6669/1982

JGM/II

SUPPLEMENTARY BENEFITS ACT 1976

Electricity Board
Reg 30.
Mandy Rear

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: West London

Case No: B1/121

/ORAL HEARING/

1. I grant the claimant leave to appeal against the decision of the supplementary benefit appeal tribunal dated 12 May 1982 and consent having been given on behalf of the claimant through his counsel and on behalf of the benefit officer to my doing so I am proceeding to deal with the point of law arising on the application for leave as if it arose on the appeal.

2. My decision on the appeal is that the decision was erroneous in point of law inasmuch as the reasons for the decision were not stated sufficiently to satisfy the requirements of rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980. In lieu thereof I decide that a single payment is not to be made for the claimant in respect of his electricity bill for £16.44 in respect of a period from approximately August to October 1981 for the reasons stated in paragraph 8 below.

3. The claimant on 2 December 1981 made a claim for a single payment to meet an electricity bill of £16.44. He was thereafter visited by a visiting officer and agreed to an arrangement under which a sum would be deducted from his supplementary allowance and paid to the electricity board. This arrangement was subsequently discontinued seemingly on the ground that no provision for such an arrangement was contained in the regulations, although there would seem to be no reason why it should not be made by agreement. The electricity board had threatened that the electricity would be cut off from 30 November 1981 if the bill was not paid. The claim for the single payment was expressed to be based on regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 and not on any other provision of those regulations, it being contended that if the electricity were cut off there would be serious damage or serious risk to the health or safety of the claimant, who was 65 years old and registered disabled, and that a single payment to meet the bill represented the only means of preventing such risk or danger. I will assume that cutting off the electricity would have involved such risk.

4. The benefit officer rejected the claim on the ground that such a payment did not represent the only means of preventing such risk or danger, alleging that the claimant already owed substantial sums of money for inessential items and contending that he could have made and arrangement with the electricity board or agreed to have installed a prepayment meter. The claimant appealed to the appeal tribunal who on 12 May 1982 rejected the appeal on the broad ground that there were other means of avoiding substantial danger to health and safety in the event of disconnection. In their findings of fact they noted that the claimant's electricity had not in fact been disconnected. They did not however indicate what means of prevention they had in mind. The claimant applied for leave to appeal to the Commissioner, answering "No" to the question in the form of application whether he consented to the Commissioner's determining any question of law stated in the application and asked for an oral hearing of the application. I granted this request and in doing so indicated that I wished, to hear submissions on the question whether it would be proper, in a case where the application is based on the ground that the reasons for the decision attached were inadequately stated, to refuse leave to appeal if the Commissioner considers that on the appeal itself he would think it expedient to give a decision to the same effect as that appealed from. The claimant did not attend the hearing of the appeal at which he was represented by Mr Mark Rowland of Counsel and the benefit officer was represented by Mr David James from the Solicitor's Office of the Department of Health and Social Security.

5. As both Mr Rowland and Mr James agreed that if I granted leave to appeal I might determine the question of law arising on the application as if it were a question on the appeal, the question that I outlined in granting the oral hearing of the application can be side-stepped. As I heard argument on it I think that I ought perhaps to deal with it.

6. In Bland v Chief Supplementary Benefit Officer [1983] 1 WLR 262 reported as Decision R(SB) 12/83 Kerr LJ pointed out that there was superimposed on the requirement that an appeal to the Commissioner lies only on a point of law a requirement of the leave of the Commissioner; and that it is still a matter for the Commissioner whether leave shall be granted even if a point of law is raised. A similar point was made by the Commissioner in Decision CSB 13/82 (not reported). In what circumstances, if any, is it appropriate to refuse leave to appeal notwithstanding that a point of law is raised? Mr Rowland and Mr James were unanimous in their contention that the fact that the Commissioner to whom the application comes thinks that the only result of a successful appeal will be to substitute a better reasoned decision to the same effect as that from which leave to appeal is sought is not by itself a sound ground for refusing leave. Between them they put forward the following reasons for their submissions:-

(1) The Commissioner is not bound to give reasons for refusing leave to appeal and a refusal of leave unsupported by reasons would not be a satisfactory substitute for a reasoned decision in form allowing the appeal though in substance not allowing it.

(2) The point might be one not properly canvassed in the appeal tribunal, on which the claimant would if leave was refused never be given an opportunity of being heard or making submissions;

(3) Refusal of leave would be a circumvention of the

requirement of regulation 10(7) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules that it is only with the consent of both the claimant and the benefit officer that the Commissioner may determine a question of law arising on the application for leave as though it arose on the appeal and as though the application were an appeal.

These arguments they supported with instances where, although a question of law was raised, it might be appropriate to refuse or defer leave to appeal, so that the need for the Commissioner's leave was not entirely superfluous. Examples suggested were where the point of law is a bad one (cf Decision R(I) 3/61) and where the applicant is the benefit officer and neither the amount involved is large nor the point of law one of important principle. (cf Decision CSB 13/82 above referred to). I would add examples of postponing leave (a) cases where it may save time if first the decision attacked is referred to the appeal tribunal for consideration whether it should be set aside under the Social Security (Correction and Setting-Aside of Decisions) Regulations 1975 (see Decision R(SB) 19/83; and (b) cases where a single payment has been refused because a relevant and decisive regulation has been overlooked and the matter can be more expeditiously dealt with by review or by a fresh claim (I fancy that Bland's case above was such a case).

7. I accept broadly these submissions and, accepting them, grant leave to appeal in this case. I now proceed to the question of law itself. As to this it was not disputed by Mr James that it was inadequate for the tribunal to decide that there were other means of preventing serious damage or serious risk than the making of a single payment without specifying what those means were. It follows that the appeal succeeds in the sense that the decision of the tribunal is set aside. Mr Rowland and Mr James were not however agreed on the course that I should take. Mr Rowland asked me to refer the matter back to another tribunal; Mr James invited me to give the decision that the tribunal gave fortified by properly stated reasons which, he submitted, could be deduced from the findings of the tribunal or the evidence before them. I have reached the conclusion that I can take this latter course.

8. In order to take this course I have to be satisfied that there has not been shown on the evidence to have been no other way of preventing the serious danger to the health or safety of the claimant and to indicate what it was. I have further to be satisfied that the method existed at the date of the claim (see the Decision on file CSB 76/82 (not reported) at paragraph 8 applying the Decisions to be reported as R(SB) 26/83). This means that the bare fact found by the tribunal that the claimant's electricity was not cut off, at all events before 12 May 1982, does not establish that there was some other way of preventing the risk etc. at the date of the claim. It establishes of itself only that some other way had by then been found. However under regulation 30 it was for the claimant to show that a payment represented the only means by which serious risk etc. could be prevented, and I do not consider that the evidence before the tribunal came near to establishing this. The amount of the electricity bill was relatively small, and a relatively minor deduction from the claimant's allowance paid direct to the electricity board was likely to stave off the cutting off of electricity; and I find that it was not shown that the conditions of regulation 30 were satisfied; and in the exercise of the power to give the decision which the tribunal should have given. I so decide.

9. I add one other matter. Reference was made in the submission of benefit officer to the fact that the claimant had incurred indebtedness for inessential items, and a passing reference was made in the decision of the tribunal to the claimant's inability to manage his finances. These matters are not really relevant to the question in issue and it would have been better not to refer to them.

Signed J G Monroe
Commissioner

Date: 3 August 1983

Commissioner's File: CSB/669/1982
C SBO File: 626/82
Region: London North