Roger.

Definition of 'chronically sick'

Appellant's Name: Michael McNab

Commissioner's File No: CSB/598/1983

This case is starred as it decides that the words "chronically sick" in regulation 10(1)(a)(ii) of the Supplementary Benefit (Single Payments) Regulations 1981 must be read in their ordinary meaning and not read subject to any provisions not expressly contained in the regulations. A person is "chronically sick" within regulation 10(1)(a)(ii) though he may not be severely ill.

JBM

— see CSB 697/1983

JBM/BC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Michael McNab

Supplementary Benefit Appeal Tribunal: Wolverhampton

Case No: 8/169

[ORAL HEARING]

1. My decision is that the decision of the Wolverhampton Supplementary Benefit Appeal Tribunal dated 18 April 1983 is erroneous in point of law. Accordingly I set it aside and give the decision the tribunal should have given namely that the claimant is entitled to a single payment to purchase essential furniture and household equipment; rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of SI 1980 No 40.

2. This is an appeal to the Commissioner with the leave of the Commissioner by the claimant against the unanimous decision of the appeal tribunal confirming the decision of the benefit officer issued on 14 December 1982 "Refusal of a single payment for carpets, curtains, cooker, fridge, saucepans, light-bulbs, heater, armchairs, wall unit, bed, wardrobe and dressing table and chairs".

3. On 10 December 1982 the claimant claimed a single payment for furniture and listed the following items that he needed: carpets, curtains, cooker, fridge, saucepans, light-bulbs, heater, armchairs, wall unit, bed, wardrobe, dressing table and chairs. At that date the claimant was aged 19 and was receiving a supplementary allowance because he was unemployed and registered for employment. He was due to move into an unfurnished local authority flat on 16 December 1982. He was moving from a furnished flat.

4. The relevant statutory provisions are:-

Section 3 of the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980.

Regulations 3, 9, 10 and 30 of the Supplementary Benefit (Single Payments) Regulations 1981 as amended by SI 1982 No 907 and SI 1982 No 914.

Rule 7 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980.

I need only set out regulation 10(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 as in force at the date of claim:-

"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 and one or more of the following applies:-

(i) one of sub-paragraphs (a) to (f) of regulation 13(1) applies 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;

(iii) the claimant has, in the opinion of the benefit officer, no immediate prospect of employment and either has been a person in receipt of an allowance for a continuous period of 6 months or has, within the preceding 6 months, been the partner of such a person,

(iv) immediately before he became such a tenant or owner, the claimant was a prisoner, or was living in a resettlement unit, or accommodation provided for an analogous purpose by a voluntary organisation, or in accommodation provided by a statutory authority or voluntary organisation for the purpose of providing special care and attention for him, or had been a a patient for a continuous period of more than one year,

and cases to which head (iii), or (iv) applies, there is no suitable alternative furnished accommodation available in the area..."

5. I directed an oral hearing and accordingly I heard this case on 16 January 1984 together with the case on Commissioner's File No CSB/139/1983, which case I deal with in a separate judgment. The claimant was present. He was represented by Mr D P Powell, Welfare Rights Worker of the Metropolitan Borough of Wolverhampton. The benefit officer was represented by Mrs G M V Leslie. I am indebted to both of them.

6. I turn to the submissions of Mr Powell made before me at the hearing. Mr Powell submitted that the question of issue concerned regulation 10(1)(1)(ii) of the Single Payments Regulations which records that one of the members of the assessment unit is "chronically sick". The tribunal, so submitted Mr Powell, found as a fact in their findings on the face of the record that the claimant "has suffered from asthmatic bronchitis since 1972". In their decision the tribunal stated "although the appellant suffers from asthmatic bronchitis this was not felt to be a chronic sickness within the meaning of the regulations". Mr Powell's argument was that these two findings cannot stand together and that no reasonable tribunal could come to the decision at which the appeal tribunal in the instant case arrived. In order to arrive at that conclusion Mr Powell submitted that it was necessary to add to the regulations. There are two possible additions - the first being that to be within regulation 10(1)(a)(ii) the person must be such as to be not required to register for employment at the relevant time. The second possible addition is that the expression "chronically sick" has

to be interpreted as meaning a person suffering from a chronic illness who cannot reasonably be expected to move again to suitable alternative furnished accommodation because of his state of health. In Mr Powell's submission the regulation must be read as it stands. The main supplementary benefit case on statutory interpretation is R(SB)16/83 and in particular Mr Powell referred to paragraph 13 of that decision. Mr Powell submitted that that decision follows a whole line of decisions by the House of Lords on statutory interpretation. The importance of these decisions is that unless the plain meaning of words used in the Act or Regulations produces an anomaly or a choice between interpretations then the words in the statutory provisions must be given their ordinary meaning. Mr Powell referred me to Abley v Dale (1851) 11 C.B.378 where Jervis C J at page 392 stated "But, without speculating upon the motives of the legislation we are not at liberty to depart from the plain meaning of the words used, .." The benefit officer had been able to define what the words "chronically sick" meant as "deep seated" which is a plain meaning. It has been argued, so stated Mr Powell, that this would produce anomalies - a person's sickness might have no effect on his working ability or choice of accommodation - the argument is that an anomaly exists which must be taken into account and accordingly it is necessary to look for another meaning. However Mr Powell submitted that this was not a permissible approach, referring to the House of Lords decision of Stock v Frank Jones (Tipton) Ltd [1978] 1 WLR 231 in particular the judgment of Lord Scarman at page 238 which is as follows:-

> "I wish, however, to add a few words of my own on the "anomalies" argument. Mr Yorke for the appellants sought to give the words a meaning other than their plain meaning by drawing attention to what he called the "anomalies" which would result from giving effect to the words used by Parliament. If the words used be plain, this is, I think, an illegitimate method of stautory interpretation unless it can be demonstrated that the anomalies are such that they produce an absurdity which Parliament cannot have intended, or destroy the remedy established by Parliament to deal with the mischief which the Act is designed to combat."

There is no absurdity in this case submitted Mr Powell. Mr Powell further referred me to the judgment of Lord Simonds in Magor and St Mellons Rural District Council v Newport Corporation [1951] 2A11ER 839 at page 841 which is as follows:-

> "What the lesiglature has not written, the court must write. This proposition ... cannot be supported. It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation, and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

Regulation 10(1)(a), so submitted Mr Powell, by restricting the proviso at the end to apply only to (iii) and (iv) also suggests that not only are the benefit officer and the tribunal doing what is impermissible, they are doing what is explicitly excluded by the regulations. The claimant is within the regulations and in view of the decision of the Tribunal of

Commissioners in R(SB)26/83 the claimant's need for the items he claims is tested at the date of claim. The claimant did not as a fact then have them and is entitled to the items in paragraph 4 of the submission by the benefit officer at page 2 of the case papers. Mr Powell's final submission in opening was that I should give the decision the tribunal should have given as all relevant findings have been made but the conclusions of the appeal tribunal were wrong.

7. I turn now to the submissions made before me by Mrs Leslie. Mrs Leslie stated that the claim was made on 10 September 1982 and at that date the claimant had not moved into his local authority accommodation. He was in a furnished flat. He was in receipt of supplementary allowance. The claimant moved into his new flat on 16 September 1982 and moved from the furnished flat. The claimant's health problem was not initially mentioned and Mrs Leslie referred me to paragraph 8 of the submission of the benefit officer at page 5 of the case papers. Mrs Leslie invited me to examine the words "chronically sick" and look at the statement before the tribunal from the claimant's doctor dated 12 April 1983. Mrs Leslie stated that the words in that letter "often has tight chest" did not indicate a continuing condition. She further referred me to the words "his present medication" in the letter of 12 April 1983. Mrs Leslie submitted that there was nothing to suggest in that doctor's certificate that the claimant was constantly sick and she stated that the claimant did not mention the medical condition until his claim had been turned down by the benefit officer and until one month after the date of his appeal to the appeal tribunal. Turning to the meaning of "chronically sick" in regulation 10(1)(a)(ii) Mrs Leslie submitted that there was no definition of those words. She referred me to the Chronically Sick and Disabled Persons Act 1970 and stated that the power to define certain expressions existing in section 28 of that Act had never been exercised. She also referred me to sections 1 and 2 of that Act and submitted that "chronically sick" must be interpreted in the light of section 29 of the National Assistance Act 1948 which states "other persons who are substantially and permanently handicapped by illness ...". Mrs Leslie submitted that that is the generally understood meaning of chronically sick. She sought to illustrate her submission by giving instances of conditions falling into the above category - they were cerebral paralysis, Parkinson's disease, poliomyelitis, multiple sclerosis and epilepsy. In all of these Mrs Leslie submitted there was an element of permanence and the person was unlikely to recover. Mrs Leslie then referred me to a Department of Health and Social Security circular for the guidance of local authorities being LAC 17/74 a copy of which was produced at the hearing. Mrs Leslie then turned to the appeal tribunal's record of the hearing dated 18 April 1983. She referred to the finding of fact of the tribunal that the claimant has suffered from asthmatic bronchitis since 1972. Mrs Leslie referred also to the reasons for decision of the tribunal "although the appellant suffers from asthmatic bronchitis this was not felt to be a chronic sickness within the meaning of the regulations". Mrs Leslie submitted that it was a question of fact for the tribunal whether the claimant suffered from a chronic sickness. Mrs Leslie submitted that the appeal tribunal had made a clear decision and that was a question of fact for them. Mrs Leslie referred me to the House of Lords decision in Brutus v Cozens [1973] A.C. 854 to the judgment of Lord Reid at page 861 which I set out as follows:-

"It is not clear to me what precisely is the point of law which we have to decide. The question in the case stated for the opinion of the court is "Whether, on the above statement of facts, we came to a correct determination and decision in point of law." This seems to assume that the meaning of the word "insulting" in section 5 is a matter of law. And the Divisional Court appear to have proceeded on that footing.

In my judgment that is not right. The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word "insulting" being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonaly reach that decision".

This, so submitted Mrs Leslie, supports the submission that it is a question of fact for the tribunal to determine whether the claimant was "chronically sick". Mrs Leslie submitted that the tribunal have made the clearest finding that it is not a chronic sickness. She referred me to the chairman's notes of evidence in support of the proposition that the appeal tribunal went through the whole of regulation 10. In her final submission in opening Mrs Leslie submitted that it is a question of fact for the tribunal and the words "chronically sick" must mean something permanent and substantial. The appeal tribunal acted in a reasonable manner so submitted Mrs Leslie and came to a decision they were entitled to come to and any reasonable tribunal could have come to the same decision. Mrs Leslie relied on these submissions made in paragraphs 10 and 11 of the written submission dated 12 August 1983 and stated that she went further - that the words "chronically sick" must mean something much more serious than a state of asthma which is not a constant state - chronically sick must have an element of constancy. Mrs Leslie submitted that there were no arguments on the facts, the decision of the tribunal was correct and should be supported.

8. In reply Mr Powell stated that the whole sense of the case is all in the last sentence of the above quotation from Brutus v Cozens [1973] A.C 834 at page 861. He submitted that the benefit officer has given a definition of "chronically sick" into which the claimant falls, being 19 years old and having suffered for 11 years from asthmatic bronchitis. No tribunal, so submitted Mr Powell, could reach the decision that the tribunal have reached. Mrs Leslie has to rely on definitions from elsewhere for other purposes. The kind of definition in section 29(1) of the National Assistance Act 1948 is that of handicapped and the Housing Benefit Regulations specifically refer to section 29(1) of that Act. Mr Powell submitted that Mrs Leslie is writing in a new definition into regulation 2 of the Single Payments Regulations which she cannot in law do. Mr Powell accepted that someone who is chronically sick may not be severely ill and submitted that as long as such a person has a sickness lasting an appreciable time he is within the regulations.

9. Finally Mrs Leslie in addition to giving the meaning of the word "chronic" as shown in the current edition of Chambers 20th Century Dictionary as of "a disease, deep seated or long continued, as opposed to "acute" referred me to the definition of "chronic" in the current Shorter Oxford Dictionary as "lasting a long time or lingering, inveterate, opposite to acute - constant."

10. I accept Mr Powell's submissions and reject those of Mrs Leslie. The words "chronically sick" must be read in their ordinary meaning and no such provisions as Mrs Leslie contended for are to be read in or implied.

11. In accordance with my jurisdiction under rule 10(8) of the Supplementary Benefit and Family Supplements (Appeals) Rules 1980 as amended by rule 6(2) of SI 1980 No 40, my decision is as set out in paragraph 1 above and I am satisfied that it is expedient in the circumstances to give the decision the tribunal should have given namely that the claimant is entitled to a single payment to purchase essential furniture and household equipment. Qualifying items are set out in regulation 9 of the Supplementary Benefit (Single Payments) Regulations 1981. The amounts payable are set out in regulation 10(3). Of the items requested the following are listed (i) curtains (ii) cooker (iii) minor items such as cooking utensils (this covers saucepans and light bulbs) (iv) heater, (v) one armchair (vi) bed and mattress (vii) sufficient storage units for clothing, food and household goods (this covers wall unit, wardrobe, and dressing table) (viii) one dining chair. Of the other items requested carpet is not specifically provided for - the appropriate item is polyvinyl chloride or equivalent floor covering. A fridge is only provided in certain circumstances (see regulation 9(k)). I leave the quantification of the award to the benefit officer. In the event of dispute the matter may be referred to me.

12. I would add that - in argument before me Mrs Leslie referred to the sentence "he stated he was still in need of carpets for the living room and stairs, an electric heater, curtains and a three-piece suite" in paragraph 4 of the initial submission of the benefit officer. Mrs Leslie queried why a carpet was required for stairs when the accommodation was a flat. I do not propose to deal with this minor matter and I do not see that it affects my judgment. I would add that the question of a carpet for the stairs is something that can be dealt with by the benefit officer when quantifying the award as set out in paragraph 11 of this decision.

13. Accordingly the claimant's appeal is allowed.

Signed J B Morcom
Commissioner

Date: 22 March 1984

Commissioner's file: CSB/598/1983
C SBO File: 660/83
Region: Midlands