

JNBP/BC

Commissioner's File: CSB/949/1984

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Region: London North

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SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the Finchley Supplementary Benefit Appeal Tribunal (now Social Security Appeal Tribunal and hereafter called "the tribunal") is erroneous in law and is set aside. I remit the case for re-hearing by a differently constituted tribunal in accordance with the directions hereafter given.

2. This is an appeal brought by the claimant, with the leave of a chairman of social security appeal tribunals qualified to grant such leave, against the above-mentioned decision of the tribunal which confirmed the decision of the supplementary benefit officer (now adjudication officer) issued on 21 November 1983 refusing a single payment for repairs to the house of which the claimant is the owner-occupier.

3. I heard the appeal at an oral hearing requested by the claimant. The claimant attended and presented his own case. The adjudication officer was represented by Mr E O F Stocker, barrister. I am indebted to the claimant and Mr Stocker for their assistance.

4. On 25 August 1983 the claimant claimed a single payment for help with dry-rot repairs, plumbing work, roof repairs, gutter and down pipe repairs, pointing work, soil stack repairs, insulation repairs, insulation and zinc flashings to dormers at a total cost of £8,781.40. The claimant was initially concerned to have the dry-rot repairs done and applied to his Local Authority for a grant. It was agreed that a grant would be available but that it would be conditional on certain other repairs, specified by the Local Authority, also being done. Eventually a grant of £5,940 was made and the claimant himself contributed savings of £875, an amount of £1,200 which he borrowed and an insulation grant of £69, making a total of £8,084. At the time of his claim the claimant was in receipt of a supplementary allowance.

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5. The making of single payments of supplementary benefit is provided for by the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] and the regulations which have to be considered on the present appeal are regulations 17, 21 and 30 as in force at the date of claim which, so far as relevant, provided as follows:-

Regulation 17

- "17.-(1) A single payment shall be made in respect of the cost of repairs to, and any consequential redecoration of, the home where the claimant or his partner is a person falling within sub-paragraph (9), (b) or (c) of paragraph (1) of regulation 17 of the Requirements Regulations (persons in respect of whom an amount is applicable for maintenance and insurance) and -
- (a) the repairs are essential to preserve the home in a habitable condition;
  - (b) the total cost of the repairs and redecoration does not exceed £225;
  - (c) the cost is such that it would be unreasonable in the circumstances in which the repairs have become necessary to expect the claimant to be able to pay for them out of the amount allowed towards repairs under the said regulation 17; and
  - (d) the claimant or his partner is unable to finance the repairs in any other way.
- (2) Paragraph (1) shall not apply to any item to which regulation 18, 19 or 21 applies, nor to any other home improvement.
- (3) .....
- (4) .....
- (5) ....."

Regulation 21

- "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 cess-pit 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."

Regulation 30

"30.--(1) Where a claimant is entitled to a pension or allowance and he -

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment 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.

(2) .....

(3) ....."

6. Regulations 17 and 19 of the Requirements Regulations (referred to in paragraph 21(1) above) as in form at the date of claim and so far as relevant to the present case, provided as follows:-

Regulation 17

"17.--(1) Where a person is -

- (a) an owner-occupier .....
- (c) .....

there should 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.

Regulation 19

"19.--(1) The amounts, calculated in accordance with paragraph (2), of the following outgoings payable in respect of the home shall be applicable under this regulation -

- (a) charges or rates in respect of water and, except in Scotland, of sewerage and allied environmental services;



- (b) payments by way of rent or ground rent (in Scotland  
fue duty) .....
- (c) payments under a co-ownership scheme to which regulation  
8(2)(d) of the Housing Benefit Regulations (co-owners not  
eligible for rent allowances) applies;
- (d) recurring charges for the emptying of cess-pits and  
septic tanks and the cost of fluid and materials to service  
a chemical toilet;
- (e) service charges (for example for maintenance, insurance,  
management and the cleaning of common areas) but  
subject to deduction .....
- (f) where the home or any part of the home is occupied under  
a crofting tenancy for the purposes of the Crofters  
(Scotland) Acts 1955 and 1961 the amount of the rent payable  
in respect of the home or that part of the home;
- (g) outgoings analogous to those mentioned in this Part."

- (2) .....
- (3) .....
- (4) .....
- (5) .....
- (6) .....

[After the date of claim regulations 17 and 19 above were replaced on consolidation by regulations 16 and 18 of the 1983 Requirements Regulations which are in the same terms. Following that replacement, regulation 21(1) above had to be construed as referring to the replacement regulations until a new regulation 21 was substituted by regulation 6(7) of the Supplementary benefit (Miscellaneous Amendments) Regulations 1984 [SI 1984 No 938] as from 26 November 1984].

7. The supplementary benefit officer considered that some of the repairs in respect of which the claim was made were not essential to preserve the home in a habitable condition, that the cost of the repairs (£8,781.40) exceeded £225.00 and that the claimant was able to contribute £8,084.00. He therefore concluded that a payment could not be made under regulation 17 of the Single Payments Regulations. As regards regulation 21, he decided that a payment could not be made because he considered that the costs incurred by the claimant arose because of the repairs necessary and not because they were a charge which occurred irregularly. As regards regulation 30 he decided that a payment could not be made because there was no evidence of any serious damage or serious risk to him or his family's health or safety which would be prevented by the award of a single payment.

8. The claimant attended the tribunal hearing and according to the chairman's note of evidence stated that his case was based solely on Single Payments Regulation 21. He also cited a case referred to as the case of "Mr Jones" which had been conducted on behalf of a claimant by the Disability Alliance and in which it had been held by the majority of an appeal tribunal that the claimant was entitled to a single payment, under regulation 21, to cover the cost of external redecoration of his house, which he could not do himself because of his disability. It appears that the actual decision in Mr Jones' case has not come to light but on the present appeal the adjudication officer has produced a copy of the decision on Commissioner's file CSB 240/1984 in which the Commissioner allowed an appeal by the adjudication officer against the unanimous decision of an appeal tribunal which, on very similar facts, was to the same effect as that in Mr Jones' case. I shall have more to say about the Commissioner's decision later.

9. The tribunal recorded findings of material facts as follows:-

"Major repairs had to be carried out on [the claimant's] home, and some of them were required by the local Authority which was making a substantial grant. The cost of the repairs greatly exceeded £225.00.

The repair can be described as irregular. It was occasioned by dry rot."

After recording their decision as mentioned in paragraph 2 above the tribunal recorded their reasons for decision as follows:-

"Regulation 17 of the Single Payments Regulations states £225.00 is the limit on the total used for repairs. Regulation 21 of the same regulations would appear to apply only to irregular charges, and then for items not covered by Regulation 17 of the Single Payments Regulations."

I think that the reference to regulation 17 of the Single Payments Regulations in the passage just quoted may have been intended to be a reference to regulation 17 of the Requirements Regulations but it is not clear.

10. In his grounds of the present appeal the claimant argued that the work he had had done could be covered by regulation 21 of the Single Payments Regulations.

11. The adjudication officer now concerned with the case supports the appeal. In his submission dated 2 October 1984 he submitted that the tribunal had erred in law in that they had failed to consider fully the interaction between regulation 21 of the Single Payments Regulations and regulations 16 and 18 of the Requirements Regulations and as a result had failed to make findings on material questions of fact and to record adequate reasons for their decision. In view of the date of the claim he should have referred to regulations 17 and 19 of the Single Payments Regulations but his submission is equally applicable to those regulations.

12. As mentioned above the claimant explained to the tribunal that he was relying on regulation 21. He also supplied the tribunal with a document containing a report on Mr Jones' case (see paragraph 8 above) by the Disability Alliance accompanied by notes of the arguments which had been put forward in that case. In the circumstances I consider that it should have been clear that in substance the claimant's case was that (a) the majority of the tribunal in Mr Jones' case had evidently accepted that the costs of Mr Jones' external redecoration were outgoings within regulation 19(1)(g) of the Requirements Regulations and that amounts in respect of them were not



applicable under that regulation solely because they were charges which occurred only irregularly, (b) that the tribunal in Mr Jones' case had evidently accepted that a payment could therefore be made under regulation 21 and (c) that the same result should follow in the claimant's case. However, there is nothing which indicates that when the tribunal were dealing with the claimant's case they considered the above argument and to that extent they erred in law. Their decision must therefore be set aside. I should add that as it has never been suggested that the work done for the claimant was minor maintenance or that the costs he incurred were outgoings listed in regulation 19(1)(a) to (f) it was not in my view necessary for the tribunal to make findings on those points.

13. As will appear later, I consider that the tribunal's decision was erroneous in law in other respects and that the case will have to be referred to a differently constituted tribunal for redetermination. I must therefore consider what directions I should give to the new tribunal as to how they should approach regulation 21 and its interaction with regulation 19(1)(g).

14. The fundamental question for decision is whether the costs incurred by the claimant were within the scope of regulation 19(1)(g) which reads:-

"(g) outgoings analogous to those mentioned in this Part."

If the costs were within that scope then, but for the irregularity of their occurrence, an amount could have been allowed under regulation 19 and therefore a single payment could be made under regulation 21 of the Single Payments Regulations.

15. The Part referred to in regulation 19(1)(g) is Part IV of the Requirements Regulations and in my view the reference to "outgoings mentioned" should be construed as referring to all items of expenditure for which a claimant is liable and which give rise to amounts applicable under the regulations in Part IV. Thus, for example, I consider that the amount which a non-householder has to contribute towards the housing expenses of the household of which he is a member (regulation 23) is an outgoing "mentioned" for the purposes of regulation 19(1)(g).

16. It seems to me that the process of deciding whether an outgoing is analogous to the outgoings in a specified group of outgoings involves deciding, first, whether there are any features which are common to all outgoings in the group, if so, second, whether any such feature or features are to be found in the first-mentioned outgoing and, if so, third, whether the presence of such feature or features makes the first-mentioned outgoing analogous to the group. In my view the three questions above are all questions of fact which are for decision by an appeal tribunal. "Analogous" is an ordinary English word and I cannot see anything in the context indicating that it is used in an unusual sense. Accordingly, the third question is one to which the following passage from the speech of Lord Reid in *Cozens v Brutus* [1973] A.C. 854 at page 861 applies -

"The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word 'insulting' being used in any

unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether the decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

In my judgment similar considerations apply to the first and second questions and an appeal tribunal's decision could not be said to be wrong until it could be said that the conclusions reached by the tribunal on the first and second questions were or must have been unreasonable in the sense indicated by Lord Reid.

17. The decision on Commissioner's file CSB 240/1984 was concerned with the question whether a single payment could be made for certain external redecoration of the claimant's house. In that decision the learned Commissioner said:-

"It appears to me that the common denominator of the housing requirements in Part IV of the Requirements Regulations is that they are items on which expenditure must inevitably be incurred in the sense that, if not, either they would be the subject of legal proceedings against the claimant or alternatively, if the expenditure is not incurred, the house will become unfit for human habitation.

.....  
.....

Moreover, there is in my view nothing in Part IV of the Requirements Regulations to show that external redecoration is analogous to the housing requirements in that Part. External redecoration is sui generis and does not in my judgment come within the wording of regulation 21. That is a question of law and not just a question of fact and I can give a ruling upon it (compare R(SB)46/83, paragraph 16). I therefore hold that a single payment cannot be made in any circumstances for the costs of external redecoration by or on behalf of an owner occupier whether of the part or whole of a house."

18. Applying the reasoning quoted above would lead to the conclusion that Mr Jones' case (see paragraph 8 above) was wrongly decided and also to the conclusion that a single payment could not be made under regulation 21 for the cost of the repairs done for the present claimant. However, I find myself unable to adopt and apply the learned Commissioner's conclusion that he could decide the question in issue as a question of law and give his own decision in place of that given by the appeal tribunal. He must, I think, have based that conclusion at least partly on the assumption that his own view of the common features of the outgoings mentioned in Part IV was the only view that a reasonable tribunal could take. In the present case I do not feel able to make a corresponding assumption and I have therefore decided that I must remit the question of regulation 21 to the new tribunal for consideration by them without any directions beyond my indication above as to how the question of analogy should be approached.

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19. The adjudication officer also submitted that the tribunal had erred in failing to consider fully regulation 17 of the Single Payments Regulations. He submitted that it was open to the tribunal to consider the claimant's composite claim as a series of individual claims under the provisions of regulation 17 and that if the cost of any particular repair was less than £225.00 to consider making a single payment. That submission was regarded as a far-ranging concession by the Commissioner then dealing with the case. He considered that if the concession was right, then regulation 17(1)(b) of the Single Payments Regulations would be largely ineffective and asked for full argument on the point at the oral hearing which he directed but which eventually was held by me. It was subsequently explained by the adjudication officer that the submission was based on a passage in paragraph 5 of the unreported decision on Commissioner's file CSB/191/1983 which was as follows:-

"I consider that the benefit officer and the tribunal were correct in so far as they considered that the effect of regulation 17(1)(b) is that, if the total cost of the external repairs exceeds £225, then no payment can be made at all even of the amount up to £225. On the other hand it may be that in some cases what is put forward as essential repairs amounts in fact to two or more such repairs, each of which can by itself be described as an essential repair; so that, if a claim was made for the cost of one such repair costing less than £225 a payment could be awarded for it. It may even be that separate claims could be made for two or more such severable essential repairs."

The adjudication officer went on to submit that where a claim is made and there are a number of essential repairs contained in it, both (I think he meant "all") the repairs can be treated as one claim for essential repairs where there is a nexus between them or where one repair has to be made as a consequence of another, as he submitted was apparently the case in the claimant's case. However, he submitted that where there is no such nexus, or the repairs are not made as the consequence of one another and they do amount to separate claims, although lodged at the same time, they could be treated as separate claims for repairs. He pointed out however that each claim treated separately would have to meet all the criteria of regulation 17, total cost being only one feature, and that where an item in a bill belongs to more than one or two repairs which can be treated separately it would have to be attributed to one of them. The matter was discussed at the hearing and Mr Stocker gave limited support to the submission although he doubted whether it could be open to appeal tribunals to sever claims treated as single claims by the adjudication officer.

20. In my view if the suggestion made in the above quoted decision is applied sensibly it should not have the effect of rendering regulation 17(1)(b) ineffective. It does not appear to me that there can be any objection to claims for separate repairs each costing less than £225 (now £325) being made on successive days if the claims are truly separate and I do not see why truly separate claims should be treated as other than separate just because they are made on the same piece of paper on the same day. Of course it is possible that attempts may be made to make claims look separate when they ought not to be so regarded and care will have to be exercised by adjudication officers and tribunals. In the present case I understood the claimant to say that he did not think that any claims for less than £225 could be separated out of his composite claim but I do not consider that he should be bound by what he said at the hearing and he should be free to pursue the matter if he chooses to raise it at the hearing by the new tribunal.

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21. Finally the adjudication officer submitted that the tribunal erred in law, by failing to consider regulation 30. In fact the claimant did not produce any evidence relevant to regulation 30 and I do not think that the tribunal can really be criticised for not considering the regulation. However, if the claimant chooses to raise the matter before the new tribunal and produces evidence of risk to the safety of any members of the assessment unit the tribunal will have to make findings of the facts material to a decision under the regulation and give reasons for their decision.

22. As indicated above I have decided that the tribunal's decision must be set aside and that, since giving the decision that the tribunal should have given would involve making findings of fact, I cannot give that decision myself. I must therefore remit the case for rehearing by a differently constituted tribunal.

23. For the foregoing reasons the appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny  
Commissioner

Date: 12 June 1985

JNBP/BC

Commissioner's File: CSB/949/1984

C SBO File: AO 9128/84

Region: London North

*Revised S.P. by 17.19.81*

SUPPLEMENTARY BENEFITS ACT 1976

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[ORAL HEARING]

1. My decision is that the decision of the Finchley Supplementary Benefit Appeal Tribunal (now Social Security Appeal Tribunal and hereafter called "the tribunal") is erroneous in law and is set aside. I remit the case for re-hearing by a differently constituted tribunal in accordance with the directions hereafter given.
2. This is an appeal brought by the claimant, with the leave of a chairman of social security appeal tribunals qualified to grant such leave, against the above-mentioned decision of the tribunal which confirmed the decision of the supplementary benefit officer (now adjudication officer) issued on 21 November 1983 refusing a single payment for repairs to the house of which the claimant is the owner-occupier.
3. I heard the appeal at an oral hearing requested by the claimant. The claimant attended and presented his own case. The adjudication officer was represented by Mr E O F Stocker, barrister. I am indebted to the claimant and Mr Stocker for their assistance.
4. On 25 August 1983 the claimant claimed a single payment for help with dry-rot repairs, plumbing work, roof repairs, gutter and down pipe repairs, pointing work, soil stack repairs, insulation repairs, insulation and zinc flashings to dormers at a total cost of £8,781.40. The claimant was initially concerned to have the dry-rot repairs done and applied to his Local Authority for a grant. It was agreed that a grant would be available but that it would be conditional on certain other repairs, specified by the Local Authority, also being done. Eventually a grant of £5,940 was made and the claimant himself contributed savings of £875, an amount of £1,200 which he borrowed and an insulation grant of £69, making a total of £8,084. At the time of his claim the claimant was in receipt of a supplementary allowance.

5. The making of single payments of supplementary benefit is provided for by the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] and the regulations which have to be considered on the present appeal are regulations 17, 21 and 30 as in force at the date of claim which, so far as relevant, provided as follows:-

Regulation 17

- "17.-(1) A single payment shall be made in respect of the cost of repairs to, and any consequential redecoration of, the home where the claimant or his partner is a person falling within sub-paragraph (9), (b) or (c) of paragraph (1) of regulation 17 of the Requirements Regulations (persons in respect of whom an amount is applicable for maintenance and insurance) and -
- (a) the repairs are essential to preserve the home in a habitable condition;
  - (b) the total cost of the repairs and redecoration does not exceed £225;
  - (c) the cost is such that it would be unreasonable in the circumstances in which the repairs have become necessary to expect the claimant to be able to pay for them out of the amount allowed towards repairs under the said regulation 17; and
  - (d) the claimant or his partner is unable to finance the repairs in any other way.
- (2) Paragraph (1) shall not apply to any item to which regulation 18, 19 or 21 applies, nor to any other home improvement.
- (3) .....
- (4) .....
- (5) ....."

Regulation 21

- "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 cess-pit 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."

Regulation 30

"30.-(1) Where a claimant is entitled to a pension or allowance and he -

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment 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.

(2) .....

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6. Regulations 17 and 19 of the Requirements Regulations (referred to in paragraph 21(1) above) as in form at the date of claim and so far as relevant to the present case, provided as follows:-

Regulation 17

"17.-(1) Where a person is -

- (a) an owner-occupier .....
- (c) .....

there should 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.

Regulation 19

"19.-(1) The amounts, calculated in accordance with paragraph (2), of the following outgoings payable in respect of the home shall be applicable under this regulation -

- (a) charges or rates in respect of water and, except in Scotland, of sewerage and allied environmental services;

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 eligible for rent allowances) applies;
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 a crofting tenancy for the purposes of the Crofters  
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  - (g) outgoings analogous to those mentioned in this Part."
- (2) .....
  - (3) .....
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[After the date of claim regulations 17 and 19 above were replaced on consolidation by regulations 16 and 18 of the 1983 Requirements Regulations which are in the same terms. Following that replacement, regulation 21(1) above had to be construed as referring to the replacement regulations until a new regulation 21 was substituted by regulation 6(7) of the Supplementary benefit (Miscellaneous Amendments) Regulations 1984 [SI 1984 No 938] as from 26 November 1984].

7. The supplementary benefit officer considered that some of the repairs in respect of which the claim was made were not essential to preserve the home in a habitable condition, that the cost of the repairs (£8,781.40) exceeded £225.00 and that the claimant was able to contribute £8,084.00. He therefore concluded that a payment could not be made under regulation 17 of the Single Payments Regulations. As regards regulation 21, he decided that a payment could not be made because he considered that the costs incurred by the claimant arose because of the repairs necessary and not because they were a charge which occurred irregularly. As regards regulation 30 he decided that a payment could not be made because there was no evidence of any serious damage or serious risk to him or his family's health or safety which would be prevented by the award of a single payment.

8. The claimant attended the tribunal hearing and according to the chairman's note of evidence stated that his case was based solely on Single Payments Regulation 21. He also cited a case referred to as the case of "Mr Jones" which had been conducted on behalf of a claimant by the Disability Alliance and in which it had been held by the majority of an appeal tribunal that the claimant was entitled to a single payment, under regulation 21, to cover the cost of external redecoration of his house, which he could not do himself because of his disability. It appears that the actual decision in Mr Jones' case has not come to light but on the present appeal the adjudication officer has produced a copy of the decision on Commissioner's file CSB 240/1984 in which the Commissioner allowed an appeal by the adjudication officer against the unanimous decision of an appeal tribunal which, on very similar facts, was to the same effect as that in Mr Jones' case. I shall have more to say about the Commissioner's decision later.

9. The tribunal recorded findings of material facts as follows:-

"Major repairs had to be carried out on [the claimant's] home, and some of them were required by the local Authority which was making a substantial grant. The cost of the repairs greatly exceeded £225.00.

The repair can be described as irregular. It was occasioned by dry rot."

After recording their decision as mentioned in paragraph 2 above the tribunal recorded their reasons for decision as follows:-

"Regulation 17 of the Single Payments Regulations states £225.00 is the limit on the total used for repairs. Regulation 21 of the same regulations would appear to apply only to irregular charges, and then for items not covered by Regulation 17 of the Single Payments Regulations."

I think that the reference to regulation 17 of the Single Payments Regulations in the passage just quoted may have been intended to be a reference to regulation 17 of the Requirements Regulations but it is not clear.

10. In his grounds of the present appeal the claimant argued that the work he had had done could be covered by regulation 21 of the Single Payments Regulations.

11. The adjudication officer now concerned with the case supports the appeal. In his submission dated 2 October 1984 he submitted that the tribunal had erred in law in that they had failed to consider fully the interaction between regulation 21 of the Single Payments Regulations and regulations 16 and 18 of the Requirements Regulations and as a result had failed to make findings on material questions of fact and to record adequate reasons for their decision. In view of the date of the claim he should have referred to regulations 17 and 19 of the Single Payments Regulations but his submission is equally applicable to those regulations.

12. As mentioned above the claimant explained to the tribunal that he was relying on regulation 21. He also supplied the tribunal with a document containing a report on Mr Jones' case (see paragraph 8 above) by the Disability Alliance accompanied by notes of the arguments which had been put forward in that case. In the circumstances I consider that it should have been clear that in substance the claimant's case was that (a) the majority of the tribunal in Mr Jones' case had evidently accepted that the costs of Mr Jones' external redecorations were outgoings within regulation 19(1)(g) of the Requirements Regulations and that amounts in respect of them were not

applicable under that regulation solely because they were charges which occurred only irregularly, (b) that the tribunal in Mr Jones' case had evidently accepted that a payment could therefore be made under regulation 21 and (c) that the same result should follow in the claimant's case. However, there is nothing which indicates that when the tribunal were dealing with the claimant's case they considered the above argument and to that extent they erred in law. Their decision must therefore be set aside. I should add that as it has never been suggested that the work done for the claimant was minor maintenance or that the costs he incurred were outgoings listed in regulation 19(1)(a) to (f) it was not in my view necessary for the tribunal to make findings on those points.

13. As will appear later, I consider that the tribunal's decision was erroneous in law in other respects and that the case will have to be referred to a differently constituted tribunal for redetermination. I must therefore consider what directions I should give to the new tribunal as to how they should approach regulation 21 and its interaction with regulation 19(1)(g).

14. The fundamental question for decision is whether the costs incurred by the claimant were within the scope of regulation 19(1)(g) which reads:-

"(g) outgoings analogous to those mentioned in this Part."

If the costs were within that scope then, but for the irregularity of their occurrence, an amount could have been allowed under regulation 19 and therefore a single payment could be made under regulation 21 of the Single Payments Regulations.

15. The Part referred to in regulation 19(1)(g) is Part IV of the Requirements Regulations and in my view the reference to "outgoings mentioned" should be construed as referring to all items of expenditure for which a claimant is liable and which give rise to amounts applicable under the regulations in Part IV. Thus, for example, I consider that the amount which a non-householder has to contribute towards the housing expenses of the household of which he is a member (regulation 23) is an outgoing "mentioned" for the purposes of regulation 19(1)(g).

16. It seems to me that the process of deciding whether an outgoing is analogous to the outgoings in a specified group of outgoings involves deciding, first, whether there are any features which are common to all outgoings in the group, if so, second, whether any such feature or features are to be found in the first-mentioned outgoing and, if so, third, whether the presence of such feature or features makes the first-mentioned outgoing analogous to the group. In my view the three questions above are all questions of fact which are for decision by an appeal tribunal. "Analogous" is an ordinary English word and I cannot see anything in the context indicating that it is used in an unusual sense. Accordingly, the third question is one to which the following passage from the speech of Lord Reid in *Cozens v Brutus* [1973] A.C. 854 at page 861 applies -

"The meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is. But here there is in my opinion no question of the word 'insulting' being used in any

unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether the decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision."

In my judgment similar considerations apply to the first and second questions and an appeal tribunal's decision could not be said to be wrong until it could be said that the conclusions reached by the tribunal on the first and second questions were or must have been unreasonable in the sense indicated by Lord Reid.

17. The decision on Commissioner's file CSB 240/1984 was concerned with the question whether a single payment could be made for certain external redecoration of the claimant's house. In that decision the learned Commissioner said:-

"It appears to me that the common denominator of the housing requirements in Part IV of the Requirements Regulations is that they are items on which expenditure must inevitably be incurred in the sense that, if not, either they would be the subject of legal proceedings against the claimant or alternatively, if the expenditure is not incurred, the house will become unfit for human habitation.

.....  
.....

Moreover, there is in my view nothing in Part IV of the Requirements Regulations to show that external redecoration is analogous to the housing requirements in that Part. External redecoration is sui generis and does not in my judgment come within the wording of regulation 21. That is a question of law and not just a question of fact and I can give a ruling upon it (compare R(SB)46/83, paragraph 16). I therefore hold that a single payment cannot be made in any circumstances for the costs of external redecoration by or on behalf of an owner occupier whether of the part or whole of a house."

18. Applying the reasoning quoted above would lead to the conclusion that Mr Jones' case (see paragraph 8 above) was wrongly decided and also to the conclusion that a single payment could not be made under regulation 21 for the cost of the repairs done for the present claimant. However, I find myself unable to adopt and apply the learned Commissioner's conclusion that he could decide the question in issue as a question of law and give his own decision in place of that given by the appeal tribunal. He must, I think, have based that conclusion at least partly on the assumption that his own view of the common features of the outgoings mentioned in Part IV was the only view that a reasonable tribunal could take. In the present case I do not feel able to make a corresponding assumption and I have therefore decided that I must remit the question of regulation 21 to the new tribunal for consideration by them without any directions beyond my indication above as to how the question of analogy should be approached.

19. The adjudication officer also submitted that the tribunal had erred in failing to consider fully regulation 17 of the Single Payments Regulations. He submitted that it was open to the tribunal to consider the claimant's composite claim as a series of individual claims under the provisions of regulation 17 and that if the cost of any particular repair was less than £225.00 to consider making a single payment. That submission was regarded as a far-ranging concession by the Commissioner then dealing with the case. He considered that if the concession was right, then regulation 17(1)(b) of the Single Payments Regulations would be largely ineffective and asked for full argument on the point at the oral hearing which he directed but which eventually was held by me. It was subsequently explained by the adjudication officer that the submission was based on a passage in paragraph 5 of the unreported decision on Commissioner's file CSB/191/1983 which was as follows:-

"I consider that the benefit officer and the tribunal were correct in so far as they considered that the effect of regulation 17(1)(b) is that, if the total cost of the external repairs exceeds £225, then no payment can be made at all even of the amount up to £225. On the other hand it may be that in some cases what is put forward as essential repairs amounts in fact to two or more such repairs, each of which can by itself be described as an essential repair; so that, if a claim was made for the cost of one such repair costing less than £225 a payment could be awarded for it. It may even be that separate claims could be made for two or more such severable essential repairs."

The adjudication officer went on to submit that where a claim is made and there are a number of essential repairs contained in it, both (I think he meant "all") the repairs can be treated as one claim for essential repairs where there is a nexus between them or where one repair has to be made as a consequence of another, as he submitted was apparently the case in the claimant's case. However, he submitted that where there is no such nexus, or the repairs are not made as the consequence of one another and they do amount to separate claims, although lodged at the same time, they could be treated as separate claims for repairs. He pointed out however that each claim treated separately would have to meet all the criteria of regulation 17, total cost being only one feature, and that where an item in a bill belongs to more than one or two repairs which can be treated separately it would have to be attributed to one of them. The matter was discussed at the hearing and Mr Stocker gave limited support to the submission although he doubted whether it could be open to appeal tribunals to sever claims treated as single claims by the adjudication officer.

20. In my view if the suggestion made in the above quoted decision is applied sensibly it should not have the effect of rendering regulation 17(1)(b) ineffective. It does not appear to me that there can be any objection to claims for separate repairs each costing less than £225 (now £325) being made on successive days if the claims are truly separate and I do not see why truly separate claims should be treated as other than separate just because they are made on the same piece of paper on the same day. Of course it is possible that attempts may be made to make claims look separate when they ought not to be so regarded and care will have to be exercised by adjudication officers and tribunals. In the present case I understood the claimant to say that he did not think that any claims for less than £225 could be separated out of his composite claim but I do not consider that he should be bound by what he said at the hearing and he should be free to pursue the matter if he chooses to raise it at the hearing by the new tribunal.

21. Finally the adjudication officer submitted that the tribunal erred in law, by failing to consider regulation 30. In fact the claimant did not produce any evidence relevant to regulation 30 and I do not think that the tribunal can really be criticised for not considering the regulation. However, if the claimant chooses to raise the matter before the new tribunal and produces evidence of risk to the safety of any members of the assessment unit the tribunal will have to make findings of the facts material to a decision under the regulation and give reasons for their decision.

22. As indicated above I have decided that the tribunal's decision must be set aside and that, since giving the decision that the tribunal should have given would involve making findings of fact, I cannot give that decision myself. I must therefore remit the case for rehearing by a differently constituted tribunal.

23. For the foregoing reasons the appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny  
Commissioner

Date: 12 June 1985