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C S B 380/1982

JNBP/EA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

*Jurisdiction of tribunal*

Name: *Mr.*

*to award A/R.*

Supplementary Benefit Appeal Tribunal: London South

Case No: 11/371

1. My decision is that the decision of the London South Supplementary Benefit Appeal Tribunal ("the tribunal") dated 21 September 1982 (a) inasmuch as it confirmed the decision of the benefit officer issued on 25 August 1982 refusing a single payment for repairs to the claimant's front door is not erroneous in law and therefore stands and (b) inasmuch as it awarded an additional weekly allowance was invalid for want of jurisdiction and is set aside.

2. This is an appeal brought by the benefit officer with my leave against the above-mentioned decision of the tribunal which was given on the claimant's appeal from the above mentioned decision of the benefit officer. The tribunal's decision in effect confirmed the benefit officer's refusal of a single payment for repairs to the claimant's front door but awarded a weekly addition of £1.65 to the claimant's supplementary allowance.

3. On 5 August 1982 the benefit officer received a letter from the claimant asking for a single payment for the replacement of some glass in her front door which had been broken during her absence. On 24 August 1982, before the claim of 5 August 1982 had been determined, a letter purporting to be a letter of appeal was received from the claimant. At that stage the "letter of appeal" was clearly a nullity. On 28 August 1982 the benefit officer issued a decision refusing the single payment. The letter received on 24 August 1982 was, however, treated as an appeal from the decision issued on 25 August 1982 and the case was submitted to the tribunal. The claimant was present at the appeal to the tribunal and should have been aware of what had happened from the statement of facts made to the tribunal on form LT205. She did not at any stage register any objection to the procedure that had been adopted and the benefit officer now concerned with the case submits that by endorsing her purported appeal received on 24 August 1982 as a valid appeal against the decision of 25 August 1982 she validated the proceedings before the tribunal. I agree that in the circumstances it can be accepted that the tribunal had jurisdiction to determine the appeal.

4. The benefit officer now concerned goes on to submit that although the tribunal had jurisdiction to determine the appeal from the benefit officer's decision refusing a single payment they had no jurisdiction to consider whether the claimant was entitled to an additional weekly allowance in respect of repairs and maintenance. The question of such an additional allowance had never been adjudicated on by the benefit officer, who had considered only the claim for a single payment. As the benefit officer points out, there is no provision in the Supplementary Benefits Act 1976 or the regulations made thereunder corresponding to section 102(1) of the Social Security Act 1975 which enables a determining authority to adjudicate on a question first arising on appeal. The submission that the tribunal had no jurisdiction is supported by paragraph 9 of Commissioners Decision R(S.B.) 1/82 and accords with what is said in Decision R(S.B.) 2/83. However, I think it is most clearly supported by the first 2 sentences of paragraph 8 of Decision R(S.B.) 9/81. I accept the decision and conclude that the tribunal had no jurisdiction to award an additional weekly allowance.

5. In the circumstances, it is unnecessary for me to deal with the benefit officer's further submission that, if the tribunal had had jurisdiction to consider the question of an additional weekly allowance, the decision they gave was wrong in law. I need only say that I agree with the benefit officer's statement of the law.

6. As mentioned above, the tribunal's decision also confirmed the benefit officer's decision refusing a single payment. In their reasons for decision the tribunal said that they accepted that the claimant's tenancy agreement with Wandsworth Council required her to be responsible for the repair of her door and also accepted that a single payment was specifically excluded, if for repairs to council property, by the Supplementary Benefit Regulations. The attention of the tribunal had been directed, in the observations to the tribunal by the benefit officer, to regulation 6(2)(m) of the Supplementary Benefit (Single Payments) Regulations 1981 and it is clear that it was to that regulation that the tribunal intended to refer. The regulation provides that no single payment can be made in respect of any repair to the property of any body mentioned in section 28(4) of the Housing Act 1980 or section 10(2) of the Tenants' Rights Etc. (Scotland) Act 1980. Wandsworth Council is a body of the kind mentioned in the said section 28(4).

There is nothing whatever in the evidence to suggest that the door could possibly be regarded as anything other than the property of Wandsworth Council and the tribunal therefore did not err in law in concluding that a single payment could not be made.

7. The result is that that part of the tribunal's decision which awarded an additional weekly allowance was invalid for want of jurisdiction and I must set it aside. That part of the decision which confirmed the benefit officer's decision was sound in law and therefore must stand.

8. For the foregoing reasons my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny  
Commissioner

Date: 14 November 1982

Commissioner's File: C.S.B. 1136/1982  
CSBO File: 1296/82  
Region: London South