748/1982

T/RJK

Change in Reg. Para 24

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Claim for service charge (plumber) borrowed money

Case No.: 06/266

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 24 June 1982 is not erroneous in point of law, and accordingly this appeal fails.

2. The facts of this case are simple and straightforward. On 7 May 1982 the claimant, who was in receipt of supplementary benefit, claimed a single payment for the cost of repairs to a cold water tank and for the cost of fares incurred by him in attending job interviews. On 11 May 1982 the benefit officer disallowed both claims on the ground that the relevant statutory provisions conferring entitlement were not satisfied.

3. On 17 May 1982 the claimant lodged an appeal to the tribunal, who in each event upheld the benefit officer. In his letter of appeal the claimant stated, inter alia, that he had met the cost of the repairs to the tank out of money borrowed. He also pointed out that hitherto he had been repaid the cost of his fares and complained that he could not understand why the Department had suddenly refused all further re-imbursement. On the last point, the benefit officer in his written submissions to the appeal tribunal stated that the Department had previously made single payments to cover the cost of travel to interviews in error, and that as a consequence overpayments had occurred. As soon as the error was realised, the Department had ceased to make any further payments in respect of fares. As to the water tank, at the hearing before the tribunal the claimant is recorded as having said that "there was a sudden burst of the water tank and a plumber had to be called immediately. [The claimant] borrowed the money from a neighbour to pay the plumber".

4. The tribunal made the following findings of fact:

> "The Tribunal find that the appellant incurred the expenditure on fares and repairs to the water tank before applying to the Department for assistance".

The reasons for their decision read as follows:

> "In accordance with Reg 3(1)(a) of the Single Payments Regulations and Commissioner's decision R(SB) 8/81 there was no need for the items requested and there is no provision for repayment of a loan".

5. Thereupon the claimant applied for leave to appeal to the Commissioner, and the necessary leave was given on 17 September 1982. The claimant asked for an oral hearing, a request which was acceded to. However, in view of the important point of principle arising in this case, the Chief Commissioner directed that the matter be heard orally before a Tribunal of Commissioners. At the oral hearing the claimant appeared in person and the benefit officer was represented by Mr D James of the Solicitor's Office of the Department of Health and Social Security. At the same time the appeal on Commissioner's File CSB/806/1982, where the same point of principle was in issue, was also considered.

6. Section 3(1) of the Supplementary Benefits Act 1976 (as amended) provides as follows:

> "There shall be payable in prescribed cases, to a person who is entitled or would if he satisfied prescribed conditions be entitled to a supplementary pension or allowance, supplementary benefit by way of a single payment of a prescribed amount to meet an exceptional need".

The relevant regulations are the Supplementary Benefit (Single Payments) Regulations 1981, (S.I. 1981 No. 1528) of which regulation 3, in so far as is material, reads as follows:

> " 3.-(1) In these regulations 'single payment' means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Parts II to VIII of these regulations apply.
>
> (2) A single payment shall be made only where -
>
> (a) there is a need for the item in question; and
>
> (b) in a case in which the payment would be in respect of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item".

In regulation 4 "claimant" is defined as meaning "a person who claims a single payment and in respect of the day on which that claim is made either -

> (a) he is entitled to a pension or allowance; or
>
> (b) he would be entitled to a pension or allowance if he -
>
> (i) made a claim for it, and
>
> (ii) satisfied the conditions for claiming and payment of that pension or allowance prescribed pursuant to section 14 of the Act,
>
> ....."

In the present case the claimant is undoubtedly a "claimant" within the above regulation.

7. The two specific provisions dealing with (i) travelling expenses and (ii) essential repairs and maintenance of the home are contained in regulations 22 and 17 respectively of the aforesaid regulations. However, regardless of whether the claimant can satisfy those specific regulations, he will necessarily fail if he is unable to satisfy regulation 3(2)(a).

8. For convenience, before dealing with the two specific claims under appeal, it might be helpful if we first expounded the law generally. It is a prerequisite of entitlement to a single payment that the claimant shall at the relevant time be in need of "the item in question", and it has been conclusively held by two decisions of a Tribunal of Commissioners respectively reported as R(SB) 26/83, that the relevant time is the date of claim. The reference in regulation 3(2)(a) to "the item in question" suggests that the subject matter of the claim for a single payment is a physical object, ie a chattel. However, it is quite clear from the terms of the Single Payments Regulations that an award of a single payment may also relate to the provision of services or more accurately - see paragraph 13 - the cost of such services (see, for example, regulations 8, 13, 15, 17, 20, 22, 25 and 26) (or even to payments in respect of deposits on the taking up of a tenancy (see regulation 14)). Moreover, sometimes the services themselves involve the provisions of chattels. But the important point is that in construing regulation 3 the word "item" must clearly have a broad meaning, so as to encompass not merely a chattel in the strict sense, but everything for which a single payment is available under the relevant statutory provisions.

9. Now, it is quite clear from the terms of regulation 3(2)(a) that if at the date of claim there is no longer a need for "the item in question", then whether or not the claimant is able to satisfy the provisions set out in Parts II to VIII in respect of the matter for which he is claiming a single payment, he must necessarily fail. In other words, if he obtains "the item in question" (as interpreted above), prior to the date of claim, there necessarily can have been no need still in existence at the date of such claim, and the claimant will be unable to satisfy regulation 3(2)(a). Although the proposition just stated looks simple and straightforward, in practice it gives rise to considerable difficulty. We will consider the matter, first where the "item in question" is a simple chattel, and secondly where it constitutes the cost of a service.

10. In the case of a chattel, the need will, of course, have been satisfied if prior to the date of claim the claimant has purchased it. (He may, however, be able to take advantage of regulation 28, which will be discussed later). Nevertheless, considerable difficulty will arise if instead of having purchased the item before the date of claim, the claimant has simply borrowed it. The effect of this was considered in R(SB) 24/83. Whether borrowing will suffice will depend upon the circumstances of the case. For example, if a pregnant woman is able to borrow maternity wear up to the period of her confinement, then she will have satisfied the need for such wear (R(SB) 10/82). However, borrowing, by way of an emergency, a pair of shoes does not, if such shoes have to be returned shortly, really satisfy the need for shoes. The length of time for which the relevant item may be borrowed is a crucial factor in determining whether in any given set of circumstances the need has been satisfied. The issue is essentially a question of fact. The matter can be looked at under regulation 3(2)(a), but perhaps it is more appropriate to consider it under regulation 3(2)(b).

11. In the case of services, manifestly these are incapable of being borrowed. They are not physical objects, and regulation 3(2)(b) can normally have no application to them. However, if the claimant has already paid for such services prior to the date of claim, the need will then no longer exist. But, once again the claimant may, depending on the circumstances, be able to rely on regulation 28.

12. A difficulty common to both chattels and services arises when a claimant has paid for "the item in question" by means of borrowed monies. The effect of this is that he has purchased the item, but has impoverished himself to the extent that he is under a legal obligation to the lender to make repayment. However, notwithstanding the deterioration in the claimant's financial position there is no provision in the regulations enabling the claimant to repay the lender (see paragraph 7 of R(SB) 8/81). This result may in certain cases impose considerable hardship. Although in most instances a claimant can at least put in a claim for a single payment, and then acquire "the item in question" at a later date without prejudice (subject to what is said later) to his entitlement, there may be exceptional circumstances where there is no time even to put in a claim. Thus if a water tank bursts, there is no practical alternative to calling in a plumber, and, if he demands cash, paying him. As this is an emergency, the whole transaction will normall in practice have been effected before a claim is lodged at the local ofi . Admittedly, it could be said that all the claimant need have done was to have made a claim by telephone and this would have sufficed. Nevertheless it not infrequently happens that the emergency in question occurs during the weekend or in the evening when the local office is not open for the receipt of telephone calls. If the cash is procured by borrowing from a third party, then the claimant will be unable to recover his outlay by way of a single payment. The need for "the item in question" will have been satisfied, and that is the end of the matter. If however he pays the plumber out of his own cash, then there is the possibility, to which we will advert shortly, of his being able to invoke regulation 28.

13. It should be remembered that, if in the illustration given above the claimant had been able to persuade the plumber to do the work without an immediate payment in cash but on the basis that he would send in his account in due course, then the claimant's position would have been quite different. For in the case of services the single payment is in respect of the costs of such services. Now, if the <u>services</u> have been rendered, but the <u>costs</u> have not been paid, then in those circumstances the need has not been s- fied. For the "item in question" within regulation 3, is not the prov. of the services, but the cost thereof, and accordingly until the cost has been discharged, there is a need for "the item in question". If, then, the supplier of the services is willing to grant credit, whether monthly or on the mere presentation of the account, or whatever it may be, then unless and until the claimant has paid such account there will be no satisfaction of the "item in question", and normally there will be ample time in which the claimant can put in his claim.

14. It is useful to contrast the position where the "item in question" is a chattel. For then the acquisition of the item is enough to satisfy the need, irrespective of whether the account has been paid. The need is not the cost, but the chattel itself. The distinction is clearly brought out in the drafting of the various regulations dealing with the various needs.

15. We referred above to the possibility of a claimant, who has paid for a chattel or satisfied the cost of a service, being able to rely on regulation 28. That provision, in so far as is material, reads as follows:

> " 28.-(1) A single payment shall be made where a claimant ...
>
> (a) ...
>
> (b) has spent, on any item for which had he claimed at a single payment would have been made under these regulations, money set aside to provide for any item to which the category of normal, additional or housing requirements relates,
>
> and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he should meet."

However, before a claimant can derive any advantage from regulation 28, he has to comply with the specific conditions therein set out. He has to show that he has actually set aside money to provide for some other relevant living expense, that he has applied that money to the item for which, had he claimed, a single payment would have been forthcoming, and that as a consequence - the "fall-out words" are crucial - he is unable and cannot reasonably be expected to meet the cost of any of the relevant living expenses which it is essential that he should meet.

16. It is clear from what has been said above that there may be exceptional circumstances where, before a claimant is actually able to claim, he has satisfied the need within regulation 3 and has done so to his financial detriment. This is the consequence of the regulations as currently enacted. Before the 1980 legislation came into operation on 24 November 1980, a great deal of discretion was left with the Supplementary Benefits Commission. However, Parliament acceded to the widespread pressure for entitlement to supplementary benefit to be codified, with the object of eliminating discretion and conferring rights, and one of the consequences of the removal of a discretion is that hard cases may, and will, arise through oversights in the relevant legislation. We consider that, where emergencies arise rendering it impractical for a claim to be made before a claimant is required himself to make payment for the "need in question", some suitable relieving provision should be incorporated in the regulations.

17. In the course of Mr James's careful submissions, the question arose as to what would be the consequence if a claimant, who had in fact made a claim was compelled by the exigencies of the moment to pay for the "item in question" before an award could be made. Could it be said that his ability to pay so soon after making a claim meant that there was in fact no need as at the date of claim? He was in fact able to obtain the money, whether by borrowing or resort to some other expedient. However, for the purposes of this appeal it is unnecessary for us to decide this particular matter.

18. In the course of the hearing our attention was drawn to a recent decision on Commissioner's file CSB/45/1983 which concerned a claim for a single payment to meet fuel bills. The supplementary benefit appeal tribunal held that a payment could not be made under regulation 26 of the above-mentioned regulations (which specifically provides for payments in respect of fuel costs in certain circumstances) or under regulation 28 (which provides for payments of certain costs in cases where supplementary benefit has not been paid or has not been claimed). The learned Commissioner held that the tribunal had not erred in law in their decision under regulation 28 but had erred in their decision under regulation 26.

19. The terms of regulation 26 are such that a claim cannot be made until after the fuel has been supplied and it has been ascertained that the cost thereof exceeds the amount put aside to meet it. The Commissioner observed that the need relevant under regulation 26 is not the need for the fuel itself but in respect of the cost of it, ie the need to meet the debt incurred in respect of the fuel. He concluded that, if the fuel had not been paid for at the date of claim, the claimant would (provided the conditions of regulation 26 were satisfied) have been entitled to a single payment in respect of his fuel costs to the extent allowed by the regulations. Dealing with the benefit officer's submission that if the fuel had been paid for, the need had ceased to exist, he drew attention to the fact that the regulation provides for payments "in respect of" fuel costs and not for payments "for" fuel costs. His decision then proceeded as follows:-

> "The phrase 'in respect of' is a wide one. It has been the subject of High Court decisions on section 1 of the Gaming Act 1892, which provides that any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement made void by the Gaming Act 1845 shall be null and void. Cases have arisen under that Act relating to persons who have given financial assistance by loan or otherwise to enable others either to enter into or to discharge 'liabilities' under void betting transactions. I will refer to the person giving such assistance as the lender though in strictness the transaction may not always be one of loan. In Tatam v Reeve [1893] 1 QB 44 a person had lost a bet and the lender at his request discharged the betting debt. The lender was unable to recover from the loser of the bet because the implied promise to reimburse him was a promise to pay money paid not 'under' but 'in respect of' the void betting debt. If the debt had instead been a debt for fuel supplied, the debtor's need to pay the lender would by parity of reasoning have been a need in respect of the cost of the fuel. Subsequent decisions (notably MacDonald v Green [1951] 1 KB 594) show that under the Gaming Act the same result followed if the lender paid the money to the loser of the bet stipulating that it be applied in paying the winner, but not if he just lent the money to the loser without any such stipulation even if the lender knew of the lost bet; and not where it was lent for the purpose of making bets (see CHT Ltd v Ward [1965] 2 QB 63 at page 86). On this principle in my judgment the need under regulation 26 is in respect of the cost of fuel if a single payment is required to enable the supplier of the fuel to be paid or to rei a 'lender' who has either paid the supplier direct or who has lent the money with a stipulation express or implied that it shall be used to pay the supplier, but not otherwise. I therefore remit this case to a different tribunal to ascertain the terms on which the claimant's son lent the £25 and to apply the above accordingly."

20. We accept that the expression "in respect of" often has a wider meaning than the word "for". Also, since there is nothing in any of the judgments referred to in the above-quoted passage which indicates or suggests that the Courts concerned considered that they were giving the expression anything but its normal meaning, we accept that the cases cited support the view that the expression as used quite normally can have a meaning wide enough to produce the result explained in the penultimate sentence of the quoted passage. We must therefore reject Mr James's contention that in citing the cases under the Gaming Act the Commissioner was seeking to support a wider than normal construction of the expression.

21. In our view, the relevant question arising is whether the context of the regulations as a whole justifies giving the expression "in respect of" a narrower meaning than it normally bears. The only regulation which gives an explicit indication of an intention not to provide for single payments to meet debts is regulation 3(2)(b) and if we were to adopt the reasoning of the decision on file CSB/45/1983 we would be creating, or at least exposing, an inconsistency between the treatment of claimants whose needs are for chattels and claimants whose needs relate to the provision of services. Nevertheless, despite the inconsistency which would thus arise, we would have to accept the last-mentioned decision as correct if we were satisfied that when the draftsman used "in respect of" instead of "for", he did so deliberately. We have therefore carefully considered all the provisions of the regulations and have found no strong evidence of any such deliberate intention. On the contrary, we have found in regulation 3(2)(b) itself a strong indication that "for" and "in respect of" have been used indiscriminately. The regulation refers to payments which "would be in respect of the purchase" of particular items, yet all the regulations which are concerned primarily with the purchase of items speak of payments "for" the purchase. Such indiscriminate use makes it impossible to infer any deliberate intention as mentioned above and we have therefore reached the conclusion that the decision on file CSB/45/1983 was wrongly decided and should not be followed.

22. We will now apply the principles stated at some length above to the facts of the present case. As far as the fares are concerned, it is not in dispute that the claimant failed to claim them before he actually discharged them. It follows that at the actual date of claim there was no longer any need, and as a result the claimant was unable to satisfy regulation 3(2)(a). Admittedly, in the reasons for their decision the tribunal refer to regulation 3(1)(a) instead of 3(2)(a), but this is clearly a clerical error and does not, in our view, undermine the validity of the decision. We consider that the tribunal reached the correct conclusion on their findings. Accordingly, they were not erroneous in point of law.

23. As regard the emergency repairs to the tank, once again we are satisfied that the tribunal made no mistake of law. At the actual date of claim the claimant had already paid the plumber, so that there was no need subsisting, and the claimant was unable to satisfy regulation 3(2)(a). Once again it is immaterial that through a clerical error the tribunal referred to regulation 3(1)(a). Of course, by dint of borrowing the claimant was indebted to a third party, and his financial position had deteriorated in consequence, but, as explained above, there is no provision in the regulations for repayment of a loan. We are aware that in his oral submissions to us the claimant explained that he did not actually pay the plumber from money borrowed, but that he applied for this purpose money set aside for the purchase of food, and that the money which he actually borrowed was used to replace the money set aside for food. However, it must be remembered that we are not judges of fact. We are only concerned with whether or not the tribunal erred in point of law on the evidence before them. The account given to us by the claimant differs from that put forward to the tribunal, but we can only take account of the evidence before the tribunal. On the basis of that evidence, which indicates that the money used to pay the plumber was borrowed directly from a third party, we do not see that the tribunal erred in any respect. Furthermore, on the evidence before them it was unnecessary for them to consider the possible effect of regulation 28.

24. We understand that, on the advice from the Department, the claimant has in more recent times when attending interviews, claimed the fares in advance, so that he has been in receipt of single payments in respect thereof. We are sympathetic towards the claimant as regards the irrecoverable loss incurred in paying the plumber for emergency repairs to his tank, but he was properly refused benefit, and cases of this sort can only be remedied by some change in the regulations.

Signed I O Griffiths
Chief Commissioner

Signed J N B Penny
Commissioner

Signed D G Rice
Commissioner

Date 4 August 1983

Commissioner's File: CSB/748/1982
C SBO File: SBO 907/82
Region: London North