

JM/BC

Commissioner's File: CSB/669/1985

C A O File: AO 2444/SB/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of a chairman of social security appeal tribunals, against a decision of that tribunal dated 4 March 1985 which confirmed a decision issued by the adjudication officer on 10 January 1985. The appeal is supported by the adjudication officer now concerned. The claimant requested an oral hearing. I refused that request because I did not consider that any useful purpose would have been served by such a hearing.

2. The claimant is aged about 51. He lives in London with his wife and one dependent child. On the evening of 9 December 1984 he heard that his brother had died in Northern Ireland. He has another brother and a sister. The sister was unable to get to the funeral. The claimant could not get in touch with his other brother because he did not know where that brother lived. The deceased appears to have had no assets when he died. The claimant, who was also impecunious, borrowed a sum of money from a provident society and travelled to Northern Ireland on 11 December 1984. He attended his brother's funeral, which took place on 14 December. At the material time the claimant was not in receipt of supplementary benefit. He was receiving invalidity benefit and was awaiting a calculation of his entitlement to housing benefit supplement.

3. Whilst the claimant was in Northern Ireland the Citizens Advice Bureau got in touch with him. Someone had, apparently, told that Bureau that the claimant was in receipt of supplementary benefit. The Bureau advised the claimant that he would be able to claim from the Department of Health and Social Security a refund in respect of his expenditure on fares and lodging.

4. On 18 December 1984 the claimant claimed a single payment in respect of his travelling expenses. The local adjudication officer rejected that claim. He had in mind regulation 3(2)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 which provides as follows:

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

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He took the view that since the claimant had been able to borrow money for his travelling expenses he (the claimant) had no "need" of that money at the date of claim. The claimant appealed to the appeal tribunal. His appeal was disallowed.

5. With effect from 6 August 1984 regulation 5B of the Supplementary Benefit (Claims and Payments) Regulations 1981 has provided as follows:

"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."

6. The local adjudication officer does not appear to have considered the aforesaid regulation 5B. The appeal tribunal did consider it but held that it was "not relevant as the claim was in excess of 5 days after need arose". It did not, however, record any express finding as to the date upon which the relevant need arose nor any findings of fact sufficiently precise to permit of the inferring of such date. In the circumstances of this case such findings were crucial. The claimant had travelled to Northern Ireland on 11 December 1984, which was a Tuesday. He made his claim on 18 December. That was 7 days after he had travelled - but it was only 5 days after he had travelled if the intervening Saturday and Sunday (on which, presumably, his local office of the Department was closed) were excluded. The decision of the appeal tribunal is insufficiently precise to be allowed to stand. The case must be reheard.

7. The appeal tribunal which rehears the case should approach the matter step by step, rather than by seeking a swift coup de grace. The first enquiry should be as to whether the claimant was, at the date of his claim for a single payment, entitled or contingently entitled to a supplementary allowance so as to be able to satisfy the provisions of regulation 4 of the Supplementary Benefit (Single Payments) Regulations 1981. And in this context, of course, the appeal tribunal will bear in mind that housing benefit supplement is an element of a supplementary pension or supplementary allowance.

8. If the claimant surmounts that hurdle, the next step will be to consider regulation 22(1)(i) of the Single payments Regulations. In the circumstances of this case that should be the least of the appeal tribunal's problems.

9. The appeal tribunal must then turn to regulation 5B of the Claims and Payments Regulations (see paragraph 5 above). It must find and record the date upon which the relevant need first arose. That will, in my view, be the date upon which the claimant paid for his ticket. That was the earliest date upon which he "needed" the travelling expenses the subject of regulation 22(1)(i) of the Single Payments Regulations. He may well have borrowed the necessary money on an earlier date; but he did not "need" it on that date. The borrowing was simply a step preparatory to meeting the need when it arose - just as would have been the withdrawal of the appropriate sum from a building society or, indeed, the taking of the appropriate number of £5 notes from a teapot on the mantelpiece.

10. I must make it clear that what I have said about the date upon which the need arose is not to be taken as indicating that the "need" in this case is for money to repay a loan. If the claimant succeeds with his claim he may very well, of course, use the proceeds to repay the provident society. But that is not the essence of the case. In the early days of the "new" system of supplementary benefit it had to be stressed that, by and large, the Single Payments Regulations could not be successfully invoked by those who wished to repay money borrowed to meet what had at the time been such a need as is within the purview of those Regulations. Such claimants foundered because, by borrowing the money and paying for the relevant item prior to the date of the relevant claim, they had by that date eliminated the relevant need. And they will still so founder unless they can avail themselves of regulation 5B of the Claims and Payments Regulations. The relief afforded by that regulation is, in all conscience, niggardly enough - but it is as freely available to those who have borrowed as it is to those who have dipped into their own resources.

11. If by this stage of the appeal tribunal's enquiries the claimant is still in the race, it will be necessary to consider whether -

- (a) the need for the travelling expenses "had to be met immediately"; and
- (b) "it was not practicable for the claim to have been made before that need had to be met."

Those are eminently issues for the commonsense of the appeal tribunal. It may feel, however, that in this type of case the test should not be over-rigorous.

12. Thereafter there would remain only the matter of quantification of the claim - see regulation 22(2) and (3) of the Single Payments Regulations.

13. My decision, accordingly, is as follows:

- (1) The claimant's appeal is allowed.
- (2) The decision of the appeal tribunal dated 4 March 1985 is erroneous in point of law and is set aside.
- (3) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 8 October 1985