

CSB 728/1984 *JN*

Decision

1. My decision is that the decision of the social security appeal tribunal "SSAT" dated 10 May 1984 is erroneous in point of law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

Nature of the appeal

2. The question at issue before the SSAT in this appeal was the amount to be awarded to the claimant to purchase a double bed mattress. No amount for this item is specified in the regulations. The amount payable is "such amount as is necessary to purchase an item of reasonable quality": see regulation 3(3)(b)(i) of the Supplementary Benefit (Single Payments) Regulations 1981 /S.I. 1981 No. 1528/.

The law

3. Paragraphs (3), (4) and (5) of the above-mentioned regulation provide:-

"(3) Except in so far as regulation 5 provides that no amount or a reduced amount shall be payable, the amount of a single payment which falls to be made by virtue of any regulation in Parts II to VII of these regulations shall be -

(a) subject to paragraph (5), the amount, if any, specified in that regulation;

(b) if no amount is so specified -

(1) where that regulation provides that the payment is to be made in respect of the purchase of an item, such amount as is necessary to purchase an item of reasonable quality, or

- (ii) where that regulation provides that the payment is to be made in respect of costs of services provided, the amount of such costs to the extent that they are reasonable.
- (4) The amount of a single payment which falls to be made by virtue of regulation 30 (which is in Part VIII of these regulations and relates to discretionary payments) shall be determined according to the provisions of that regulation.
- (5) Where pursuant to regulation 25 of the Supplementary Benefit (Claims and Payments) Regulations 1981 (payment of single payments to third parties) a single payment is payable direct to the person who or the body who supplied the item in respect of which it is made, the amount of the single payment shall, notwithstanding any provision in these regulations, be the amount applicable under paragraph 3(a) or, as the case may be, regulation 30(3)(a)(i), or the actual cost of the item in respect of which it is made, whichever is less."

The supplementary benefit officer's decision

4. By a decision issued on 2 April 1984 a supplementary benefit officer awarded the claimant a single payment of £38 to purchase a double bed mattress. The claimant appealed against this decision on 5 April 1984.

Submissions to the SSAT

5. The grounds of the claimant's appeal were that the girocheque received was already made payable to a named company, where on calling, the claimant and his wife were told that they could not see a double bed mattress because they did not keep them at the shop but at the warehouse. They were then shown a mattress for a bunk bed which was of a poor quality and told that was what everybody from the DHSS received but in double bed size. They had not been allowed to obtain estimates and submit them before the amount was decided. The regulations allowed for whatever was needed to buy items of reasonable quality. He and his wife had obtained 3 estimates for double bed mattresses of a reasonable quality. (The case papers contain photocopies of two of those estimates each with firms at Barnsley - where the claimant lives. Both are for 4'6" mattresses. One is dated 4 April 1984 and is for £59.95 and the other is dated 5 April 1984 and is for £59.)

6. According to form LT205, the facts before the supplementary benefit officer were that the claimant was married with three dependent children. His wife was aged 29. The claimant's age was 31. He had been in receipt of a supplementary allowance since 13 March 1982. On 21 March 1984 the claimant claimed a single payment to purchase a double mattress saying that the need arose as their present mattress was no longer in a fit condition for sleeping on. The supplementary benefit officer had awarded a single payment of £38 to

purchase a new mattress. The amount was determined as being £38 because it was known that new double bed mattresses were available from local suppliers for this price, the provision of estimates not being a prerequisite for the award of single payments for furniture.

Chairman's note of evidence

7. The chairman's note of evidence is in these terms:-

"PO. Accepted there is a need for a Double Bed Mattress. Single Payment made for £38.00, for a mattress from South Yorkshire Furnishing Co. Normal practice to supply a Giro made payable to a Supplier. Mattress has a Five year guarantee.

Appellant. Act quotes that a Single Payment be made to purchase items of a reasonable quality. Appellant worked at Perfecta Bedding Warehouse. Mattress on Bunk Beds shown to him were of very poor quality. Unable to see a Double Bed Mattress and not told of Guarantee. Guarantee may not cover all aspects of replacement. Previous Mattress owned was used for 11½ years. Shop Assistant at S. Yorks Furnishing Co stated that Mattresses supplied to DHSS Claimants were always at Warehouse - not on Display. Appellant never asked to obtain Quotations. Appellant refused sight of Mattress. Giro handed back to the Department. Some Stores do not split beds and mattresses.

PO. MFI sell Double Mattresses at £34.95 with a 5 year Guarantee."

The SSAT decision

8. The SSAT heard the appeal on 10 May 1984. Their decision was:

"That a Single Payment of £38.00 be given to the Appellant to purchase a Double Bed Mattress."

Boxes 2 and 4 of the record of their decision are in the following terms:-

"(2) Findings of Tribunal on questions of fact material to decision (ie the relevant facts accepted from the evidence available).

It is accepted that a Double Bed Mattress of Reasonable quality can be purchased for £38.00. Mattresses costing £34.95/£38.00 carry a Guarantee.

(4) Reasons for decision (ie an explanation of why, when applying the facts to the statutory provisions and case-law, a particular conclusion has been reached. And why, if it is not clear from box 2, certain evidence has been accepted or rejected).

Reg 3 (Single Payments) Regs 1981 satisfied
Regs 9, 10(2) and 10(3) of (Single Payments) Regs 1981 applicable."

Was the decision of the SSAT erroneous in law?

9. The decision of the SSAT was clearly erroneous in law. The claimant had produced evidence of the cost of double-bed mattresses in the form of two estimates from different suppliers, one for £59 and the other for £59.95. In addition, he gave evidence, which is recorded in the chairman's note, that he had worked in a bedding warehouse and that the mattress shown in the shop of the company in whose favour the Girocheque was made out, and which was like that supplied to all DHSS claimants, was of very poor quality. The SSAT failed to give any reasons as to why the claimant's evidence was rejected. There was no evidence at all before them that a double-bed mattress of reasonable quality could be purchased for £38. There is nothing anywhere in the case papers or in the record of the proceedings before the SSAT to show that the supplementary benefit officer had ever seen the type of mattress for which an award of £38 was made, or had any information as to its quality. The presenting officer is not recorded as having any personal knowledge of their quality. He simply said that they had a 5 year guarantee.

10. In the absence of proper findings of fact based on evidence, it is neither expedient nor possible for me to give the decision that the SSAT should have given. The case must be referred to another SSAT, which should be entirely differently constituted, for determination.

Directions to the fresh SSAT

11. (1) The SSAT to whom the case is now referred should make proper findings as to the material facts. In making these findings they should indicate what evidence they accept, what evidence they reject and, in each case, why.
- (2) The essential primary fact on which a finding must be made is this: could a double bed mattress of reasonable quality in terms of regulation 3(3)(b)(1) at the date of claim have been purchased by the claimant for £38.00. If not, at what price could it have been purchased?
- (3) The quality of a mattress for which an award is to be made is required, by regulation 3(3)(b)(1) to be "reasonable". This may or may not be the cheapest quality. It is the reasonableness of the quality that is the test. What is reasonable quality is for the SSAT to determine. It is a question of fact.
- (4) Reasonable quality must be considered by reference to the needs of the claimant (or other member of the assessment unit for whom the item in question is required) that is to say, in this particular case, for the claimant and his wife. These needs must be determined by reference to the objective facts of the case, which require to be found and recorded by the SSAT. Personal idiosyncracies should not be taken into account (compare R(SB) 1/84). But the /

fact that the intended user suffers from an established medical condition such as permanent back trouble would be relevant in determining whether the quality of a mattress was reasonable in the circumstances. (There is a suggestion in the case papers that the claimant and his wife have had back trouble which should be investigated.)

- (5) Where a claimant, after the date of claim, (as is said to be the case here), has purchased the item claimed, the claimant should be afforded the opportunity of giving evidence as to the quality of the item bought and the price paid for it. For this is, or may be, relevant when determining the price at which an item of reasonable quality could have been purchased at the date of claim.
- (6) The fact that a mattress has a guarantee of some description does not establish that it is, or is not, of reasonable quality. Evidence is required of the quality of the mattress itself, not of the terms on which it will be replaced or repaired if found to be defective.
- (7) No further single payment can be made for an item for which a single payment has already been made unless the circumstances have changed - see regulation 6(1)(a) of the Single Payments Regulations. This should be in mind, when the SSAT determines whether the quality of the item concerned is reasonable.
- (8) The adjudication officer now concerned, in a careful written submission dated 20 July 1984, a copy of which should be before the SSAT, has drawn attention to an unreported decision, the reference to which on Commissioner's file is C.S.B. 1104/83, in support of the proposition that it is not open to a tribunal to accept the unsubstantiated report of the presenting officer without investigation and the making of proper findings of fact as to the basis of the presenting officer's submissions as to the quality of the item in question. This principle should be applied by the SSAT. As stated in that decision "The practice, and it is a not uncommon practice, of some tribunals of simply accepting a presenting officer's statement, in preference to evidence submitted by the claimant, without stating why is thoroughly undesirable. For the claimant is left guessing as to why the case went against him and is likely to entertain the suspicion that the tribunal is simply a rubber stamp for the presenting officer. The fresh tribunal should accordingly take particular care in this respect."

- (9) Regulation 25 of the Supplementary Benefit (Claims and Payments) Regulations 1981 authorises the Secretary of State to direct that an amount of supplementary benefit to which a beneficiary is entitled by way of supplementary benefit shall be paid to the person or body which supplied that item, on behalf of the beneficiary. If the Secretary of State names a person or body which cannot supply the item for which the award has been made at the price awarded, it is for the claimant to return the girocheque to the Department and ask for his award to be implemented in some other way. There is no power to appeal to the statutory authorities - (the SSAT and the Commissioner). The adjudication officer now concerned is accordingly correct in submitting that the question whether the Secretary of State is to direct that the award shall be paid to a third party is not a matter for the statutory authorities.
- (10) The SSAT should accordingly either confirm the original award of £38.00 made by the supplementary benefit officer ("need" in this case has never been in dispute) or make a fresh award of the appropriate sum. It will be for the Secretary of State to determine how the award is (in so far as not already satisfied) to be implemented.

(Signed) V G H Hallett
Commissioner

Date: 18 October 1984

Commissioner's File: C.S.B. 728/1984
C AO File: A.O. 9007/84
Region: North Eastern