

S.P. Clothing

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JSW/MD

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Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Mary Summers (Mrs)

Supplementary Benefit Appeal Tribunal: Barking

Case No: 07/189

1. My decision is that the decision of the Barking supplementary benefit appeal tribunal, dated 8 November 1983, is not erroneous in law.
2. This appeal by the claimant is brought with leave granted by me. On a date not specified, but earlier than 2 September 1983, the claimant requested a payment to purchase a pair of shoes for her youngest child Jason, then aged 3. She is divorced from her husband and was living with her four children aged 3, 6, 8 and 9 respectively in a local authority property not centrally heated. Her only income was child benefit and her ex-husband was not paying maintenance for the children. She has no capital. She was receiving a supplementary allowance which included a heating allowance of £3.80 weekly. On 2 September 1983 she was visited by an officer of the Department of Health and Social Security in response to her request for 2 beds, a mattress, an iron and shoes for her youngest child. A single payment was made for the first 4 items but not for the shoes. The supplementary benefit officer decided that regulation 27 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] as amended by SI 1982 No 907 and 914 and SI 1983 No 1000 ("the Single Payments Regulations") did not apply to the claimant's case for the reasons which he gave and that regulation 30 of those regulations did not apply because there was no evidence of any serious damage or serious risk to the child's health. In reaching that decision the benefit officer had regard to Decision R(SB)3/82. On the claimant's appeal the appeal tribunal confirmed the benefit officer's decision.
3. At the hearing of the appeal by the tribunal, the claimant's representative accepted that a payment would not be permissible under regulation 27 and, in my opinion, that acceptance was properly made. It is not contended on the appeal to the Commissioner that that regulation applies. The case is put under regulation 30 of the said regulations.
4. It was argued before the tribunal that Decision R(SB)5/81 should be applied to the case and not Decision R(SB)8/82 on which the presenting officer relied. It is contended that the tribunal misdirected itself in law in applying Decision R(SB)8/82. The fallacy of that submission lies in the practice of endeavouring to fit the facts of a case into those of a decision. It was open to the tribunal to follow which decision they considered appropriate and there is no justification for asserting that they applied R(SB)8/82 because it was a later decision. (See Decision R(I)12/75, paragraph 20). The reasoning of Decision R(SB)5/81 in regard to regulation 30 is contained in paragraph 9 in which it is stated that shoes that let in water seemed to present an obvious risk to health and that damp is an insidious cause of ill health. Those are observations of a general nature in support of a finding by the tribunal which considered and stated that the risk to health in the circumstances of that case was serious. In view of the benefit officer's submissions in that appeal (contained in paragraphs 3 and 4), the submissions were no doubt repeated when the next opportunity arose and were dealt with in Decision R(SB)3/82.

5. The contention put as a matter of law ignores that the issues postulated in regulation 30 are essentially questions of fact in each case - is there a risk of damage or a risk to health or safety, if so, is it serious and, if so, is a single payment the only means of preventing it? Evidence was put before the appeal tribunal to show that the claimant could not apply to the local authority for a clothing grant for Jason because he was not then old enough to go to school. A copy of a page from Black's Medical Dictionary (1981) was put in evidence in support of a contention that Jason, because of his age, was particularly at risk of hypothermia. The extract from the dictionary deals with hypothermia generally and contains a general observation that the condition may develop especially in old folk and in infants if they are exposed to abnormally low temperatures. The extract then deals in some detail with old people and with immersion in water, usually at sea, that form known as immersion hypothermia. Such evidence as there was of a risk of hypothermia could apply to any infant. The test under the Single Payments Regulations is subjective, i.e. is to be applied to the actual facts of the case. A letter from the claimant's doctor was also submitted in evidence which simply stated that the child needed suitable footwear for the coming months and that the matter was urgent because the weather was quite cold then (November).

The tribunal recorded in their findings that the claimant through her representative accepted that Jason's previous pair of shoes were discarded through normal wear and tear in the ordinary course of events. That was correct as far as it went because it ruled out regulation 27, which the claimant's representative had accepted did not apply. The tribunal were not required to set out that each of the examples in regulation 27 did not apply. They did not accept that a 3 year old toddler was at risk from hypothermia. That was a general finding in relation to what was a general, hypothetical submission made in regard to hypothermia. They found that the child was in good health, which was admitted, other than that at the time of the hearing he had coughs and colds. The doctor's letter fell far short of evidence that it was a reasonable probability that the child would suffer hypothermia and was not evidence that being without shoes could cause serious damage or serious risk to the health or safety of the child. In their reasons, the tribunal considered that there was no serious risk to health and safety (words in regulation 30) as far as Jason was concerned. Although that appears in the box for reasons it also contains a finding.

7. Presumably the grounds of appeal are those contained in the application for leave to appeal. Part 1 of Form AT31 (tear-off) is inappropriately worded. An appeal is made on "grounds": reasons are those in support of the grounds. Dealing with the grounds, I do not agree that the tribunal misdirected itself in law in applying Decision R(SB)8/82. On the facts proved the observation was superfluous. I do not agree that the tribunal failed to comply with Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [SI 1980 No 1605] as amended by SI 1982 No 40 ("the Appeals Rules"). As I stated in Decision R(SB)5/81, a tribunal are not expected to record a reasoned judgment as might be expected of a court. Both the finding and reasons of the tribunal were recorded adequately in the circumstances of this case and on the evidence before them. There is no substance in grounds (c) and (d).

8. This is another case in which I regret to state that the adjudication officer's submission (which is not even signed) is not helpful. It consists largely of a chronology of the progress of the case, a list of relevant statutory provisions and a reference to relevant Commissioners' decision. There follows a brief reference to regulation 30 of the Single Payments Regulations and a submission that the case should be remitted for rehearing by a differently constituted tribunal because of failure to make findings of material fact and to record satisfactory reasons in accordance with Rule 7(2)(b) of the Appeals Rules. The submission does not attempt to analyse the facts or to suggest what else it is submitted the tribunal should have found in addition to their findings. A submission is for the information of a claimant and should be informative and not merely a formal reiteration of what has gone before. A failure to make findings or to give reasons must be material to constitute an error of law. I am satisfied that there was no error of law in that respect in the decision of the tribunal.

9. I am, however, concerned in this case that there appears to be no relief for the claimant to obtain a pair of shoes for Jason, a modest enough requirement. It would seem that there was a need for the item and that in view of the coming winter the need was urgent: the doctor stated that it was urgent. The claimant's husband was not paying maintenance for the children and, even with the resources available as set out on form LT206, she must at times have been hard put to make ends meet. The claimant's representative, in the written submission to the appeal tribunal, gave cogent reasons why the claimant could not purchase shoes. It was stated that she could not get a clothing grant from the local authority, she had no capital, she was not able to obtain credit and could not afford to take on credit. The claimant's circumstances appear at first sight to have been exiguous. Indeed, the tribunal found that a single payment would have been the only means under regulation 30. Regulation 30 in Part VIII is headed "Discretionary payments" but, as I have remarked previously (Decision R(SB)9/82, paragraph 7), it affords no discretion at all. The regulation is restrictively drawn: the provisions as to serious damage or serious risk to health or safety, not emphasised in Decision R(SB)5/81 but emphasised in Decision R(SB)3/82, import a gravity requiring earnest consideration. The claimant's need appears to have been urgent and I have considered whether her circumstances and need should have been considered under the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No 1529]. Regulation 3 of those regulations provides for a single payment to be made in an urgent case but regulation 24, which is the only one which could assist the claimant, repeats the same restrictive conditions contained in regulation 30 of the Single Payments Regulations, "namely 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." Thus it gives no greater relief than is obtainable under regulation 30. If the system for single payments is to be retained, I submit for consideration that at least the elimination of the word "serious" from regulation 30 would afford relief. Often it is the less well-off members of the community who require such relief. I decline to distort the law because I think that this is a hard case in which the claimant should have been able to have obtained some assistance, of course after a full examination of the facts and circumstances.

10. The claimant's appeal is dismissed.

(Signed) J S Watson
Commissioner
Date 22 May 1985