal to spell** out in detail why they reached the conclusion that they did. In my judgment, it was enough for them to dispose of the matter generally in the way that they chose.

15. In reaching this conclusion - and I would say that I have done so only with considerable hesitation - I must not be taken to have approved fully the way in which the tribunal dealt with their findings of fact and the reasons for their decision. I would like to have seen a considerable enlargement in both areas, so that it would not have been open on any footing for the claimant to make complaint. However, although I think there is scope for criticism, I do not consider that the claimant has, on the facts of this particular case, been left in the dark, and accordingly I do not believe that the tribunal erred in law. They simply reached the conclusion that the existing heating system was suitable for the claimant and that she did not satisfy regulation 3(2).

16. I dismiss this appeal.

(Signed) D G Rice
Commissioner

Date: 11 **November** 1982

Commissioner's File: C.S.B. 568/1981
C SBO File: 628/8