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COMMISSIONER'S FILE NO: CSB/914/1984

This decision is starred because it decides that the external decorating of a house does not constitute "essential routine minor [my underlining] maintenance" within regulation 17 of the Supplementary Benefit (Requirements) Regulations 1981.

Although new legislation has since been introduced the same expression "essential routine minor maintenance" continues to feature.

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DGR/CDB

Commissioner's File: CSB/914/1984
C A O File: AO 9065/84
Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Arthur Conrad David Mitchell
Social Security Appeal Tribunal: Bury St. Edmunds
Case No: 10/1

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 30 May 1984 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is not entitled to a single payment for the cost of redecorating the exterior of his house.

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 30 May 1984. In view of the complexity of the matter I directed an oral hearing. At that hearing the claimant was represented by Mr. Mark Rowland of Counsel (instructed by the Child Poverty Action Group) and the adjudication officer by Mr. E.O.F. Stocker. I am grateful to them both for their submissions.

3. The question at issue is whether the claimant is entitled to a single payment to cover the expense of redecorating his house, estimated to cost £398.17 exclusive of VAT. The claim was rejected by the benefit officer (now the adjudication officer) and on appeal his decision was upheld by the tribunal. Unfortunately, although the tribunal reached the right conclusion, I am not satisfied that their reasoning is sufficiently clear so as to satisfy regulation 19(2)(b) of the Adjudication Regulations. Accordingly I must set aside their decision. However, I am satisfied that sufficient facts have been found to enable me to substitute my own decision.

4. The claimant sought to bring himself within regulation 21 or 28 of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528]. The tribunal in fact directed their attention to the former and wholly neglected consideration of the latter. However, in the event nothing turns upon their disregard of regulation 28.

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5. Regulation 21 read at the relevant time as follows:-

"21(1) - Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively) for an item solely because charges for that item occur only irregularly (for example charges under a lease for redecoration of common and external areas, or charges for the emptying of a cesspit or septic tank), a single payment shall be made of an amount equal to the amount of each charge.

(2) For the purposes of this regulation, the provisions of regulation 5 (effect of disregarded capital on amounts payable) shall not apply."

The Requirements Regulations have in fact since been consolidated into the Supplementary Benefit (Requirements) Regulations 1983 [S.I. 1983 No. 1399] and regulations 17 and 19 are now 16 and 18 respectively. Since 26 November 1984 the wording of the former regulation has been changed in minor respects and that of the latter more substantially. In particular regulation 17(2) has not been altered.

6. Now, it is clear from the terms of regulation 21 of the Single Payments Regulations that it embraces only items which would have fallen within regulation 17 or 19 of the Requirements Regulations, had it not been for the fact that charges for such items only occurred irregularly. Accordingly, the items falling within regulation 21 are strictly limited.

7. Regulation 17 provided at the relevant date as follows:

"17-(1) Where a person is -

(a) an owner-occupier ... there shall be applicable under this regulation the weekly amount of £1.70 for maintenance and insurance or, where the actual costs of maintenance and insurance exceed that amount, such higher amount, if any, as is reasonable having regard to any special circumstances (for example a high fire risk) justifying higher than average expenditure.

(2) For the purposes of this regulation 'maintenance and insurance' means essential routine minor maintenance and insurance of the structure of the home."

It is clear from the foregoing that, for an item to fall within regulation 17, it must, where it is not insurance, constitute "essential routine minor maintenance."

8. Now, in the present case, is the external decoration of the house "essential routine minor maintenance?" In considering exactly the same point in the unreported decision on Commissioner's File CSB/240/1984 the learned Commissioner observed as follows (paragraph 5):

"It cannot therefore be contended that external redecoration of a part of or the whole of the house falls in this category because that is clearly not an item of 'essential routine minor maintenance' and [the claimant's representative] did not contend otherwise."

Unfortunately the learned Commissioner did not say exactly why external decoration did not constitute "essential routine minor maintenance", but I have no doubt that what was fatal to any such interpretation was the fact that on no footing could decoration of this type be regarded as "minor".

9. Mr. Rowland contended that external decoration could be, and in fact was in the present case, minor maintenance, falling within regulation 17. He also contended that it was routine, but, if this was not right, then it was at least something which fell within regulation 21 of the Single Payments Regulations. Mr. Stocker wavered somewhat, taking the view on balance that the learned Commissioner in his decision CSB 240/1984 might well have stated the case too strongly. I do not think that he did. I do not consider that external decoration of the house could normally constitute minor maintenance. In my judgment, it is more likely to be classified as major maintenance, but in any event it was, putting it at its lowest, just maintenance. On no footing was it minor maintenance. Mr. Rowland endeavoured to contend that, although, in the present case, the estimate was for a considerable sum, this was only because the employment of labour was involved, and that if the value of the paint alone were taken into consideration, then the maintenance should only be regarded as minor. I do not think this is the proper way of looking at it. What has to be envisaged is the extent of the relevant undertaking. The external redecoration of a house involves not merely the purchase of the paint, but its application, and, in my judgment, it is immaterial whether the person applying the paint is the owner himself or some firm hired to carry out this particular function. The fact is that the whole undertaking of painting the outside of the house is a considerable task. In no reasonable sense of the word can I interpret that activity as constituting merely "minor" maintenance. Accordingly, it was not open to the claimant at the hearing before the tribunal to rely on regulation 17. Moreover, regulation 21 of the Single Payments Regulations was likewise of no assistance to him because, for it to apply, the item in question had to be one which fell within regulation 17 save for the fact that the charge therefor was irregular.

10. Furthermore, the claimant could derive no assistance from regulation 19 of the Requirements Regulations. In paragraphs 6 and 7 of the above decision, the learned Commissioner considered whether external decoration of a house could fall within its terms. He rejected the contention conclusively and I accept all that he has said. If, then, external decorating does not fall within regulation 19, it likewise does not fall within regulation 21.

11. Accordingly, I accept what the learned Commissioner said in CSB 240/1984, namely that a "single payment cannot be made in any circumstances for the cost of external redecoration by or on behalf of an owner-occupier". It follows that I can conveniently substitute my own decision for that of the tribunal.

12. Technically speaking, the tribunal should have also considered regulation 30 of the Single Payments Regulations. However, no serious argument would appear to have been directed at this particular provision, and in any event there was no evidence in support of its application. Moreover, Mr. Rowland did not contend that this was a matter of any importance.

13. For completeness, I should also add that, although the claimant had in his far-ranging written submissions directed a great deal of attention to his contention that some or all of the Single Payment Regulations were ultra vires, Mr. Rowland frankly stated to me at the beginning of the hearing that he had no intention of arguing himself in favour of any such proposition. He very prudently abandoned the hopeless and concentrated on issues which properly merited ventilation.

Signed: D.G. Rice
Commissioner

Date: 8 March 1985

COMMISSIONER'S FILE NO:

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