

S.P. Furniture

CSB/1082/1984

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

35

VGHH/SH

SUPPLEMENTARY BENEFITS ACT 1976

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

Social Security Appeal Tribunal:

Case No: 4/3

1. This appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 11 July 1984 is erroneous in point of law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. During a visit on 15 March 1984, the claimant claimed a single payment for a three-piece suite. On 15 March 1984 a supplementary benefit (now adjudication) officer decided that the claimant was not entitled to such a payment. The claimant appealed against this decision and the benefit officer submitted, in his written submission on the appeal, that a single payment could not be made because the claimant did not satisfy the conditions of regulation 3(2) or regulation 10 of the Single Payments Regulations.

3. The tribunal heard the appeal on 11 July 1984. The claimant appeared and gave evidence that the suite was no longer serviceable. The arms on the chairs were worn and the foam was exposed - it was a fire risk. The settee springs were weak. He would have replaced it if he had been in work. He had had it for 12 years and it was not worthwhile to repair it. The visiting officer did not appear to inspect. The adjudication officer stated that the visiting officer thought the suite serviceable.

4. The tribunal found, in relation to the suite (which is the only point under appeal) the following facts:

"At the date of claim the suite was serviceable."

Their decision was:

"No single payment is payable for 3 piece suite."

Their recorded reasons for this decision were:

"The assessment unit already possesses a 3 piece suite.

Single Payments Regulation 3(2)(b)."

5. It was never in dispute that the claimant possessed a three-piece suite. The issue was whether that suite was serviceable. If it was defective or unsafe and the cost of repair to which paragraph (4) of regulation 10 would otherwise apply would exceed the cost of the replacement or it would be uneconomic having regard to the future viability of the item, then the claimant would be entitled to a single payment for those items falling within regulation 9, that is to say sufficient easy chairs for all members of the assessment unit: see paragraph (a). The decision of the tribunal was erroneous in point of law because it is not possible to tell why it was that the claimant's evidence was rejected. It is not referred to at all in the findings of fact or the reasons for decision. There was no evidence the other way before the tribunal. What the presenting officer thinks that the visiting officer thought is not evidence. The visiting officer did not appear before the tribunal. No statement of his has been produced. I am in agreement with the adjudication officer now concerned that, for these reasons, and for the reasons given by that adjudication officer in his written submission dated 9 November 1984, the decision of the tribunal was erroneous in point of law.

6. There are not sufficient findings of fact for me to give the decision that the tribunal should have given. The case must accordingly be referred to a social security appeal tribunal which should, in accordance with the usual practice, be entirely differently constituted. That tribunal should consider and make findings of fact, based on proper evidence and indicating what this evidence is and, in the case of conflict, which evidence is preferred and why, on the question whether the conditions of regulation 10(2)(b)(i) were satisfied, with appropriate reasons. If they find that those conditions were satisfied they should then go on to consider what single payments for items can be awarded. The claimant claimed a single payment for a three-piece suite. "Easy chairs" fall within paragraph (a) of regulation 9. A settee is not an easy chair. Accordingly an award cannot be made for a settee, since this is a seat for two or more persons, while an easy chair is a seat for one person only. The expressions "Easy chair", "chair" and "settee" are so defined in the Shorter Oxford Dictionary and there is no reason to attribute any special or artificial meaning to these expressions. It will be necessary for the tribunal, if they make an award, to make findings as to how many easy chairs fall within paragraph (a) and to award accordingly.

7. The record of the tribunal's decision should state sufficient findings of fact and give sufficient reasons to comply with the requirements of regulation 19(2)(b) of the Adjudication Regulations and should cover all material points raised by or on behalf of the claimant and the adjudication officer.

8. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 24 January 1985

Commissioner's File: CSB/1082/1984
C A O File: AO 9211/84
Region: North Western