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CSB 542/83

T/AM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name:

Supplementary Benefit Appeal Tribunal:

Case No: 02/13

[ ORAL HEARING ]

1. This is a claimant's appeal, brought by leave of one of our members, against a decision of the supplementary benefit appeal tribunal dated 13 January 1983 which confirmed a decision of the benefit officer issued on 18 August 1982. Our decision is that the aforesaid decision of the appeal tribunal is erroneous in law and is set aside. The case is referred to the social security appeal tribunal, which must be constituted differently from the appeal tribunal which gave the decision hereby set aside, for determination in accordance with the principles of law set out below.

2. We held an oral hearing of the appeal. The claimant was represented by Miss F Logan, legal officer of the National Council for One Parent Families. The adjudication officer was represented by Mr E O F Stocker. To both we are indebted for most careful and helpful submissions. By the end of the hearing, remarkably little remained in contention.

3. The facts are simple and not in dispute. The claimant is a widow. At the material time her household included a dependent child of 15 and a non-dependent child who was over 18. She was in receipt of supplementary allowance. She had no capital. On 9 August 1982 she made a claim in writing for a single payment. It was expressed thus:

"I wish to claim for the cost of paint & brushes for the hall & stairway .....

Vinyl Silk	£11.25
Vinyl Silk	2.49
Vinyl Matt	4.49
Brushes	3.02
	<u>£21.25"</u>

(That document of claim was not before the appeal tribunal - but its tenor was accurately reflected in the submission of the local benefit officer.)

4. On 10 August 1982 a letter was written to the claimant asking whether she had yet paid for or purchased the items. In her reply, dated 11 August and received on 16 August, she stated that she had bought the items over a period of three weeks out of her supplementary allowance - but that the job was not yet finished.

5. On 18 August 1982 the benefit officer issued a decision in the following terms:

"Refusal of a single payment to meet the cost of £25 spent on decorating materials."

(He erroneously carried into that decision a sum of £4.00 which the claimant had claimed in respect of fares incurred by reason of illness.) When the claimant appealed, the benefit officer's submission to the appeal tribunal made it clear that his consideration of the claim had proceeded no further than the question of whether there had been, at the date of the claim, a need for a single payment to meet the cost of the paint and brushes. To that, of course, there could be but one answer (regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations /SI 1981 No 1528/, applied in accordance with Decisions R(SB) 8/81 and R(SB) 13/81). His submission dealt with no other aspect of the claim. The proceedings before the appeal tribunal took a similar course. Inevitably, the appeal failed.

6. The central issue in this appeal is whether the benefit officer and the appeal tribunal ought to have considered whether the claimant was entitled to an award under regulation 28 of the Single Payments Regulations. We quote so much as is presently material from the regulation as it stood at the relevant time:

"28.-(1) A single payment shall be made where a claimant either - .....

(b) has spent, on any item for which had he claimed it a single payment would have been made under these regulations, money set aside to provide for any item to which the category of normal, additional or housing requirements relates,

and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he should meet.

(2) The amount payable in a case to which paragraph (1) applies shall be the amount of the cost, or where more than one item is concerned the aggregate amount of the costs, which he is unable to meet, subject to

a maximum of -

.....

- (b) in a case to which paragraph (1)(b) applies, the amount of the single payment which would otherwise have been made."

(That regulation has since been amended so as to -

- (a) add "or his partner" to all references to "the claimant"; and
- (b) take account of the introduction of housing benefit.

Neither amendment has any bearing upon the issues with which we deal in this decision.)

7. At the hearing before us the initial submission advanced by Mr Stocker was that -

- (a) the Single Payments Regulations were directed to a variety of "exceptional needs";
- (b) accordingly, it behoved a claimant clearly to identify the particular exceptional need to which his claim related;
- (c) such need is to be determined as at the date of claim (see First Decision of a Tribunal of Commissioners R(SB) 26/83);
- (d) the exceptional need to which regulation 28 was directed was the need to meet the cost of certain items to which the category of normal, additional or housing requirements relates;
- (e) the claim in this case was for the cost of decorating materials;
- (f) decorating materials are the subject of regulation 19 of the Single Payments Regulations and, a fortiori, are not within the category aforesaid;
- (g) accordingly, the claim could not be construed as a claim for an award under regulation 28.

8. In our view, that analysis is too rigid. No ordinary claimant can be expected to know the ins-and-outs of the Single Payments Regulations - least of all of the highly technical regulation 28. It is for a claimant, who thinks that he may have some sort of claim, to lay before the adjudication officer such facts as he (the claimant) considers may entitle him to a single payment. It is then for the adjudication officer to consider whether, on those facts, the claimant

has, or (subject to further enquiries) may have, a good claim under one or more of the regulations. It will be noted that in the instant case the adjudication officer complied with that procedure - up to a point. He received a bald claim for the cost of paint and brushes. He could see that that claim might well fall under regulation 19. He asked whether the claimant had yet paid for or purchased the items. Had the claimant answered "No", he would then, no doubt, have directed further enquiries as to whether the claimant satisfied the various conditions prescribed in regulation 19. One such condition is that a claimant should have lived at his present home for at least one year. No one, we think, would consider that an adjudication officer would have been justified in saying to himself: "There is nothing in this claim to show how long the claimant has been in his present home. He cannot, accordingly, be making a claim under regulation 19".

9. But the claimant did not answer "No". She answered "Yes" - adding that she had bought the items over three weeks out of her supplementary allowance. At that stage, in our view, the benefit officer ought to have switched his mind to regulation 28. Manifestly the claim was a non-starter under regulation 19. But the skeleton of a claim under regulation 28 was there - no less than had been the skeleton of a claim under regulation 19 at the stage when the benefit officer had before him the document set out in paragraph 3 above. It then behoved the benefit officer to ascertain whether flesh could be put on that skeleton. Mr Stocker urged upon us that "advising" a claimant or making enquiries is not the function of the benefit/adjudication officer - and that is right. But the benefit officer could have directed that further enquiries be made as to the factual basis underlying possible entitlement under regulation 28; and in so doing he would have been no more "advising" the claimant than if, in the context of regulation 19, he had directed that enquiry be made as to how long she had lived at her present house.

10. To put it slightly differently, both the benefit officer and the appeal tribunal treated the claim as a claim for assistance towards the purchase of paint and brushes. But the claimant was not claiming a payment for that. She had already made the purchases before she made her claim. Her claim was for reimbursement of the money already spent. Both the benefit officer and the appeal tribunal rejected a claim which had never, in fact, been made.

11. In the case before us there was, by the time the benefit officer gave his decision, a clear statement that the items in question had been purchased out of the claimant's supplementary allowance (cf paragraph 4 above). That was, of course, all the more reason why the benefit officer should have been alerted to regulation 28. We do not, however, consider that that is of the essence. Persons in receipt of supplementary benefit very commonly have nothing but the money set aside for their normal, additional and housing requirements with which to pay for anything. Very commonly, accordingly, if they do divert such money to other purposes, they have to forego some item of normal or additional requirements or fall into arrears in respect of the commitments represented by their housing requirements. Accordingly,

it is in general right that, in cases where the claim is not made until after the item has been acquired or paid for, the adjudication officer and the appeal tribunal should consider the possibility that there may be entitlement under regulation 28. That will not, of course, apply where, for one reason or another, it is obvious that there can be no entitlement under that regulation - eg where the claimant states that the item was paid for with money borrowed for that express purpose (see Decision of a Tribunal of Commissioners R(SB) 47/83, paragraph 12).

12. It follows that we consider that in the case before us the benefit officer had before him a claim for a single payment under regulation 28. His actual decision (see paragraph 5 above) was mis-directed - but falls, undoubtedly, to be construed as a disallowance of that claim. It was then for the appeal tribunal to consider and determine the claim under regulation 28. It did not do so. That is error of law and the decision must be set aside.

13. It is to be noted that, since 6 August 1984, a further element has been introduced into the type of situation which we have been considering. With effect from that date regulation 5B has been inserted into the Supplementary Benefit (Claims and Payments) Regulations 1981 /SI 1981 No 1525/:

"5B. Where a claim for a single payment is made not more than 5 days, excluding any day on which a local office of the Department is closed to the public for the receipt of claims, after the date on which the need for the item in question first arose it shall be treated as made on the date on which the need first arose but only where the need for that item had to be met immediately and it was not practicable for the claim to have been made before that need had to be met."

14. The general approach which emerges from what we have said in paragraphs 6 to 13 above can be summed up thus:

- (a) Where a claim for a single payment is made after the relevant item has been acquired or paid for, the first duty of the adjudication officer is to consider whether the claimant can avail himself of regulation 5B of the Claims and Payments Regulations 1981.
- (b) If the adjudication officer decides that the claimant cannot so avail himself, he should then consider the claim as being made under regulation 28 of the Single Payments Regulations, unless it is manifest that that regulation cannot apply (as where, for example, the claimant has stated that the item was paid for by money borrowed for that express purpose).

(In fairness to Mr Stocker, it should be said that, by the end of the hearing before us, he was not disposed to resist those conclusions.)

15. We add a few words in respect of the application and construction of regulation 28. The adjudication officer now concerned, in his written submission, canvassed the question of whether a claim under that regulation could ever succeed where a claim for a single payment in respect of the original item had, in fact, been made and disallowed. The crucial words are, of course, -

".... has spent, on any item for which had he claimed it a single payment would have been made under these regulations..."

In paragraph 6(d) of Decision on Commissioner's File C.S.B. 488/1983, the Commissioner expressed the view that:

"The claim under regulation 28(1)(b) can only succeed in respect of an item for which a claim has not been made because only then can the condition 'for which had he claimed it a single payment would have been made' /my underlining/ apply."

In Decision R(SB) 36/83 a different Commissioner expressed the contrary view (paragraph 6). And in Decision on Commissioner's File C.S.B. 1103/1982, yet another Commissioner was tentatively of that contrary view.

16. Mr Stocker expressly disclaimed any intention of supporting the view taken in C.S.B. 488/1983. As he submitted, it would place at a wholly unreasonable and unjustifiable disadvantage the claimant who first made a claim in respect of the cost of the item itself - or who made a claim in the alternative. The position would be even more hazardous for claimants now that regulation 5B of the Claims and Payments Regulations is in force (see paragraph 13 above). A claimant who thought that he might have a chance of bringing himself within that regulation would be put in a dilemma of election. We agree that regulation 28 of the Single Payments Regulations is less felicitously drafted than it might be. We must, however, construe it in accordance with what we regard to have been the intention of the legislature, as derived from the words themselves. We have no hesitation in construing the relevant passage as if the words "before he acquired or paid for it" were inserted immediately after the words "had he claimed it". So -

".... has spent, on any item for which had he claimed it, before he acquired or paid for it, a single payment would have been made under these regulations ....."

17. As to the further construction and application of regulation 28, we endorse the careful analysis set out in Decision R(SB) 36/83 -

and wish only to emphasise the liberal construction to be put on the phrase "money set aside". The great majority of those in receipt of supplementary benefit live from week to week. There must always be a strong presumption that, in any given week, the whole of the relevant allowance or pension has been set aside to provide for items to which the category of normal, additional or housing requirements (including housing benefit expenditure) applies.

18. The claimant's appeal is allowed.

(Signed) J S Watson  
Commissioner

(Signed) D G Rice  
Commissioner

(Signed) J Mitchell  
Commissioner

Date: 24 October 1984

Commissioner's File: CSB/572/1983  
C SBO File: 612/83  
Region: London North