

MJG/MP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

C S B

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1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 2 June 1982 and set that decision aside as being erroneous in law. I remit this case to a differently constituted tribunal for rehearing and redetermination in accordance with this decision: Supplementary Benefits Act 1976, section 15A and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, [S.I. 1980 No 1605] rule 7(2).
2. The claimant is a young married man living with his wife and child. In connection with his appeal, detailed written submissions (dated 14 June 1982 and 22 January 1983) have been put in by his representative. Those submissions have clearly been the subject of some considerable thought by the claimant and his representative and I have given careful consideration to them.
3. The facts of the case are that on Friday 23 April 1982 the claimant reported to the Department that he had not received a giro order for £89.60 which had been sent to him for supplementary benefit covering a period of 2 weeks. The benefit officer now concerned (in paragraph 11 of his submission dated 23 November 1982) submits that as a result the claimant can be taken as on 23 April 1982 having made a claim for an urgent needs payment under the Supplementary Benefit (Urgent Cases) Regulations 1981, [S.I. 1981 No 1529]. I accept that submission as being correct (see regulation 5(7) of the Urgent Cases Regulations), with the result that the tribunal erred in law in calculating the urgent needs payment only from Monday 26 April 1982 and not Friday 23 April 1982. Had the matter remained there, I would simply myself have given the decision that the tribunal ought to have given (see the amended rule 10(8) of the above cited Appeals Rules) but in fact I shall have to remit the case for rehearing to a differently constituted tribunal because the original tribunal also failed to record findings of fact and to give adequate reasons for decision (see below). Moreover, there may not have been any entitlement at all to an urgent needs payment (see paragraph 5 below).

4. In relation to the tribunal's decision, the benefit officer now concerned submits as follows (paragraphs 9 and 10 of his submission dated 23 November 1982),

"Under the provisions of regulation 3 [of the Urgent Cases Regulations] an urgent case is one to which Parts II, III or IV of the Urgent Cases Regulations apply where funds to meet the expenses in question are not readily available to the assessment unit from its own resources or from any other source. It is submitted that the tribunal should have recorded findings as to the availability of such funds, especially as the claimant and his family were living in his father's household which included the claimant's brother who was in full-time work. I would refer the Commissioner to the numbered Decision C.S.S.B. 2/82 paragraph 9. There are two points to the provisions of regulation 24 on which, it is submitted, the tribunal should have recorded findings of fact. The first, which covers much of the same ground as above, is that payment under the regulation was the only means of preventing serious damage or serious risk to the health or safety of any member of the assessment unit; and the second is that there was such a risk and that it was serious".

5. I accept those submissions as being clearly correct in law and the new tribunal that rehears this case must take evidence, make appropriate findings of fact and give reasons for decision relating to the matters set out in the benefit officer's submission. That may of course mean that the new tribunal will come to the conclusion that nothing should have been payable to the claimant by way of an urgent needs payment. If that is so, that is an inevitable consequence of the claimant having set the appeal machinery in motion, when all parts of the tribunal's decision are then subject to reversal on appeal including those parts which are in favour of the claimant and not adverse to him.

6. The claimant's complaint on appeal to the Commissioner appears to be that the Department did not pay him the full amount of the lost giro order, i.e. £89.60 but paid him only £39.86. However, a decision whether or not to replace the full amount of a giro order is (as correctly submitted by the benefit officer now concerned) not a determination of a benefit officer with respect to a claim or benefit (see section 15(1) of the Supplementary Benefits Act 1976) but is merely an administrative decision. Consequently it cannot be the subject of appeal to a tribunal or to the Commissioner and I have no jurisdiction to deal with this complaint. The administrative practice in such cases is summarised in paragraphs 1.19 and 1.20 of the Supplementary Benefits Handbook published by the Department of Health and Social Security (Revised Edition 1982). Paragraph 1.20 states,

"There is no right of appeal against a decision not to issue an immediate replacement. This is because the responsibility for issuing (and replacing) instruments of payment is that of officers acting on behalf of the Secretary of State, not benefit officers" (citing section 13 of the Supplementary

Benefits Act 1976 and regulations 6, 7, 8 and 9 of the
Supplementary Benefit (Claims and Payments) Regulations
1981, [S.I. 1981 No 15257].

7. Having considered those citations, I hold that that statement in the Handbook is correct in law and that no appeal can be brought against a refusal to replace, wholly or in part, a giro order. It also ought to be added that regulation 10(2) of the Urgent Cases Regulations (dealing with "loss of money") provides that that regulation shall not apply to any instrument of payment of benefit. Any claim therefore under the Urgent Cases Regulations because of the loss of a giro order or girocheque must be brought under some regulation other than regulation 10, e.g. regulation 24 (serious damage or serious risk to the health or safety of members of the assessment unit). All the requirements of regulation 24 have to be fulfilled before there is entitlement. The marginal note to regulation 24, "Discretionary Amounts", is misleading as there is no unfettered discretion on the part of the benefit officer or of the tribunal (cf. reported Commissioner's Decision R(SB) 9/82, para 7).

(Signed) M J Goodman
Commissioner

Date: 17 February 1983

Commissioner's File: C.S.B. 706/1982
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