

MASTER

SP for furniture - alleged unreasonable disposal of items for which SP had previously been made.

WRB

ATH/SH/6/MD

Commissioner's File: CSB/0903/1986

C A O File: AO 3240/SB/1986

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: ~~XXXXXXXXXX~~

Social Security Appeal Tribunal: Cleveland

Case No: 032/09

1. I allow this appeal by the claimant. The decision of the Middlesbrough social security appeal tribunal dated 7 April 1986 was erroneous in law. I set the decision aside. The case must be reheard and redetermined by a differently constituted tribunal.

2. The claimant is a single person with four dependent children. She is in receipt of supplementary allowance and has no capital. In 1984 the claimant moved into premises at South Bank. She claimed and was awarded single payments for a number of household items, details of which are set out in Form AT2, box 5A "Facts before adjudication officer" under paragraph 3 (at page 5 of the file). On 17 July 1985 the claimant moved to Middlesbrough to a privately rented furnished house. She then moved to unfurnished premises at A... Street and on 17 October 1985 she claimed a single payment for a table and four chairs, a three-piece suite, three single beds, carpets for the whole house, two chests of drawers, one wardrobe, two dressing tables, and curtains for the whole house. Save for the two dressing tables, those were all items for which she had received single payments in 1984. By a decision issued on 4 November 1985 the adjudication officer refused any single payment on the ground that she had unreasonably disposed of the items for which single payments had been made previously in 1984: regulation 3(2)(b)(iii) of the Supplementary Benefit (Single Payments) Regulations 1981. The claimant appealed and on 7 April 1986 the appeal tribunal unanimously refused "a single payment for household items". The claimant now appeals with the leave of another Commissioner.

3. Regulation 3 of the Single Payments Regulations 1981 provided, at the date of the claim, so far as is relevant:

"(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 the purchase of a particular item, the assessment unit -

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

4. It was the claimant's case, in relation to the disposal of the items for which she had received single payments in 1984, that when she left the accommodation at South Bank, she had sold all the furniture because she could not afford the storage charges and that she had made a telephone enquiry to the local DHSS office and had been told that no help could be given with regard to those charges.

5. At the hearing before the appeal tribunal, the presenting officer, according to the chairman's note of evidence in Form AT3, box 1 (at page 13 of the file), "stated that there was no record in the case papers of any telephone call involving the storage charges" and that "a clerical officer at the telephone would not be in a position to give such information and it would have to be an adjudication officer and normally [the claimant] would have been asked to put her request in writing". The claimant was asked whether in previous claims she had made her request in writing and she said yes but that she had not done so in this particular instance.

In their findings of fact, Form AT2, box 2, the appeal tribunal stated in paragraph (2) -

"...[claimant] stated she had previously had furniture at ... South Bank but sold it when moved to [A] Street as she could not afford to put it in storage and it was secondhand anyway."

In their reasons for their decision, Form AT3, box 4, the appeal tribunal stated:

"The tribunal considered regulation 3(2) of the Single Payments Regulations and the fact that the [claimant] states in evidence that she made a telephone enquiry at the local office for the payment of storage fees. She stated that the person on the telephone told her that no help could be given so she sold most of the furniture for £50 and left the carpets at the previous premises. The tribunal considered that the [claimant] had unreasonably disposed of the furniture for which single payments had been made. The [claimant] also stated that in every previous application for a single payment she had always put her request in writing. She did not do so in this instance for the payment of storage fees. The presenting officer stated that there was no record in the case papers of the [claimant] making a telephone enquiry about storage fees. The tribunal considered that the conditions of regulation 3(2)(b)(iii) of the Single Payments Regulations are not satisfied."

6. The grounds of the claimant's appeal have been set out very clearly by the casework supervisor of the Cleveland Housing Aid Trust in a letter on pages 32 to 34 of the file. I am grateful to him.

7. In my judgment the decision of the appeal tribunal was erroneous for the following reasons:

- (1) First, where there is a claim for a single payment for a number of items, there is, in fact, a series of claims for determination, not a single composite claim covering the different items: R(SB)42/83 at paragraph 5. Each claim must, therefore, be considered separately. The appeal tribunal in the present case considered the claim as a composite claim. It was pointed out by the Commissioner in CSB/243/1984 at paragraph 4:

"... although it is no doubt permissible for such strictly separate claims to be dealt with by a composite decision dealing with them all, care has to be taken to ensure that each claim is adequately dealt with in the single decision. In the present case the claimant made what fell to be treated as separate claims for a number of different items, and if the claim is to be rejected on the ground that (within the meaning of regulation 3(2)(b) of the Supplementary Benefit (Single Payments) Regulations 1981) the claimant has unreasonably disposed of or failed to avail himself of such an item or a suitable alternative item, the several items so disposed of must be particularised. This has not been done."

Accordingly, in the present case the appeal tribunal should have considered and determined whether each particular item had been unreasonably disposed of.

- (2) Secondly, the question whether or not it was reasonable to get rid of each item of furniture at a loss rather than incur the cost of storage -

"depends on a number of factors, such as the value of the furniture, the cost of storage and the likely time for which storage will have to be paid; and the claimant's explanation may well have been a reasonable one; and relevant findings should certainly have been made:" CSB/243/84 at paragraph 5.

The appeal tribunal in the present case failed to make the relevant findings.

- (3) Thirdly, in determining whether or not the claimant made, as she asserted, a telephone enquiry about storage fees the appeal tribunal should have had regard to the words of the Commissioner in CSB/347/1983 at paragraph 10(3). Dealing with the burden of proof on the adjudication officer, the Commissioner there said:

"It may well be - I do not know one way or the other - that there is a standing instruction to officers of the Department who deal by telephone with members of the public that a contemporary record is to be made of each conversation, and sufficient information elicited to enable it to be attached to a claimant's file, and that there are appropriate administrative arrangements for this to be done; so that the absence of a written report of a telephonic communication by a claimant upon a claimant's case file has a certain probative value. Even if there was such a procedure, the weight of such evidence might be affected by how far it could be shown to have been in practice carried out, and to what extent not. But, be that as it may, mere assertion that 'there is no record' is plainly insufficient to discharge the requisite burden of proof, nor is its insufficiency cured by assertion also that a search has been made for a written record and none can be found."

The appeal tribunal made no relevant findings of fact in relation to those matters. I draw attention to the fact that the tribunal in their reasons stated, as I have already indicated, that the presenting officer

"stated that there was no record in the case papers of the [claimant] making a telephone enquiry about storage heaters."

That is not a finding of fact - it is merely a repetition of a statement made by the presenting officer and, as such, cannot constitute a reason for their decision.

- (4) Fourthly, if, having made the relevant findings of fact, the appeal tribunal had reached a decision that the claimant had unreasonably disposed of each item, or

had unreasonably disposed of some of the items, it was incumbent upon the tribunal to consider, in relation to those items which had been unreasonably disposed of, whether or not the claimant could establish entitlement under regulation 24 of the Supplementary Benefit (Urgent Cases) Regulations 1981: CSSB/150/83. Regulation 24 must be read as it stood at the date of the claim, that is to say before the recent amendments which did not come into effect until 11 August 1986: see Supplementary Benefit (Miscellaneous Amendments) Regulations 1986, regulation 17.

8. The failure of the tribunal to make the appropriate and relevant findings of fact as indicated above constituted an error or errors of law and accordingly I set aside their decision.

9. For those reasons, I allow this appeal.

(Signed) A.T. Hoolahan  
Commissioner

Date: 30 September 1987