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Reg 21. S.R.

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THE DEPARTMENT

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Commissioner's File: CSB/1049/1984  
C A O File: AO 9184/84  
Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the social security appeal tribunal did not in its decision given on 13 July 1984 err in law in confirming the adjudication officer's refusal of a single payment towards the cost of the redecoration of the claimant's bungalow. I accordingly dismiss the appeal. At the oral hearing the claimant was represented by Miss S. Robertson of the Disability Alliance Educational and Research Association and the adjudication officer was represented by Mrs. A.H. Stockton of the Solicitors Office DHSS; I am grateful to both of them for their arguments.
2. The claimant and his wife live in a freehold bungalow which was bought in 1980. The proceedings have been upon the footing that it was the claimant who was the owner although it may be that the bungalow was jointly owned; no point has been taken that this has any significance and I am content to treat the appeal on the basis adopted by the parties. The claimant is in receipt of a supplementary allowance which includes provision for his housing requirements, including £1.70 per week in respect of "essential routine minor maintenance and insurance of the structure of the home". On 11 January 1984 the claimant claimed a single payment to cover the cost of external re-decoration of his home. The request was refused under regulation 17 of the Single Payments Regulations (relating to the cost of repairs to and any consequential re-decoration of the home) and there is no appeal in respect of that refusal. On 1 May 1984 the claimant made a further request for a single payment in respect of the cost of external re-decoration of his home, this time under regulation 21 of the Single Payments Regulations.
3. The appeal concerns regulation 21 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No. 1528] as that regulation stood before a new regulation 21 was substituted by regulation 6(7) of the Supplementary Benefit (Miscellaneous Amendment) Regulations 1984 [SI 1984 No. 938] as from 24 November 1984.
4. Regulation 21 contains references to other regulations which have since been replaced on consolidation and those references are to be construed accordingly as references to the replacement regulations - section 17(2)(a) and section 23(1) Interpretation Act 1978. I accordingly set out regulation 21 in its unamended form but substituting the replacement regulation numbers referred to. It runs as follows:-

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"21.-(1) Where in the determination of the claimant's housing requirements no amount is applicable under regulation [16] or [18] 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".

5. The Requirements Regulations referred to are (now) the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399]. Regulation 16(1) of those Regulations provides for an additional requirement for an owner-occupier and certain other persons of a weekly amount of (now) £1.80 (which may be increased in certain circumstances) for "maintenance and insurance" which means for the purposes of that regulation "essential routine minor maintenance and insurance of the structure of the home" -

6. Regulation 18 was at the relevant time in the following terms so far as material -

"18.-(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:

.....

(e) service charges (for example for maintenance, insurance, management and the cleaning of common areas) .....

.....

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

In broad outline the regulation then provided for the calculation of amounts applicable to be calculated on a weekly basis. The reference to "this Part" is to Part IV of the Requirements Regulations, headed "Housing Requirements".

7. Regulation 21 of the Single Payments Regulations only applies if no amount is applicable under regulation 16 and 18 of the Requirements Regulations "solely because charges for that item occur only irregularly". If regulations 16 and 18 do not apply for some other reason then regulation 21 of the Single Payments Regulations cannot apply either. In the present case on its facts the cost of the external redecoration of the claimant's home clearly cannot fall within regulation 16 because it is not "minor" apart from any other consideration - see decision CSB 914/1984. The issue before me turns therefore on whether this claimant's expenditure on external redecoration of his home falls outside regulation 18(1)(g) of the Requirements Regulations for any reason other than the irregularity of the "charge" for it.

8. The learned Commissioner in decision CSB 240/1984 held that the cost of external decorations to the home did not fall within regulation 18(1)(g). His reasoning was expressly approved by another Commissioner in the other case to which I have just referred. In CSB 240/1984 at paragraph 6 the Commissioner said

this -

"It appears to me that the common denominator of the housing requirements in Part IV of the Requirements Regulation 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".

In paragraph 7 of his decision the Commissioner referred to other Regulations and also said that there was in his view nothing in Part IV to show that external redecoration was analogous to the housing requirements in that Part. He found that external redecoration was sui generis and it did not in his judgment come within the wording of regulation 21. It does not however clearly appear to me to what extent in reaching his conclusion the learned Commissioner in fact made use of the genus which he had found.

9. Miss Robertson has pointed out how important this case is for thousands of owner-occupiers, and that in respect of the weekly amount payable under regulation 16 of the Requirements Regulations they do not have to prove expenditure.

10. Miss Robertson submitted a critical analysis in writing of the genus identified by the Commissioner in Decision CSB/240/1984 and I am myself not with respect able to agree with that identification.

11. It appears to me to be clear that "outgoings" in regulation 18(1)(g) bears the meaning of "outgoing in respect of the home", the phrase used in the opening part of regulation 18(1) of which subparagraph (g) forms part. What the whole expression "outgoings analogous to those mentioned in this Part" means in its context is I consider a matter of law, to be determined by applying the judicial process of statutory interpretation to the relevant legislative provisions - see per Lord Scarman in Lees v. Secretary of State for social services [1985] 2 WLR 805 at 806. It is equally in my view a matter of law whether there is a common characteristic of the outgoings in Part IV which other outgoings, if they are to be analogous must also exhibit.

12. Part IV of the Requirements Regulations identifies "the items" "to which housing requirements relate" - regulation 14(1). The function of Part IV is to identify (within its ambit) the particular weekly amounts which are to come into the requirements part of the supplementary benefit calculation and against which the resources are set, to determine how much, if any, supplementary benefit is payable weekly. Further, regulation 18(1)(g) is concerned not with "items" but with "outgoings" which are "mentioned" in Part IV. In my judgment Mrs. Stockton was right in submitting that Part IV is broadly concerned with periodic and reasonably frequent expenditure (I add, actual or assumed) in respect of the home which is on or may reasonably be reduced to a weekly basis. It follows in my view that an analogy cannot be established within regulation 18(1)(g) unless the outgoing in question is in respect of the home and is one on, or which may reasonably be reduced to, a weekly basis. This is rather a sine qua non, (an essential feature) rather than a genus; the outgoing must still be analogous to one or other outgoing "mentioned in Part IV since the analogy has to be with "those [outgoings] mentioned in this Part" and in my view this imports the requirement of some comparison going beyond the mere identification of a common characteristic.

13. My view is, I consider, supported by the fact that the calculations for identifying or for reducing to a weekly basis outgoings within regulation 18(1)(g)

are on the same general basis as for other outgoings within regulation 18(1)(a) - (f) -see regulation 18(2) and (5).

14. I am, I consider, further supported in my conclusion by regulation 21 of the Single Payments Regulations, which appears to identify as a requirement of outgoings within regulation 18(1) (to which in toto it refers) the quality of recurring regularly. Further, the common feature of the two examples given in regulation 21 is the absence of the element of recurrence or sensible reducibility to a calculation on a weekly basis.

15. As to "service charges" referred to in regulation 18(1)(e) and "charges under a lease ..." referred to in regulation 21, there is the common element of an outgoing payable pursuant to a legal obligation (to the landlord, under the lease). In my view the argument that "if as to external redecoration leaseholders can come within regulation 21 why not freeholders", involves too simply a comparison; leaseholders falling within regulation 18(1)(e) or regulation 21 have a legal obligation to their landlords in respect of the outgoings in question and could in an ordinary case if they did not pay be subject to forfeiture or distress levied by their landlords. Owner-occupiers have no such obligation or risk.

16. It is clear that some certainly of the outgoings mentioned in Part IV are identified by the legislature with exact and restricted precision - thus, under regulation 16, essential routine minor maintenance and insurance of the structure of the home; and under regulation 17, interest on loans for major repairs necessary to maintain the fabric of the home and any of a list of identified improvements undertaken with a view to improving the fitness for occupation of the home. The precision of this identification in my view both points away from a genus of the nature of that identified in CSB/240/1984 and makes it inherently unlikely that an analogy-longstop-or-sweeping-up provision (which in my view regulation 18(1)(g) is) in a list of miscellaneous outgoings was intended to effect so significant an extension of the requirements items in fact identified as in substance to quality the restrictions therein. In my view, no such effect can properly be attributed to regulation 18(1)(g).

17. While the meaning of or essential characteristic implicit in regulation 18(1)(g) in its context is a matter of law it was for the tribunal to apply that regulation to the facts. I am only entitled to intervene if the tribunal has erred in law in so doing, whether by misconstruction or misapplication.

18. The tribunal made the following findings:

"The bungalow was inadequately decorated externally before occupation by the appellant in October 1980 and now required redecoration.

The tribunal made no error of law in finding that the external decoration of the bungalow did not fall within regulation 16 because it was not "routine and minor". In relation to regulation 18(1)(g) the tribunal found as follows:-

"On consideration of Regulation 18(1)(g) the Tribunal found no outgoings in any of the Regulations 14 to 23 (Part IV) to which external redecoration by the owner-occupier was analogous."

The tribunal rightly found that no other of the subparagraphs in regulation 18(1) were applicable.

19. In my judgment the tribunal's approach was correct and its findings of fact are such as to support its decision. It is no challenge to the correctness of the decision

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that the tribunal did not make findings relating to the sine qua non point to which I have referred. Since regulation 16 and 18 did not apply for reasons other than irregularity of the 'charges', it follows that regulation 21 of the Single Payments Regulations does not apply. There is no error of law made by the tribunal and I accordingly dismiss the appeal.

(Signed) Leonard Bromley  
Chief Commissioner

Date: 4th July 85

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(Signed) Leonard Bromley  
Chief Commissioner

Date: 4th July 85