

Single Payments - reg 10A(1) (& reg 10(1)(a))
- meaning of "tenant" - didn't mean person
had to be in actual occupation for the purposes of this reg.
- approves CSSB/486/1987 - disagrees with CSB/294/1987
TOC/2/LM Commissioner's File: CSB/1025/1987

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

Name: L. C.

Social Security Appeal Tribunal: Rochdale

Case No:

[ORAL HEARING]

1. Our decision is that the decision of the social security appeal tribunal dated 9 July 1987 is erroneous in law and we set it aside. The case should now go back to an adjudication officer for his decision with regard to entitlement to a single payment in respect of the items in question on the basis that, in accordance with this decision, the claimant satisfies the material condition in regulation 10A(1) of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] in that she had within the 28 days immediately preceding the date of her claim become the tenant of an unfurnished or partly furnished home.

2. This is one of two appeals (the other being CSB/898/87) turning on the meaning to be attached to the words, in regulation 10A(1) of the Single Payments Regulations, "... where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant ... of an unfurnished or partly furnished home ...". As we said in the other of the two appeals, in CSB/244/87 the Commissioner decided that, having regard to the definition of "tenant" in regulation 2(1) of the Single Payments Regulations, the words in question required that the claimant or his partner must actually have occupied the home within the 28 days in order to get the benefit of the provision. However the Commissioner in CSSB/486/87 saw the matter differently. In his view the element of occupation was not to be imported from the definition in regulation 2 because the context required otherwise. Because of this conflict the Chief Commissioner directed that both appeals be determined by a Tribunal of Commissioners. We held an oral hearing on 24 May 1988. The claimant did not attend but was represented by Mr D. Wayman of the Social Services Department, Oldham Metropolitan Borough. The adjudication officer was represented by Mr N. Storey of the Solicitor's Office, Department of Health and Social Security. We are grateful to both of them for their assistance.

3. The case arises in this way. On 6 November 1986 the claimant signed a tenancy agreement in respect of a local authority flat. She was then in receipt of a supplementary allowance and on 10 November 1986 she made a claim under the Single Payments Regulations for single payments in respect of various items including items of miscellaneous furniture and household equipment. She moved into her new accommodation on 14 November 1986 and then an adjudication officer decided that her claim did not succeed because in his view she did not satisfy the 28 days rule in regulation 10A(1) to which we have referred above. She appealed but the tribunal upheld the adjudication officer's decision in relation to the regulation 10A items.

4. Regulation 10A(1) provides, so far as relevant as follows -

"10A.-(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies) where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home, notwithstanding that he is not yet in actual occupation of that new home, and one or more of the following applies -

(a) [not relevant]

(b) [not relevant]

(c) [not relevant]

(d) [not relevant]

(e) [not relevant]"

The tribunal found as a fact that the claimant "completed the agreement for the tenancy" on 6 November 1986 but then went on to find that she did not become the tenant until 5 days later and that she accordingly had not become the tenant within the 28 days immediately preceding the date of the claim as required by regulation 10A(1). Now at the hearing it was explained, and we find as a fact, that when she signed the tenancy agreement the claimant was given the keys with the purpose of giving her at least the right of access to the flat. We note that the definition of "tenant" in regulation 2(1) of the Single Payments Regulations includes a person who occupies under a licence or other agreement giving the right to occupy. In our view on 6 November 1986 the claimant was at least a licensee in respect of the flat and as the tribunal did not consider that aspect their decision was, at least in that respect, erroneous in law. We should say that at the conclusion of the hearing we directed that Mr Wayman should obtain a copy of the local authority's standard form of tenancy agreement in case that should throw any further light on the position of the "tenant" at the time of signing the agreement and the handing over of the keys. We have however now seen a copy of the agreement but it does not seem to provide any assistance.

5. In our decision in the other of the two appeals - a copy of that decision is attached - we explained why we took the view that regulation 10A(1) did not require that the claimant should have been in actual occupation of the new home before making the claim. It is enough that the claimant had become the tenant - actual occupation is irrelevant. That course applies equally in this case where the claimant had, four or five days before making her claim, become the tenant of the flat within the meaning given to "tenant" by regulation 2(1) to which we have referred. She is accordingly entitled to succeed on that

point. But as the original adjudication officer did not decide whether her claim should otherwise succeed and what if any sum she was entitled to those matters should now go back to the adjudication officer for determination.

(Signed) D Reith
Commissioner

(Signed) A T Hoolahan
Commissioner

(Signed) R A Sanders
Commissioner

Date: 26 September 1988