

Roger copy for you

1050/83

DGR/AM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

ORAL HEARING

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal (now the social security appeal tribunal) given on 23 August 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with my leave, against the decision of the supplementary benefit appeal tribunal of 23 August 1983. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was present but unrepresented, and the adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office of the Department of Health and Social Security.

3. The facts of this case are simple and straightforward. On 24 November 1982 the claimant, who was in receipt of supplementary benefit, claimed a single payment for certain articles of household furniture together with various other items no longer material to the present appeal. On 24 January 1983 the benefit officer (now the adjudication officer) decided that the claimant satisfied the relevant statutory provisions in respect of his claims for a cooker, a bed, a wardrobe and a table and chairs. In due course he was sent a girocheque made payable to the "The Longview Discount Store", from which company the claimant had previously obtained a quotation and indeed a bed in anticipation of payment. The claimant duly presented the cheque to the store in question, but unfortunately he never received the outstanding items. Apparently, at that time the proprietor had been taken into custody and was no longer trading.

4. Not surprisingly, the claimant sought another girocheque, but was met with the rejoinder that he had already received payment once and was caught by regulation 6(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 /S.I. No 1528/. The regulation read at the relevant time 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."

As from 15 August 1983 the final words after "in respect of" were changed by regulation 7(3) of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1983 to "the item in question and the circumstances surrounding that payment have not changed".

5. In due course, the claimant appealed to the tribunal who in the event upheld the benefit officer.

6. Mrs Stockton supported the claimant in his appeal, arguing that the claimant had not received a single payment. The girocheque made out in favour of the Longview Discount Store did not constitute a single payment, so as to bring the claimant within regulation 6(1)(a). She pointed out that the only way in which a valid payment could be made under the relevant regulations was

(i) by means of a voucher redeemable by a named supplier in accordance with regulation 12 of the Supplementary Benefit (Claims and Payments) Regulations 1981 /S.I. 1981 No 1525/ or

(ii) by means of a direct payment to the supplier, after he had supplied the goods, pursuant to regulation 25 of the aforesaid regulations or

(iii) by a direct payment to the claimant himself.

Mrs Stockton argued that the Secretary of State had adopted none of these alternative procedures and therefore he had not made a valid payment. Accordingly the claimant was not caught by regulation 6(1)(a).

7. Unfortunately for the claimant, there are two difficulties confronting Mrs Stockton's submission. There is a majority decision of a Tribunal of Commissioners on Commissioner's file CSB/475/1983 to the effect that the question whether supplementary benefit has or has not been paid is not "a question relating to supplementary benefit" in accordance with section 2(1) of the Supplementary Benefits Act 1976 as amended, and this decision is binding on me. According to that decision a claimant's remedy, if he has not been properly paid, is to sue the Secretary of State in the civil courts. The second difficulty is that, although regulation 6(1)(a) speaks of

a single payment not being made if one has already been made, in my judgment, the word "made" is in that context equivalent to "awarded". It does not mean "paid". It is clear from the language used in the Single Payments Regulations (see, for example, regulation 3(2)) that wherever there is a reference to a payment being made, it must be construed as a payment being awarded. Moreover, section 3(1) of the Supplementary Benefits Act 1976 itself speaks of supplementary benefit being "payable" by way of a single payment. Matters concerned with the payment as distinct from the award of benefit are dealt with in the Supplementary Benefit (Claims and Payments) Regulation 1981. Although it would have been more helpful if regulation 6(1)(a) had read

"There shall be no entitlement to a single payment if a single payment has already been awarded ..."

nevertheless I think that the language actually used amounts to the same thing. In the present case, of course, the claimant has been awarded a single payment and it necessarily follows that, regardless of whether or not the award has been implemented, the claimant is not entitled to another single payment in respect of the same items.

8. It follows from what has been said above that the tribunal did not err in law in holding that the claimant was caught by regulation 6(1)(a). However, they did err in another respect. Having reached the conclusion that the claimant could not succeed under the Single Payments Regulations, they should have gone on to consider the claimant's position under the Supplementary Benefit (Urgent Cases) Regulations 1981 [S.I. 1981 No 1529]. They should have had regard to regulations 3, 4 and 24 and should have made appropriate findings of fact and given appropriate reasons for their decision. Their failure to do this renders their decision erroneous in point of law, and I must accordingly set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

9. Finally before leaving this case, I think that it is appropriate that I should make some general remarks. In my view the Secretary of State has behaved in an unsatisfactory manner with regard to public funds by paying a supplier before the latter had actually supplied the goods and by making the claimant suffer for the Secretary of State's own shortcomings. Although questions of payment are no concern of mine, I would have thought that the proper course would have been for the Secretary of State to have ensured immediately that the claimant was not the sufferer by issuing another girocheque, this time made out in favour of the claimant. By the adoption of this course a great deal of further public money would have been saved by avoiding the need for the claimant's appealing to the tribunal and then again to the Commissioner. It would seem to me monstrous, in the event that the tribunal do not award a satisfactory payment under the Urgent Cases Regulations, that the claimant should be required to obtain legal aid, with the further public expense involved, in order to prosecute his claim in the civil courts.

10. My decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 4 January 1985

Commissioner's File: C.S.B. 1050/1983
CSBO File: 1241/83
Region: North Western