

C S B 796/1983

DGR/SG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Geoffrey Rose

Supplementary Benefit Appeal Tribunal: Hertford

Case No: 04/252

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 30 March 1983 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I should give the decision which the tribunal should have given, I further decide that the claimant is entitled to a single payment in respect of the cost of carpeting throughout the relevant accommodation other than the living room.

2. This is an appeal brought by the claimant with my leave against the decision of the supplementary benefit appeal tribunal of 30 March 1983.

3. On 18 November 1982 the claimant requested a single payment for the purchase of fitted carpets for the new accommodation into which he and his wife had just moved. A single payment was in fact made for the carpet bought for the living room, but the benefit officer refused a single payment in respect of carpeting for the rest of the accommodation because, as he contended, there was already in existence a suitable floor covering.

4. At the hearing before the tribunal two letters from the Social Services Department were put in evidence. They were to the effect that the claimant had 'a very restricted mobility and only able to walk with his stick and an assistant. The present tile flooring is totally unsuitable, as the surface is far too 'slippery' and would constitute a serious risk to his safety. At present [the claimant] walks very little indoors because of the danger involved and unfortunately takes to his wheelchair which is detrimental to his health'. However, in the event the tribunal upheld the benefit officer. They made the following findings of fact:-

"The Tribunal accepted that on appellant's wife's own admission there were plastic tiles in all the rooms where carpeting has been requested".

Reg 3 + 9
Suitable alt. +
equivalent floor cov.
(carpets + Tiles)
Reg 3

Need.

The tribunal gave as the reasons for their decision the following:-

"The tribunal examined the facts and Regulation 3 of the Single Payments Regulations and were satisfied that there is a suitable alternative to carpeting already on the floors i.e. tiling. As there is no need for the items in question Regulation 30 of the Single Payments Regulations does not apply ...".

5. There can be no question of the claimant's succeeding unless he can show a need within regulation 3(2), which provides as follows:-

"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 the purchase of a particular item, the assessment unit **either - (i) does not already possess that item, or (ii) does not have available** to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

The claimant had floor covering in the form of tiling. He requested carpeting, contending that tiling was unsuitable in as much as he was likely to slip on it. In other words, he contended, that not only did he not possess carpeting, but that tiling was not a suitable alternative item. 'Suitable' had to be construed subjectively. As was said in paragraph 11 of the unreported decision C.S.B. 568/1981:

"The Supplementary **Benefit** legislation is directed to satisfying the **requirements of the claimant**, and the approach must broadly be subjective rather than objective, although of course, it cannot be pursued to such absurd lengths that personal idiosyncrasies are catered for to the exclusion of all objective criteria based on reasonableness".

6. Although the tribunal reached the conclusion that the claimant had a suitable alternative to carpeting already on the floor, namely tiling, I do not see how any tribunal properly instructed as to **their** role and acting reasonably could have come to this conclusion. In the claimant's case, the tiling was not a suitable alternative. The claimant's medical condition was such that he might easily slip on tiling and injure himself. Accordingly, I am satisfied that the claimant was at the relevant time able to establish a need within regulation 3(2).

7. It is not in dispute that the claimant comes within regulation 10(1)(b)(ii) and (2) of the Supplementary Benefit (Single Payments) Regulations 1981. The difficulty is whether or not carpeting constitutes 'essential furniture and household equipment' within regulation 9. For, his entitlement under regulation 10(2) is

restricted to an item of 'essential furniture and household equipment' falling within regulation 9. Paragraph (h) of Regulation 9 refers to 'polyvinyl chloride (or equivalent) floor coverings'. Manifestly carpet is not a polyvinyl chloride floor covering, but is it an equivalent? In Decision R(SB) 19/82 it was held that a carpet might be an equivalent to PVC. In the present case I accept that it is in fact an equivalent. Accordingly I am satisfied that, having established a need pursuant to regulation 3(2), the claimant is entitled to fitted carpets for the entirety of his accommodation, apart from the living room, since a carpet is an equivalent of a polyvinyl chloride floor covering within regulation 9(h).

8. However, even if the claimant had not been able to satisfy me that a carpet fell within regulation 9(h), I am persuaded that he would have succeeded under regulation 30 because the evidence shows that the "only means by which serious damage or serious risk to the health or safety of the claimant might be prevented" was by means of a single payment to meet the need for carpeting.

9. In reaching the conclusion that there was no need within paragraph 3(2) and in consequence that regulation 30, which was dependent upon the satisfaction of regulation 3(2), had no application, the tribunal clearly erred in point of law, and I must set aside their decision. It was a decision which could not reasonably be reached by a properly instructed tribunal. However, this is a case where all the relevant evidence is before me and it is expedient that I should give the decision the tribunal should have given. Accordingly, my decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 1 November 1983

Commissioner's File: C.S.B. 796/1983
C SBO File: 929/83
Region: London North

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