

Removal expenses - Reg 13(1)(c) - essential element is the causal link in (c).

MHJ/4/ES

Commissioner's File: CSB/1061/1986

C A O File: AO 2925/SB/86

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Warrington

Case No: 16/06

1. My decision is that the decision of the social security appeal tribunal dated 22 April 1986 is erroneous in point of law and accordingly I set it aside. It is expedient in this case that I should give the decision which the tribunal should have given, namely that the claimant is entitled to a single payment of £350 in respect of removal expenses.

2. The claimant appeals to the Commissioner, with leave of the chairman of the appeal tribunal, against the unanimous decision of the Warrington social security appeal tribunal, dated 22 April 1986, dismissing her appeal against the decision of the adjudication officer, issued on 18 October 1985, refusing "a single payment for removal expenses from Glasgow to Runcorn".

3. On 15 August 1985 the claimant, who is aged about 35, is separated from her husband and has in her care her three children, W, I and G, aged about 13, 8 and 4 respectively, sought a single payment for the cost of removing from Glasgow to Runcorn various items of furniture and household effects which she had left in storage when, she said, she had been obliged to leave Glasgow because of harrassment and threats of violence from her husband.

4. Payment of removal expenses is governed by regulation 13 of the Supplementary Benefit (Single Payments) Regulations 1981, which, in so far as it is relevant in the present case, provides that -

"13. (1) A single payment shall be made ... in respect of the cost of removal within the United Kingdom of the household goods and personal effects of any member of the same household as the claimant where ... any other member of the household is moving to a new address and

.....

(c) the change of home is in consequence of the death of, or divorce from the claimant's partner or any other breakdown of the marriage or relationship;

.....

(3) In pursuance of a claim for a single payment under this regulation, a claimant shall furnish 2 competitive estimates of the cost of the removal ... "

5. The claimant duly furnished estimates in the sums of £438 and £350 in accordance with paragraph (3) of the regulation, but the adjudication officer decided that, as the claimant had had a tenancy in Glasgow after the breakdown of her marriage, her subsequent abandonment of that tenancy and move to Runcorn was not a "change of home" which was "in consequence of ... [the] breakdown of the marriage", and he accordingly disallowed her claim under that head and went on to find that she was not entitled to a single payment pursuant to regulation 30. The adjudication officer's decision was upheld on appeal to the tribunal.

6. The appeal tribunal accepted in essence the claimant's account of the violence she received from her husband, when he was both drunk and sober and that, after leaving him in April 1984, she had stayed at a women's refuge until she was granted a tenancy in September 1984, which she left in May 1985 after her husband had told her that he would not let her have the children, whether or not she got a court order for their custody. The tribunal gave as their reason for dismissing the claimant's appeal that -

"... she left that address [in May 1985] as a result of seizing the children, believing husband would not give them up ..."

Thus the move to Runcorn was not in consequence of a breakdown of marriage, which had broken down 13 months earlier ... "

7. In my view the word "thus" has seldom been used more inappropriately. It implies that logical reasoning has led to an inexorable conclusion but, in my judgment, while it was open to the tribunal to reject the claimant's account of what had taken place - the assessment of evidence plainly being something entirely within the province of the tribunal - , having substantially accepted her version of events - and I am bound to say that there seems to be no reason why they should have done otherwise - , it is hard to see how the claimant's move from Glasgow to Runcorn could reasonably be held to have been other than a consequence of the breakdown of her marriage. As the Commissioner held in decision on file CSB/1016/1984 the essential element of sub-paragraph (c) of the regulation is the "causal link" and, in the instant case, on the basis of the facts as found by the tribunal, I have no hesitation in finding that causal link established.

8. In the circumstances I do not need to consider the possible application of regulation 30 although, if I were to do so, I would question the validity of the reason given by the tribunal for rejecting the claim under that head, namely that "there was no evidence ... of any physical assault upon the claimant once the marriage had broken down, only verbal threats", which seems to me to indicate a regrettable lack of understanding of the effect "only verbal threats" may have, and further underlines the tribunal's failure to approach this matter in a realistic manner.

9. I have been greatly assisted by the careful submission, dated 7 October 1986, from the adjudication officer now concerned with the case. I agree with his conclusion that the tribunal erred in law, but I do not consider it necessary to remit this case for rehearing which, in my judgment, on the evidence as contained in the papers, could only result in a properly directed tribunal allowing the claimant's appeal. As I have stated, it is therefore expedient that I should give the decision which the tribunal should have given.

10. The claimant's appeal is accordingly allowed and my decision is as set out in paragraph 1.

(Signed) M H Johnson
Commissioner

Date: 31 March 1987