LB/BF

Commissioner's File: CSB/794/1984

C SBO File: 9254/84

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

Name: Terence Donaghue

Supplementary Benefit Appeal Tribunal: Euston

Case No: 13/CD

[ORAL HEARING]

1. My decision is that the supplementary benefit appeal tribunal erred in law in its decision on 25 January 1984; I am able to take the decision which that tribunal should have taken and I accordingly hold that the claimant is entitled under regulation 24 but not regulation 8 of the applicable Urgent Cases Regulations to a payment of £65.62. (The correct amount may perhaps be £65.42 but at this stage of these proceedings I disregard that difference as de minimis). This is the second time that this appeal (about a comparatively small sum of money) has been before a Commissioner and the expense and also the delay caused to a claimant known to have been mentally disturbed has been considerable. At least however the claimant has the satisfaction of knowing that he has finally succeeded.

2. I have been much assisted at the oral hearing of the appeal by the arguments of Mr. A. Griffith, Solicitor, of the Hackney Law Centre and of Mrs. A.M. Stockton of the Solicitor's Office, DHSS.

3. The appeal requires consideration of provisions in the Supplementary Benefit (Urgent Cases) Regulations 1980 [SI 1980 No. 1642] as originally they came into force,(they were subsequently amended and then replaced). The relevant provisions (omitting immaterial words) are as follows:-

> "3. - (1) For the purposes of section 4 (provision for cases of urgent need) urgent cases shall be .... only those cases to which Parts II, III and IV of these regulations apply where the item in question, or funds for that item or funds to meet the expenses in question, are not readily available to the assessment unit from any other source (for example, friends, relatives, credit facilities, a voluntary organisation) and in particular from any available income and available capital, and in any case to which Part II applies, from a local authority or relief fund".

"Part II
EMERGENCY RELIEF

"8. - (1) Where any member of the assessment unit is affected by a disaster (for example a fire or a flood), whether or not it affects other persons, and in the period mentioned in paragraph (3) -

(a) because of the disaster he is in need of any item to which column 1 of Schedule 1 to these regulations applies; and

(b) the Single Payments Regulations do not apply to that item in those circumstances,

the claimant shall be entitled in respect of that item to an amount of supplementary benefit determined in accordance with regulation 4.

.....

(3) This regulation shall apply for a period of 14 days immediately following the disaster, except ....."

The exception has no relevance in this case. Regulation 8 is the only regulation in Part II.

"24. Where a claimant to whom regulation 8(1) or 9 applies -

(a) claims an amount of supplementary benefit by way of a single payment or pension or allowance under any of the regulations in Part II and III of these regulations, but fails to satisfy the conditions for that amount; or

(b) claims to have an urgent need for which no provision is made in Part II or III of these regulations,

there shall be payable to the claimant to meet that urgent need an amount of supplementary benefit by way of a single payment determined in accordance with regulation 4... if, in the opinion of a benefit officer, a payment of such an amount is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented".

The following is contained in Schedule 1 to the Regulations -

"Items and cases applicable	Amount payable
1.	2.
Emergency Fuel	
7. Fuel essential for - (a) cooking; (b) space and water heating; (c) lighting; (d) where the disaster resulted in flooding, drying out the home and personal effects.	7. The cost of the fuel".

4. The claimant's former wife (they are now divorced) has a history of mental disorder, as does the claimant himself. Before the marriage she (and after the marriage both of them) lived in a house of which she was the tenant. She was in and out of hospital and relevantly last went in (to a mental hospital) in June of 1980, and came out in November 1980. She had by then accrued arrears on an electricity bill. She was in receipt of supplementary benefit and was told both in November 1980 and in January 1981 by the DHSS that her current electricity bills and an amount weekly in respect of the arrears would be paid by direct payment to the Electricity Board. In fact the payments did not begin until on or after 26 January 1981. It appears that from about 18 March 1981 the DHSS made a payment of £17.10 to the Electricity Board (which seems to be 5 of the weekly calculated direct payments of £3.42).

5. There clearly was some maladministration as between the DHSS and the Electricity Board and the latter was either not informed or had failed to take note of the fact that arrears were being paid by the DHSS under the direct payment. The Electricity Board sought to cut off the electricity to the house in late February 1981 and sent the usual warning letters; the claimant or his former wife informed the DHSS of this and were assured that direct payment was being effected. The claimant and his former wife married on 4 April 1981. By 21 April 1981 the total due to the Electricity Board for current electricity consumption and arrears was £85.92. On that day the Electricity Board cut off the electricity supply. On that day there was due to the Electricity Board for current electricity consumption and the arrears of the former wife a total of £85.92, subsequently reduced by a payment of £20.52 by the DHSS (apparently 6 times £3.42) reducing the arrears to £65.40 (taken as I have said as £65.62). In June 1981 the claimant procured the Electricity Board to reconnect the electricity supply without charging a reconnection charge.

6. The claimant applied for a payment under the Urgent Cases Regulations on 24 April 1981. That claim was refused. There was initially in these proceedings some confusion as to whether the claimant was claiming on his own behalf or on behalf of his then wife, and in any event as to what was the significance that the arrears were in respect of a bill incurred by the claimant's former wife before they were married. The claim was rejected by the supplementary benefit officer and that decision was upheld by the Liverpool supplementary benefit appeal tribunal. On appeal, the Commissioner on 23 November 1983 allowed the appeal and remitted the matter with directions. A second supplementary benefit appeal tribunal heard the appeal on 25 January 1984 and dismissed it. Another Commissioner gave leave to appeal; the matter has now come before me. I would add that the Commissioner who remitted the matter on 23 November 1983 invited the Secretary of State to reconsider whether to make an ex gratia payment (apparently consideration had previously been given to that) but one was not made.

7. The findings of the tribunal which dismissed the claimant's appeal on 25 January 1984 were stated in the following terms:-

> "This is a rehearing of an appeal against the refusal of a single payment to meet a charge for reconnecting electricity and to pay an electricity bill incurred by [the former wife] before her marriage to [the claimant]. We are asked to and we do treat this case as an appeal by [the claimant] against a refusal on 24 April 1981 of a single payment to him of an appropriate sum.

> The [spouses] were married on the 4 April 1981... Both of them suffered from precarious mental health. [The former wife] had been told in November 1980 and January 1981 by the Department that her current electricity bills would be discharged by 'direct payment' and her electricity would not be cut off. She understood that a single payment would be made, if necessary, to meet the arrears. In fact no deductions were made from her benefit, because it was insufficient, until 26 January 1981, and the Electricity Board were unaware that such deductions were being made from January 26th onwards. On the 21 April 1981 they cut off [the spouses'] electricity, thereby depriving them of light, hot water and use of the cooker. [The claimant] asked the local office to pay a sum to get them reconnected and it is the refusal of this that is appealed today. Because [the claimant] was not on benefit a single payment could only be made under the Supplementary Benefit (Urgent Cases) Regulations then in force. No copy of these has been provided for us, and we are indebted to Mr. Hales for the wording of the relevant regulations 8(1) and 24 from which it is clear that to qualify for a single payment [the spouses] must have suffered from a 'disaster' and the payment must be the only means of avoiding serious risk to the health of at least one of them. Mr. Hales argues that the cutting off of the electricity was for [the spouses] a disaster within regulation 8(1) above. Both of them went to hospital soon afterwards. They could not at the time have paid the electricity board themselves and social services would not pay the bill for them".

The reasons were given as follows:-

> "We think there is some force in Mr. Hales argument that the loss of electricity was an unduly severe blow to the [spouses] because of their state of mental health but we do not, on balance, conclude that it was a disaster within Regulation 8(1) above. We do consider that payment of the old bill was only means to restore the electricity, and that loss of the electricity contributed to the ill-health of both of them".

While for the reasons which I shall give I find that the tribunal erred in law, I pay tribute to its careful recording of the evidence and its findings, which have enabled me to give the decision which I give.

8. It will be noticed that the tribunal states:-

> "... to qualify for a single payment [the spouses] must have suffered from a 'disaster' and the payment must be the only means of avoiding serious risk to the health of at least one of them".

I do not think that it is legitimately right to read that part of the decision as being severally referable as to the first limb to regulation 8 and as to the second limb to regulation 24. At best the mode of expression is ambiguous and it does not in my judgment clearly appear that the tribunal severed and applied separately the criteria applicable to each of the 2 regulations. This running together or at least ambiguity in my judgment constitutes an error of law and the decision cannot stand accordingly.

9. I turn to the question of regulation 8. As to whether the disconnection was a "disaster" it is clear that the approach must be broadly subjective rather than objective (Decision R(SB) 1/84 paragraph 5) and that the word disaster is to be given its ordinary meaning as an ordinary word in the English language - the decision of a Tribunal of Commissioners (of which I was a member) in CSB/952/1984 at paragraphs 12-14. For the reasons which I have endeavoured to explain in a subsequent Decision, CSB/0004/1985, the approach should be a liberal one, given the clear emergency nature of the decision-making involved.

10. The evidence before the tribunal showed that both parties were in "precarious mental health" but they at least had the assurance (as they thought) that arrangements between the DHSS and the Electricity Board sufficed to ensure the continuance of the electricity supply. Then, however, one day in an English spring, they lost what I think must clearly be inferred to be the sole source of supply of fuel, not only for one or two of cooking, heating and lighting but for all three. As the tribunal found, there was some force in the argument that the loss of electricity was an unduly severe blow to the spouses, they both went to hospital soon afterwards, and the loss of electricity contributed to the ill-health of both of them. In my judgment Mr. Griffith was right when he said that the last thing that the claimant and his former wife wanted was trouble with electricity. I consider that in the circumstances of this case the cutting-off of electricity to this claimant was indeed a "disaster" within regulation 8. My finding must not however be taken as in any way prejudging the decision of a similar question in other circumstances.

11. It is however necessary for the application of regulation 8 that because of the "disaster" the need is of an item to which column 1 of Schedule 1 to the regulation applies. The only material item could be item 7, which I have set out. I accept Mrs. Stockton's argument that the payment needed to bring about the reconnection was not a payment for fuel or emergency fuel. It did not either in my view become such a payment because it was incurred in the past in respect of the supply of fuel, namely electricity. I think that the wording of item 7 is quite clear and that the requirement of reconnection did not come within it. Accordingly, in my judgment regulation 8 has no application.

12. I turn to regulation 24. This contains an initial difficulty of construction by the words "to whom regulation 8(1) or 9 applies" (the reference having been subsequently deleted). Clearly the words I have referred to cannot only apply to regulation 24 when in fact the claimant is actually entitled under either regulation 8 or regulation 9, since in those circumstances regulation 24 in unnecessary. Equally, it is clear that regulation 24 under sub-paragraph (b) can apply when there is an urgent need which does not fall within either regulation 8 or regulation 9. Also, it is to be noted that what regulation 24 specifies is a payment "to meet that urgent need". Further Part II is headed Emergency Relief Cases and Part III (containing regulation 9 with other regulations) is headed "Other Urgent Cases". I consider that the sense of the reference of regulations 8 and 9 is broadly a reference to those cases where there is urgent need for which relief is not provided under regulations 8(1) or regulation 9 (as is the position in this case) and I therefore consider that the claimant is a person to whom it may be said that regulation 8 (1) or 9 applies within the sense in which those words are used in regulation 24.

13. However, for the application of regulation 24 the payment must be the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented. The assessment under the Supplementary Benefits Act relating to the claimant showed, as resources, invalidity benefit with a nil disregard and capital of nil. No evidence was led before the tribunal by the Presenting Officer that any other sources of supply were open nor were any even suggested. I think it would be wrong for me to speculate in the circumstances of this case that there might conceivably be other sources of supply, nor do I see any tribunal to which I might have remitted the case being in any better position, not least because the matters to be investigated are now some 4 years old. In my judgment I am entitled in the circumstances of this case to conclude and do conclude that the payment of the amount was the only means by which serious damage or serious risk to the health or safety of the claimant and his former wife might be prevented.

14. My attention has been drawn to a further difficulty which might preclude a payment under regulation 24, namely that regulation 3(1) only enables a payment to be made if funds to meet the expense in question is not readily available to the assessment unit from any other source and in particular from any available income and available capital, which broadly, as defined, is capital and income which was disregarded or fell to be disregarded under the Resources Regulations. The point was therefore made that there is not sufficient evidence before me to enable me to give the decision which the tribunal should have given. There is no evidence from the case papers of any other readily available funds and their existence has never been suggested at any of the 2 previous tribunals or before the previous Commissioner who have given decisions in this matter. In my judgment commonsense (not even amounting to robustness) requires me to conclude that regulation 3(1) is no bar on the evidence to the claim under regulation 24 and that Mrs. Stockton is right when she submitted that were I to send the matter back on this point then the decision on it of yet another tribunal would be a foregone conclusion.

15. My decision is as in paragraph 1 above.

(Signed) Leonard Bromley
Chief Commissioner

Date: 4th July 85