

CSB/979/83

DGR/EA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: **Dawn Entwistle**

Supplementary Benefit Appeal Tribunal: Colchester

Case No: 02/176

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 26 May 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal.

2. This is an appeal brought by the claimant with my leave against the decision of the supplementary benefit appeal tribunal of 26 May 1983.

3. On 25 March 1983 the claimant, who was then in receipt of supplementary benefit, made a claim for a single payment in respect of certain items of clothing. The benefit officer rejected the claim on the grounds that the claimant did not satisfy the conditions of regulations 10, 27 or 30 of the Supplementary Benefit (Single Payments) Regulations 1981. Thereupon the claimant appealed to the tribunal, but in the event they upheld the benefit officer.

4. In the chairman's note of evidence there appears the following:

"Appellant explained that about April/May time last year she was squatting and the police evicted them and threw out her clothing, and she lost clothing as a result."

The tribunal made the following findings of fact:

"The tribunal did not consider the loss of clothing a year ago could be considered as a fact for the present request for a Single Payment.

It was not disputed that appellant's request for clothing has arisen from normal wear and tear, other than the shortage of 1 year ago."

They gave as the reasons for their decision the following:

"The tribunal after examining the facts and the Single Payments Regulations, were satisfied that the need arose from normal replacement and therefore a Single Payment was not justified.

Appellant is reminded that her weekly allowance is intended to cover the cost of purchasing and replacement of clothing."

5. The benefit officer now concerned supports the appeal and submits "that the tribunal has erred in law in that it has failed to make any findings on material questions of fact in respect of the claim for clothing. The tribunal also failed to make any specific determination in respect of that claim and did not include in its record a statement of the reasons for its determination, if indeed, it made one". I find this submission somewhat difficult to follow. The tribunal undoubtedly made certain material findings of fact. They said that it was not in dispute that the claimant's request for clothing had arisen from normal wear and tear, "other than the shortage of one year ago". Moreover, in the reasons for their decision they specifically stated that the need for the clothing arose from normal replacement. Accordingly, ignoring for the moment the question of the lost clothing, it is quite clear that the tribunal rejected the claim for a single payment to replace the surviving clothing on the ground that such clothing had really worn out from normal wear and tear and therefore the claimant did not satisfy regulation 27 of the Single Payments Regulations. To this extent I see nothing wrong with the tribunal's determination.

6. However, as regards the clothes which had been lost, I think there is scope for criticism of the tribunal's decision. They seem to have treated this loss as an irrelevant consideration, but have given no satisfactory reasons for this. It may be that they took the view that, as the claimant had successfully got by without the clothes for a year, she had no need of them. Alternatively, it may be that if she had not lost the clothes, they would any way, no less than the surviving clothes, have become worn out from normal wear and tear. However, the tribunal did not make the position clear, and the claimant is entitled not to be left in the dark. Accordingly, on this score I think the tribunal erred in point of law, and that their decision must be set aside. I direct that the matter be re-heard by a differently constituted tribunal.

7. Although there is nothing in the papers to suggest that, at the hearing before the tribunal, the question whether or not the claimant might succeed under regulation 30 was ever canvassed, and if it was not, no complaint can be made as to the tribunal's not making any express reference to that particular provision, I think it would be helpful, as the matter has in any event to be referred back to the tribunal, if the new tribunal specifically considered this provision.

8. My decision is as set out in paragraph 1.

(Signed) D G Rice  
Commissioner

Date: 15 February 1984

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Region: London North