

Funeral expenses
meaning of "child"

SUPPLEMENTARY BENEFITS ACT 1976

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

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 28 August 1984 which varied a decision of the adjudication officer issued on 2 July 1984.

2. The central issue in the appeal involves a point of construction which has not hitherto, so far as I am aware, presented any difficulties to the adjudicating authorities. Regulation 8 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] deals with funeral expenses. Paragraph (1) thereof (as amended) provides as follows:

"(1) Where any member of the assessment unit takes responsibility for the cost of a funeral or cremation (in this regulation referred to as the 'responsible member') and -

- (a) the deceased was -
 - (i) a close relative of the responsible member, or
 - (ii) a member of the same household as the responsible member;
 - (iii) related to the responsible member but, at the time of his death, had had no recent contact with any person more closely related to him than the responsible member;
- (b) there is no other person, being a close relative of the deceased, who could more reasonably, having regard to how closely they were related and the financial circumstances of that person, be expected to take responsibility; and
- (c) the accommodation where the deceased normally lived prior to his death ('the deceased's home') was in the United Kingdom and he died either -
 - (i) in the United Kingdom, or

- (ii) during a temporary absence from the United Kingdom, and the funeral or cremation takes place in the United Kingdom, the claimant shall be entitled to a single payment of an amount sufficient to meet any essential expenses of the funeral or cremation which are specified in paragraph (2) and which fall to be met by the responsible member."

3. On 24 May 1984 the claimant made a claim for a single payment in respect of the expenses of the funeral of his son Michael, who had died at the age of 24. The claimant was a married man living with his wife and one dependent daughter. Apart from Michael and the dependent daughter, there were two non-dependent sons, each of whom was in receipt of supplementary benefit, and two daughters, each of whom was married to a husband in full-time employment. Michael had been living with a girl-friend who was herself in receipt of supplementary benefit.

4. The claimant elected to take responsibility for the expenses of Michael's funeral. The total account came to £490.94. The local adjudication officer decided that £351.40 of that could properly be admitted. Pursuant to regulation 8(3)(b) he then deducted the death grant of £30.00. That left £321.40. He then applied regulation 8(3)(f) (which I need not set out here) and decided that each of the claimant's two daughters should contribute one-sixth towards the expenses. That contribution came to £107.13. That left £214.27, which he awarded to the claimant by way of a single payment. The claimant appealed to the appeal tribunal. His written grounds of appeal appear to have been confined to the adjudication officer's initial deduction - ie the reduction of the undertaker's account from £490.94 to £351.40. At the hearing before the appeal tribunal a number of other issues were canvassed. The adjudication officer appears to have submitted that it would have been more reasonable for Michael's girl-friend to take responsibility for the funeral expenses. Presumably the adjudication officer had in mind regulation 8(1)(a)(ii) - but since, as I have already said, the girl-friend was herself in receipt of supplementary benefit, it is difficult to see what practical end would have been served by treating her as the "responsible member" instead of the claimant. On behalf of the claimant it was submitted that it was unreasonable to attribute to either daughter any part of the funeral expenses. The husband of one daughter was a gardener. The husband of the other was a labourer. Neither was in a position to spare money for Michael's funeral expenses.

5. But the appeal tribunal made no findings in respect of any of the aforesaid contentions. It stripped the claimant of the whole of the adjudication officer's award. It did so upon the surprising ground that the claimant was not a "close relative" of his son Michael. Although the relevant form AT3 sets out no reasons in support of that conclusion, the line of reasoning appears to have been as follows:

- (a) In regulation 2(1) of the Single Payments Regulations "close relative" is defined as "a partner, spouse, parent, child, step-parent, step-child, brother or sister."
(My emphasis)
- (b) "Child" is not defined in the Single Payments Regulations. It is, however, defined in section 34(1) of the Supplementary Benefits Act 1976, where it "means a person under the age of 16".
- (c) Section 11 of the Interpretation Act 1978 provides as follows:

"Where an Act confers power to make subordinate legislation,

expressions used in that legislation have, unless the contrary intention appears, the meaning which they bear in the Act."

- (d) The Single Payments Regulations were made pursuant to powers conferred by the Supplementary Benefits Act 1976.
- (e) Accordingly, "child" where used in those regulations means a person under the age of 16.
- (f) Michael was 24 when he died.
- (g) Michael, therefore, was not a "child" of the claimant and cannot, accordingly, be treated as a "close relative" of the claimant.

6. I accept, with some confidence, the submission of the adjudication officer now concerned that the aforesaid line of reasoning is flawed. Section 11 of the Interpretation Act 1978 contains the words "unless the contrary intention appears". If ever a contrary intention appeared, it is in regulation 2(1) of the Single Payments Regulations. I am quite satisfied that in the definition of "close relative" the draftsman used the word "child" as an abbreviation for "son and daughter". This is a perfectly common use of the word "child" in the English language. A recent edition of "The Times" newspaper reprinted the message sent by the Prince of Wales to the Lord Mayor of London upon the death of Queen Victoria:

"My beloved mother, the Queen, has just passed away surrounded by her children and grandchildren."

No one reading that message could conceivably have thought that the Prince of Wales was using the word "children" to indicate young boys and girls. Moreover, since the definition of "close relative" also includes the word "parent", the construction of "child" adopted by the appeal tribunal leads to the ludicrous conclusion that A can be a close relative of B at a time when B is not a close relative of A. I find as a matter of law that in the definition of "close relative" in the Single Payments Regulations "child" means "son or daughter". The appeal tribunal fell into error of law in holding otherwise.

7. The manner in which the appeal tribunal disposed of the claimant's appeal leaves, of course, a number of other matters to be decided by the tribunal which rehears this matter. The initial deductions made by the local adjudication officer will have to be considered in the light of regulation 8 (2)(e) - "undertaker's fees and gratuities, chaplain's, organist's and cemetery or crematorium fees for a simple funeral or cremation". (My emphasis - and see paragraph 11 of Decison R(SB)46/84)

The question of what, if any, contribution should be assumed in respect of the daughters - or either of them - must be considered in the light of regulation 8(3)(f). The tribunal may also wish to consider whether, in the light of regulation 8(1)(a)(ii) and (b), Michael's girl-friend ought to be regarded as the "responsible member". That is, of course, a matter of fact for the tribunal; although I myself should have thought that - even in this age - a young man's father could more reasonably be expected to take responsibility for funeral expenses than could a girl-friend with whom that young man was living. I dare say, however, that the duration and stability of the "living together" relationship may be material.

8. My decision is as follows:

- (1) The claimant's appeal is allowed.
- (2) The decision of the appeal tribunal dated 28 August 1984 is erroneous in law and is aside.
- (3) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed):

J. Mitchell
Commissioner

Dated: 30 April 1985