

RFMH/BC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

*SS - removal -
breakdown of marriage need
not be primary cause.*

*66/06
CSB/711/1984*

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 12 March 1984 is erroneous in point of law. I set it aside and direct that the matter be reheard by a differently constituted tribunal for determination in accordance with my directions.

2. The claimant lived with her two children, aged 11 and 7 at the material time, in local authority accommodation. She was in receipt of supplementary benefit and had no savings. On 29 November 1983 she claimed a single payment to pay her removal expenses from 77 B... C... to 12b C... R... which were in the same locality. She produced estimates from two removal firms amounting to £97.75 and £103.50 respectively. She stated that she wished to move because her present home was causing her anxiety and depression and she submitted a letter from her doctor dated 5 October 1983 in support, which confirmed her condition and stated, that it had been largely induced by the noisy neighbourhood. The claimant's home at 77 B... C... was centrally heated two-bedroomed accommodation and was not structurally deficient or insanitary. 12b C... R... was also two-bedroomed local authority accommodation but the rooms were larger. On 1 December 1983 the benefit officer (now adjudication officer) disallowed the claim and the claimant appealed to the tribunal.

3. In his written observations on the appeal the benefit officer submitted that a single payment could not properly be awarded because the claimant failed to satisfy either regulation 13 or regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] as amended ("the Single Payments Regulations").

4. On 25 January 1984 the claimant and her representative attended the hearing of the appeal by the tribunal and submitted two further letters from her doctor dated 16 January 1984 and 23 January 1984. In the latter letter the claimant's doctor stated:

"This patient has suffered from depression since the break-up of her marriage. Following this she continued to live in the marital home and this added to her problems. I have advised her to move because of the association of the marital home and also she had problems with co-existing with her neighbour..."

The tribunal very properly adjourned the hearing to enable the benefit officer to consider the additional evidence submitted.

5. The claimant and her representative attended the reconvened hearing of the appeal on 12 March 1984. In the event the tribunal upheld the benefit officer's decision and recorded the following findings of fact:

- "1. Doctors letter 15/10/83 states depression largely induced by noisy neighbours.
2. Doctors letter 23/1/84 said that she has suffered from depression since the break up of her marriage.
3. The accommodation is in a purpose-built block of flats."

The tribunal gave as the reasons for decision the following:

"The tribunal considered regulation 13(1)(c) of the S.P. Regulations but decided that although there was evidence of depression since about the time of the break up of the marriage it was not necessarily due to that fact but more to the noisy neighbours. The tribunal also considered S.P. REG. 13(1)(b) but could find no evidence to support a claim under this regulation. The tribunal also considered S.P. Reg 30 but could find no evidence to support a serious risk to the health and safety of the assessment unit."

The claimant now appeals on a point of law to the Commissioner, leave having been granted by me. I should put on record that the adjudication officer now concerned supports the appeal.

6. In the present case a single payment for removal expenses may be awarded under regulations 13(1) and 30 of the Single Payments Regulations, subject however to the criterion of "need" as defined in regulation 3(2) first being satisfied. The tribunal restricted their findings to regulations 13(1) and 30 and I am satisfied that by implication they accepted that a "need" existed at the date of claim. Regulation 13(1) provides as follows

"13. - (1) A single payment shall be made, other than to a claimant to whom paragraph (2) applies, in respect of the cost of the removal within the United Kingdom of the household goods and personal effects of any member of the same household as the claimant where the assessment unit and any other member of the household is moving to a new home and either -

- (a) ...
- (b) having regard to the age, state of health or any physical disability of any member of the assessment unit, the size of the assessment unit and whether any other person lives in the home, the existing home is unsuitable either in size or structure or because it is too far removed from close relatives;

- (c) the change of home is in consequence of the death of, or divorce from, the claimant's partner or any other breakdown of the marriage or relationship;
- (d) ...
- (e) ...
- (f) ...
- (g) ..."

7. The claimant did not contend that 77 B.. C.... was unsuitable either in size, structure or because it was too far removed from close relatives and the tribunal did not err in law in concluding that the claimant could not satisfy regulation 13(1)(b) of the Single Payments Regulations.

8. The claimant submitted that the need for the removal was "in consequence" of the breakdown of her marriage and the letter from her doctor dated 23 January 1984 clearly supports this contention. The chairman's note of evidence, at which I am entitled to look, records that the claimant's representative submitted that "the word 'consequence' should be given its normal meaning as defined in the dictionary ie 'a result produced by some action or condition'. The shorter Oxford Dictionary defines 'consequence' as 'a thing or circumstance which follows as an effect or result from something preceding;'. ." I agree with this interpretation provided, of course, the circumstance is not too remote.

9. The tribunal considered regulation 13(1)(c) of the Single Payments Regulations but decided "that although there was evidence of depression since about the time of the break-up of the marriage it was not necessarily due to that fact but more [my underlining] to the noisy neighbours". The tribunal took the view that regulation 13(1)(c) could apply only where the consequence of the breakdown of the marriage was the sole or main cause of the change of home. I do not agree. In my judgment it is sufficient for a claimant to show that the breakdown of the marriage was one of the causes of the change of home and this need not be the primary cause. Accordingly the tribunal's decision was erroneous in law and I must set it aside and direct that the matter be reheard by a differently constituted tribunal.

10. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal shall record a statement of reasons for determination and of their findings on material questions of fact. In my view the tribunal failed to comply with the statutory requirement. They failed to record any finding as to the date of the breakdown of the claimant's marriage in order to consider whether the change of home was "in consequence" of it. Further the claimant was left in the dark as to why the evidence she submitted failed to satisfy the tribunal.

11. The tribunal proceeded to consider the provisions of regulation 30 of the Single Payments Regulations and found no evidence to support a claim for a single payment under this regulation. The claimant does not dispute this and in my view the tribunal's conclusion was justified on the evidence before them and their decision was not erroneous in law on this ground. However, if the new tribunal decide that a single payment cannot be awarded under regulation 13 they should proceed to consider again whether on the evidence before them regulation 30 is applicable. The claimant will of course be able to submit any further medical evidence in support.

12. Since the material facts have not been found, it is neither expedient nor possible for me to give the decision that the tribunal should have given. Accordingly, the claim must be referred to another tribunal, which should be differently constituted, for determination in accordance with my directions.

13. The claimant requested an oral hearing of the appeal but after considering the record of the case and the reasons for the request I was satisfied that the appeal could properly be determined without a hearing and the claimant was so informed in writing.

14. My decision is set out in paragraph 1.

Signed R F M Heggs
Commissioner

Date: 20 December 1984

Commissioner's File: CSB/711/1984
C A O File: AO 9175/84
Region: London South