

Single payment - funeral costs - "funeral" can be in UK even if burial is abroad.

RAS/14/LM

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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: Sonny James Shiels

Social Security Appeal Tribunal: Acton

Case No: 14/07

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 15 July 1986 is not erroneous in law and, accordingly, the adjudication officer's appeal does not succeed.

2. The claimant's wife died in hospital in London on 22 January 1986. The funeral directors employed by the claimant charged him £1,150.00 for the following services -

"Removal of remains from hospital to our Chapel of Rest	£ 28.00
All necessary hygienic treatment of remains & Embalming Certificate	£ 36.00
Catholic gown set	£ 24.00
Solid oak coffin, panel raised, lid fully fitted with soft side sheets, pillow & ruffel Table plate of inscription and solid bar handles	£ 714.50
Supplying hearse and 2 men to take remains into St. Aidans church East Acton, for Holy Mass	£ 80.00
Church fee & Priest	£ 25.00
Supplying Hearse and 2 men to bring remains to London Airport for burial in Ireland	£ 75.00
Airfaire to fly human remains to Ireland	£ 167.50"

And their account was headed "Re: Funeral of the late Roseleen Shiels. Died 22.Jan. 1986 R.I.P". The burial eventually took place in the Republic of Ireland. The claimant, then on supplementary benefit, made a claim for payment of the funeral expenses under regulation 8 of the Supplementary Benefit (Single Payments) Regulations 1981. The conditions for such a payment are in paragraph (1) and they include the condition, in paragraph (1)(c), that "the funeral or cremation takes place in the United Kingdom". An adjudication officer refused the claim because in his view, the burial having taken place in the Republic of Ireland, the condition to which I have referred was not satisfied. The claimant appealed and the

tribunal, allowing his appeal, awarded a payment of £907.50 which is made up of all but the last two items of the account. They disallowed those items because they said that they "were not involved in the part of the funeral which took place in the United Kingdom". The adjudication officer now appeals to the Commissioner against that decision. At the oral hearing of the appeal the adjudication officer was represented by Miss K. Lee of the Solicitor's Office of the Department of Social Security and the claimant, who attended, was represented by Mr C. Dabezies of the Citizens Advice Bureau, Legal Service.

3. The grounds for the appeal were that the tribunal had misconstrued regulation 8(1)(c) in deciding that the funeral had taken place in the United Kingdom notwithstanding that the burial was in the Republic of Ireland and the adjudication officer relied on R(SB) 23/86 in which the Commissioner had decided that "funeral" in that provision is used in the sense of burial rather than of the ceremonial or religious services which accompany burial or cremation. Then, in response to the Commissioner's direction, written submissions were made on behalf of both parties as to whether, if the claimant's case failed under the domestic law, the regulation which disentitled a claimant to a payment if the funeral or cremation took place outside the United Kingdom might be an unlawful discrimination against (so far as relevant to this case) Irish Nationals living in the United Kingdom under Articles 7 and 49 of the Treaty of Rome and Council Regulations made thereunder. Of course, if the claimant succeeds under the domestic law I do not need to deal with the several difficult issues that arise under the European law.

4. At the hearing both representatives were at first agreed that R(SB) 23/86 showed the tribunal's decision to be erroneous in law. But when that matter was further looked into Mr Dabezies took the view that that case had been wrongly decided and Miss Lee followed the course taken by the adjudication officer's representative in that case who had made what is referred to as an "open submission". Regulation 8, so far as relevant, provides that -

"8.-(1) Where any member of the assessment unit takes responsibility for the cost of a funeral or cremation (in this regulation referred to as the "responsible member") and -

(a) the deceased was -

- (i) a close relative of the responsible member, or
- (ii) a member of the same household as the responsible member;
- (iii) related to the responsible member but, at the time of his death, had had no recent contact with any person more closely related to him than the responsible member;

(b) there is no other person, being a close relative of the deceased, who could more reasonably, having regard to how closely they were related and the financial circumstances of that person, be expected to take responsibility; and

(c) the accommodation where the deceased normally lived prior to his death ("the deceased's home") was in the United Kingdom and he died either -

- (i) in the United Kingdom, or
- (ii) during a temporary absence from the United Kingdom,

and the funeral or cremation takes place in the United Kingdom,

the claimant shall be entitled to a single payment of an amount sufficient to meet any essential expenses of the funeral or cremation which are specified in paragraph (2) and which fall to be met by the responsible member.

(2) The essential expenses mentioned in paragraph (1) are as follows -

- (a) the cost of any necessary documentation;
- (b) the cost of a plain coffin;
- (c) the cost of transport for the coffin and bearers, and one additional car;
- (d) the reasonable cost of flowers from the responsible member;
- (e) undertaker's fees and gratuities, chaplain's, organist's and cemetery or crematorium fees for a simple funeral or cremation;
- (f) the cost of any additional expenses arising from a requirement of the religious faith of the deceased, not in excess of £75; and
- (g) where the death occurred away from the deceased's home -
 - (i) if the death occurred in the United Kingdom, the cost of transporting the body to that home,
 - (ii) where the death occurred elsewhere, the cost only of transporting the body within the United Kingdom to that home."

As I have said, the Commissioner, in R(SB) 23/86 came to the view that "funeral" in paragraph (1)(c)(ii) must mean burial. He said that -

"13. In my judgment, the word "funeral" as used in regulation 8(1)(c) of the Single Payments Regulations must be given its ordinary and natural meaning in the context in which it occurs. That context relates to a claim for a single payment for the expenses of a funeral or cremation. It is clearly not envisaged that a claimant can obtain the expenses of both. For example, a claimant may, if the conditions in paragraph (1) of regulation 8 are satisfied, be entitled to the cemetery fees for a simple funeral or the crematorium fees for a simple cremation: see paragraph (2)(e) of regulation 8. It is obvious that he cannot have both. "Cremation" has the settled dictionary meaning of "the reduction of a corpse to ashes in lieu of interment" (Shorter Oxford English Dictionary) and is the noun of the verb "cremate", which means "to burn up (something, particularly a corpse) and reduce to ash" (Collins English Dictionary) or "to burn (esp a dead body)" (Chambers 20th Century Dictionary). The antithesis of "cremation" is "burial". It is in the sense of "burial" that "funeral" is used. The U.S. meaning of "funeral" according to the Shorter Oxford English Dictionary, is "funeral service" but that is not the sense in which the word is used here. If a burial (or cremation) does take place in the United Kingdom the cost of a service here connected with the burial (or cremation) is allowed for by the provisions of paragraph 2(e) of regulation 8. I do not accept Mr. Rowland's arguments that "funeral" is used in the sense of the ceremonies or religious services which accompany burial or cremation. If his construction were adopted (and Mr. Rowland did not shrink from this consequence), where there is a religious service within the United Kingdom and the cremation takes place outside the United Kingdom, a claimant would qualify for the expenses incurred in the United Kingdom. Such a surprising result cannot have been

intended. The provisions for a single payment for funeral or cremation expenses is narrowly drawn and, apart from an exception for temporary absence from the United Kingdom, there are no exceptions to the stringent stipulations indicating that expenses are only to be met by a single payment if all relevant occurrences take place in an United Kingdom context. It is a condition that

- (1) the accommodation where the deceased normally lived prior to his death is in the United Kingdom
- (2) the deceased died in the United Kingdom (or during temporary absence from the United Kingdom)
- (3) the funeral or cremation takes place in the United Kingdom [these 3 conditions are all in regulation 8(1)(c)] and
- (4) the need does not occur outside the United Kingdom (regulation 6(1)(d)).

The third condition clearly contemplates one single identifiable event, not a series of events; for it uses the definite article "the". Under the alternative construction put forward by Mr. Rowland, not only is the condition that the funeral or cremation takes place in the United Kingdom satisfied where the cremation takes place elsewhere but there is a funeral service here, but the condition is also satisfied where the burial takes place elsewhere and the funeral service (or, in some cases, one of the funeral services) takes place here. On this construction, if it is accepted, the funeral can take place both inside the United Kingdom and outside the United Kingdom, which in effect is what is said to have happened in the present case. In my view, this construction does violence to the language used and is contrary to the intention which, in my judgment, is to restrict the payment of expenses to cases where the "funeral or cremation" takes place wholly within the United Kingdom."

Now in my view the ordinary and natural meaning of "funeral" is provided by the primary meaning given by the Shorter Oxford English Dictionary which is "The ceremonies connected with the burial (or cremation) of the body of a deceased person". I am sure that anyone who, as is often the case, had attended such ceremonies but who had not attended the subsequent burial might be surprised to be told that he had not been to the funeral. And, as I have said, the undertaker's account in this present case is headed "Re: Funeral of the late Roseleen Shields ..." the Commissioner in R(SB) 23/86 was as I read his decision principally persuaded to his view because "cremation" is provided as the alternative to "funeral". It could be that, as was submitted on behalf of the claimant in that case, "or cremation" was put in to make plain that cremation was included in "funeral" I would certainly hesitate to accept that "or cremation" was put in to ensure that "funeral" meant "burial" because, surely, if that had been intended "burial" could so easily have been used - as indeed it is in regulation 7 of the Social Fund Maternity and Funeral Expenses Regulations 1987 which has replaced regulation 8 of the 1981 Regulations; the comparable condition in paragraph 1(c) is that "the funeral takes place in the United Kingdom" and "funeral" is defined in regulation 3 of the new Regulations as meaning "a burial or cremation". I am not convinced that in the Single Payments Regulations "funeral" necessarily means in all cases "burial". There may of course be cases where the events in question not only did not include a burial but could not be said to amount to a funeral. Indeed in R(SB) 23/86 there is nothing to suggest for example that there was any sort of service or ceremony before the body was taken to Rawalpindi for burial. In the present case however, as is clear from the account, the body was taken to St. Aidans Church for Holy Mass and I am prepared to assume that those who attended that ceremony would have had little doubt that they had attended the funeral. In my view the tribunal were right to decide that the events in question were within the meaning of "funeral" in regulation 8(1)(c) and accordingly the adjudication officer's appeal does not succeed. I also take the view that the tribunal were right to exclude the last two items of the account because it seems to me that

those items, relating as they do to removal of the body to Ireland, are not within regulation 8(2) which defines the payable "essential expenses".

5. I was much helped with regard to the unlawful discrimination point by the extensive submissions made by both sides. In the event however it is not necessary for me to deal with it though, had it been necessary, Miss Lee and Mr Dabezies were agreed that it would be appropriate for a reference to be made to the European Court. I do not think that it is right to trouble them with a matter that is not now necessary to this decision.

(Signed) R A Sanders
Commissioner

Date: 3 February 1989