Vicki — Copy application re miscellaneous furniture under reg 10A. Claimant moving from 3 bed to 2 bed house — tribunal entitled to find one extra bedroom did not make house unsuitable in size

DGR/SH/44

Commissioner's File: CSB/762/1988

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [redacted]

Social Security Appeal Tribunal: Rochdale

Case No: 615/11829

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 18 January 1988 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 18 January 1988.

3. On 28 April 1987 the claimant claimed a single payment for a large variety of items which fall within the term "miscellaneous furniture and household equipment". If the claim was to succeed, reliance had to be placed on regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981. On 29 May 1987 the adjudication officer disallowed the claim on the ground that the claimant was unable to satisfy the conditions of that regulation.

4. The claimant could bring ~~himself~~ herself within regulation 10A if she could comply with paragraph (1)(c), i.e. if she could satisfy one of the conditions in sub-paragraphs (a)-(g) of regulation 13(1). The claimant sought to contend that she satisfied regulation 13(1)(b), in that the home from which she was moving out of was "unsuitable ... in size".

5. The facts of the case were that the claimant had been awarded the tenancy of a new two-bedroomed home by her local authority eight days prior to the date of her claim. Prior to the allocation of that home, she had been living in a three-bedroomed house, of which her mother had been the tenant. Some four months earlier her mother had left that home, but the local authority had refused to grant the claimant a tenancy thereof. The Council had started proceedings to evict the claimant from that home, but had eventually offered her a tenancy of the smaller two-bedroomed house, which she had taken up. Clearly, in the local authority's view the original home was too large for the claimant's needs - she was a single woman with one child - and they preferred to accommodate her in a two-bedroomed house, so as to leave the three-bedroomed accommodation for someone with greater requirements. However, the policy of the local authority does not in itself dictate that what they considered unsuitable in size for a claimant was necessarily so for the purposes of regulation 13(1)(b).

6. The tribunal, in upholding the adjudication officer, considered "that one extra bedroom

did not make the previous home unsuitable in size". The tribunal also found that the three-bedroomed accommodation had the same number of rooms downstairs as the premises which had been allocated to the claimant. I see nothing wrong with the tribunal's determination.

7. A similar case occurred in the unreported decision of mine CSB/0621/1986 where:-

> "The majority [of the tribunal] came to the conclusion that, although a house could be too large as well as too small, so as to render it unsuitable, the home in the present case was not 'so inappropriate in size that the assessment unit could not reasonably be expected to go on living there.' They took the view that innumerable couples, who could perfectly well live in a two-bedroomed house, nevertheless continued to live in a three-bedroomed one, and they went on to state that the size of the rooms the claimant and his wife occupied was not that much greater than the size of the rooms of the premises to which they moved. In other words, the tribunal took the view that it was perfectly reasonable for the claimant and his wife to go on living in their old three-bedroomed house, i.e. they decided that the home was not inappropriate. This was a matter for their determination as a matter of fact, and I do not see how it could be said that they were not entitled to reach the conclusion they did on the facts."

I think that those remarks apply mutatis mutandis to the present case.

8. In other words, it called for a value judgment on the part of the tribunal to decide whether the previous accommodation was so large that it would be unreasonable to expect the claimant and her child to continue living there. The tribunal decided that such was not the case, and I see no grounds for my interfering with their determination.

9. There can be no question of regulation 30 applying. The commencing words of that particular provision served to exclude its operation in the case of 'miscellaneous furniture household equipment needs' (see in this connection the decision of a Tribunal of Commissioners CSB/730/87). Although it was unnecessary for the tribunal to consider regulation 30, somewhat surprisingly they did do so, albeit they decided that there was no evidence of serious risk to health or safety. Technically, the tribunal should not have considered regulation 30 at all, but in the event nothing turned on the point.

10. I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice

Commissioner

Date: 7 November 1989