

CSB 1009/1982

JBM/CD

*Wright needs to go
to be considered by
of self claim*

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: South London - Battersea

Case No: 11/305

ORAL HEARING

1. My decision is that the decision of the South London Supplementary Benefit Appeal Tribunal dated 10 June 1982 is erroneous in point of law. Accordingly I set it aside. I remit the matter for decision to a differently constituted tribunal (Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by Rule 6(2) of S.I. 1982 No. 40).

2. This is an appeal by the claimant with the leave of the Commissioner to the Commissioner against the unanimous decision of the appeal tribunal dated 10 June 1982 upholding the benefit officer's decision issued on 19 April 1982. The claimant requested an oral hearing of the appeal to which request I acceded. Accordingly on 30 September 1983 I held an oral hearing. The claimant was represented by Mr J Wadham of Wandsworth Legal Resource Project and the supplementary benefit officer was represented by Mr E O F Stocker, to both of whom I am indebted.

3. The facts and history of the matter are dealt with in paragraphs 2-6 inclusive of the submission dated 8 February 1983 of the benefit officer now concerned on which the claimant has had the opportunity to comment. It would serve no useful purpose to set these matters out afresh here - save to state that there are two matters of appeal before me, first the claimant's request for a single payment to replace the money he had lost being £130.70 the money derived from a girocheque as a result of a claim made by the claimant on 11 March 1982 for a single payment for a cooker, a bed and bedding. The second claim before me is that made on 16 April 1982 being a single payment for curtaining, a sideboard, table and chairs, and an armchair.

4. The relevant statutory provisions and decisions of the Commissioner are referred to in paragraph 7 of the submission dated

8 February 1983. Nothing would be gained by my setting out these references afresh here. In addition however I would refer to regulations 12 and 30 of the Supplementary Benefit (Single Payments) Regulations 1981 and regulations 4, 8, 10 and 24 of the Supplementary Benefit (Urgent Cases) Regulations 1981. I would also refer to the decisions set out in Mr Wadham's letter of 21 September 1983, the references to which I do not propose to set out here.

Regulation 10(1)(a)(ii) and (iii) provides as follows:-

"10. - (1) this paragraph shall apply where either -

(a) the claimant has recently become the tenant or owner of an unfurnished or partly furnished home and one or more of the following applies:-

.. (ii) a member of the assessment unit is over pensionable age, aged 15 or less, pregnant or chronically sick or mentally or physically disabled, or

(iii) the claimant has been in receipt of an allowance for a continuous period of 6 months or more and has, in the opinion of a benefit officer, no immediate prospect of employment, ...

.. and in a case to which head (iii), or (iv) applies there is no suitable alternative furnished accommodation available in the area;"

(Regulation 10 has since been amended by regulation 7 of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1982.)

5. I turn first to the second point in issue that is the claim for curtaining, a sideboard, table and chairs and an armchair. I pause to observe that although the claimant in his original claim requested in addition a wardrobe and floor covering this was not the subject matter of the appeal before the appeal tribunal. In this regard the appeal tribunal states "the decision regarding the wardrobe and floor covering was accepted by the appellant". The claimant succeeds on this aspect of the case if he satisfies regulation 3 and regulation 10(1)(a)(ii) of the Single Payments Regulations set out above. The appeal tribunal had before them evidence on which they could have found that the claimant was "chronically sick". Before the appeal tribunal was the claimant's written evidence recorded on Form LT205 "I have thrombosis". Also before the appeal tribunal was a letter from the claimant's doctor which inter alia states "this condition is chronic". The tribunal did not make any finding on whether or not the claimant was chronically sick and it has not been conceded by the benefit officer that he was so. It has been conceded that the claimant satisfied the requirement of "need" under regulation 3 of the Single Payments Regulations. In applying regulation 10(1)(a)(iii) the tribunal erred as there was evidence before them, and it has now been conceded, that at the time he claimed these items, the claimant had been in receipt of an allowance

for a continuous period of 6 months or more. No finding has, however, been made as to the claimant's prospects of employment or the availability of suitable alternative accommodation. I therefore remit the claim to a differently constituted tribunal for them to decide the claimant's entitlement to a single payment for curtaining, a sideboard, table and chairs and an armchair under regulation 10 of the Single Payments Regulations 1981.

6. I turn now to the first matter which was before the appeal tribunal namely the claim made on 16 April 1982 for a single payment to replace the money lost. The tribunal's decision confirming the benefit officer's decision not to award a single payment for a cooker, a bed and bedding because such a payment was precluded by regulation 6(1)(a) of the Single Payments Regulations is erroneous in point of law in that the appeal tribunal failed to comply with rule 7(2)(b) of the Appeals Rules. The tribunal were faced with what was apparently a contradiction. A benefit officer had decided that the claimant was entitled to a single payment for a cooker, a bed and bedding. The claimant lost the money which had been awarded for those items and either claimed a single payment to replace the lost money or a single payment for the items and also claimed for other items of furniture and household equipment. The benefit officer's decision on these matters was that, while there had been no change in the claimant's circumstances in respect of which the claimant had been awarded a single payment for a cooker, a bed and bedding, a further single payment could not be made for the further items of furniture and household equipment requested because the conditions of such a payment were not satisfied. There was therefore an inconsistency on the face of the matter as, if there had been a change of circumstances, regulation 6(1)(a) would not have applied. If the claimant had received the single payment for some items of furniture and household equipment, and his circumstances had not changed then it is reasonable to assume that the claimant would expect that he qualified for the further items requested. The appeal tribunal in confirming both decisions of the benefit officer have confirmed contradictory decisions. It was incumbent upon the tribunal to make findings of fact in clarification of this contradiction and to state their reasons in such a way that the claimant looking at the decision could see why the tribunal had reached the determination, and how they had reconciled the apparent contradiction. This the appeal tribunal failed to do and erred in law. Regulation 6(1) of The Single Payments Regulations is as follows;

6. - (1) Notwithstanding any provision in these regulations, in particular regulation 30 -
 - (a) No single payment shall be made if a single payment has already been made in respect of the circumstances in question and those circumstances have not changed

The benefit officer decided that the claimant was not entitled to a single payment for a cooker, bed and bedding as a single payment had been made to meet the cost of these items on 11 March 1982, since

when the circumstances had not changed. The tribunal found that regulation 6(1)(a) had been correctly applied without giving reasons for that conclusion.

Before me Mr Wadham submitted that circumstances had changed between the payment of £130.70 for the cooker, bed and bedding and the claim on 16 April 1982. He said that the circumstances to be taken into account are those which led to the payment in the first place and nothing else. The circumstances are the state of affairs surrounding the claim. The claimant's resources were part of the circumstances and they had changed from the claimant's not having the resources to buy the items; being given a single payment; cashing the giro and having the resources to claim; and then losing the resources. He still did not have the items and did not have the resources to purchase them. He therefore still had a need but his resources had been through a process of change and his circumstances had therefore changed. He said that entitlement to a single payment is part of the circumstances. In addition Mr Wadham submitted that at the time of the first claim the claimant had not been receiving benefit for 6 months but by the time of the second claim he had. He referred to R(SB) 15/81 and pointed out that in this case there has been no allegation of a self-induced change.

Mr Stocker agreed that by the time of the second claim the claimant's rights had improved but doubted that that was sufficient. He said that if a regulation was more favourable than it had been before then that would be a change of circumstances. He accepted that where a claimant has no prospect of employment 6 months could make a difference - the provisions affecting his title change - so the expiry of 6 months could be a change of circumstances. The lapse of 6 months must affect him and his title to benefit for it to amount to a change of circumstances. If he is not affected by the passing of the 6 months then it is not a change of circumstances for the purposes of regulation 6(1)(a). If because of the passage of time he would get a higher rate that is a change of circumstances. A change in the way the law affects a claimant can be a change of circumstances. The appeal tribunal should have considered the provisions of regulation 10(1)(a)(iii) of the Single Payments Regulations applicable in the instant case and as set out above. At the date of claim in respect of the money lost the claimant had been in receipt of an allowance for a continuous period of 6 months. However there was no evidence before the appeal tribunal that the claimant had "no immediate prospects of employment" nor was there evidence that "there is no suitable alternative furnished accommodation available in the area". If on evidence before them the appeal tribunal to whom I remit this case are satisfied as to the above matters and make appropriate findings of fact on the evidence before them then in my judgement as a question of law the appeal tribunal to whom I remit this case could properly find that the claimant's circumstances have changed in accordance with regulation 6(1)(a). However if they do not so find complex questions in regard to the Urgent Cases Regulations then fall for the appeal tribunal's decision. I deal with these in paragraph 7 immediately below.

7. Regulation 8(1) of the Supplementary Benefit (Urgent Cases) Regulations 1981 applies:

"8. - (1) where any member of the assessment unit is affected by a disaster (for example a fire or a flood), whether or not it affects other persons, and in the period mentioned in paragraph (3) -

(a) because of the disaster he is in need of any item to which column 1 of Schedule 1 to these regulations applies; and

(b) the Single Payments Regulations do not apply to that item in those circumstances,

the claimant shall be entitled in respect of that item to an amount of supplementary benefit determined in accordance with regulation 4."

The period mentioned in paragraph (3) is fourteen days and bedding, a bed and a cooker are all items listed in column 1 of Schedule 1 to the Urgent Cases Regulations.

Regulation 24 of the same Regulations provides as follows:

"24. where a claimant either -

(a) claims an amount of supplementary benefit by way of a single payment or pension or allowance under any of the regulations in Part II or III of these regulations, but fails to satisfy the conditions for that amount; or

(b) claims to have an urgent need for which no provision is made in Part II or III of these regulations,

there shall be payable to the claimant to meet that urgent need an amount of supplementary benefit by way of a single payment determined in accordance with regulation 4 or, as the case may be, an amount of pension or allowance determined in accordance with regulation 5 if, in the opinion of a benefit officer, a payment of such amount 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."

Regulation 4 deals with single payments being made in urgent cases.

Regulation 10 is as follows:

10. - (1) Where a sum of money other than a sum to which paragraph (2) applies is lost, including any sum stolen or destroyed, but excluding any sum the loss of which is foreseeable, there shall be payable to the claimant an amount of pension or allowance determined in accordance with regulation 5, except that in aggregate the amount paid under this regulation

shall not exceed the amount of that sum.

(2) This regulation shall not apply to any instrument of payment on account of benefit under the Act, the Social Security Act 1975, the Child Benefit Act 1975, the Family Income Supplements Act 1970, or on account of any war disablement pension or war widow's pension as defined in the Duplication and Overpayment Regulations.

It will be open to the parties to argue before the tribunal to whom I refer the case whether or not regulation 10 applies.

8. Mr Stocker sought to persuade me that the appeal tribunal were not entitled to consider the Urgent Cases Regulations. I do not accept this submission. Whether or not the benefit officer has drawn the claimant's attention to the relevance of particular regulations, it is the duty of the appeal tribunal to consider and where necessary apply any relevant statutory provision which bears on the case before them. Consideration of the Urgent Cases Regulations (unless on the facts the appeal tribunal to whom I remit this case come to a conclusion as referred to in paragraph 6 of my decision) is not consideration of a fresh or different claim made by the claimant other than the one on which they are adjudicating, but is merely consideration of the claim before them in the light of relevant statutory provisions. The benefit officer cannot preclude consideration of particular regulations by failing to set them out in his submission. I turn therefore to regulation 8 of the Urgent Cases Regulations set out above. The examples of fire or flood are given as illustrative of the meaning of "disaster"; they are not the only categories that may fall into the meaning of "disaster". Whether or not a disaster has occurred is a question of fact to be determined if necessary by the tribunal to whom I remit the case who should follow R(SB) 1/83. The appeal tribunal would of course have to satisfy itself on evidence before it and on which they made findings of fact that in accordance with regulation 8(1)(a) the claimant had need of the items. Of necessity (should the appeal tribunal to whom I remit this case so decide) the appeal tribunal in considering the Urgent Cases Regulations would already have decided that regulation 8(1)(b) is satisfied as they would have decided that the Single Payment Regulations do not apply.

9. If the appeal tribunal to whom I remit this case are unable following their findings of fact on the evidence then before them to decide the matter as referred to in paragraph 6 of this decision and that appeal tribunal also decides on their findings of fact on the evidence then before them that regulation 8 set out above does not apply, then that appeal tribunal should consider application of regulation 24 set out above.

10. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by Rule 6(2) of S.I. 1982 No. 40 provides as follows:

"10(8) On an appeal from a decision of a tribunal the Commissioner may -

(a) hold that decision is erroneous in point of law and -

(i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given; or

(ii) refer the case to another tribunal with directions for its determination;

or (b) hold that the decision is not erroneous in point of law."

11. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision and I direct that the tribunal which re-hears the case de novo shall be supplied with a copy of this decision and shall give careful regard to the matters I have dealt with. They shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

12. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 30 January 1984

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C SBO File: 1099/82
Region: London South