

1/40/82 (13)

MJC/FB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal, dated 13 August 1982. That decision is set aside as being erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted tribunal: Supplementary Benefits Act 1976, section 15A and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (S.I. 1980 No 1605 as amended by S.I. 1982 No 407, rules 7(2) and 10(8)).

2. This is an appeal to the Commissioner, by the claimant, a man aged 28 at the relevant time, who was in receipt of supplementary benefit. His appeal concerns the tribunal's affirmation of the benefit officer's refusal to make a single payment for £52.90 removal expenses (there is apparently a separate decision under appeal concerning payment for clothing but that is not the subject of this decision).

3. In their findings of fact the tribunal stated:-

"The claimant appeals against the decision that he is not entitled to a single payment for removal expenses. A payment had been refused, as the payment by the claimant had already been made prior to the request. The claimant stated that he had informed the Department of the proposed move which was a sudden move. He had 3 days in which to decide on the acceptance of the accommodation. The claimant was due to enter hospital on 25.4.82, the move was made on 26.4.82. A letter was received by the Department on 23.4.82 stating he was accepting a flat, but no mention was made of removal expenses. The claimant contends that if he submits a bill for removal expenses this could be paid, this was the information given to him by the Department. The claimant's representative contended that the money used was borrowed from his mother and this need was taken from other needs such as fuel bills."

(14)

The tribunal then gave the following reasons for their decision:-

"The tribunal having considered all the material facts are satisfied that a single payment should not be made for removal expenses as they are satisfied that a claim had not been made and that the need had already been met with money borrowed from appellant's mother".

4. The benefit officer now concerned, in a written submission dated 29 July 1983, submits that the tribunal erred in law. He submits in particular that the tribunal "failed to make findings of fact as to the date on which a claim for removal expenses was first made. The Commissioner's attention is respectfully drawn to the absence of any note of evidence of the tribunal chairman, which is not available" (paragraph 8). I accept as correct that submission by the benefit officer now concerned, which indeed is echoed by the claimant. It is critical in cases as to "need" for there to be a precise finding as to the date of claim (see below). Moreover, form LT 235 (crippled of tribunal's decision) provides a considerable space for "Chairman's note of evidence". In this case, the chairman had written simply "Notes available" but it would appear from the benefit officer's submission that they are not available. In any event the chairman should enter, on form LT 235 itself, his notes of evidence which should be taken in all cases, particularly bearing in mind that an appeal to the Commissioner is on a question of law only, and that the Commissioner must rely for findings of fact and notes of evidence on the record made by the tribunal. I appreciate that some chairmen may have had conscientious objections to completing the note of evidence on a document which may be seen by many people, but in my judgment there is no alternative to a proper completion of the relevant space on form LT 235.

5. As to the date of claim, this was of course critical, because if the money had been borrowed and the removal costs paid before the claim, then there could be no "need" within regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981 /S.I. 1981 No 1528 as amended by S.I. 1982 No 907/ - (see also reported Commissioner's Decisions R(SB) 8/81; R(SB) 23/82; and R(SB) 26/83). There would then have to be reliance for a single payment if at all on regulations 28 and 30, but I agree with the benefit officer (paragraph 12(4) of his submission) that it is unlikely that those regulations could apply.

6. In determining when the claim was made, the new tribunal should bear in mind that under regulation 3(5)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 /S.I. 1981 No 1525/ it is possible for a claim for a single payment to be made "other than in writing". There was evidence that the claimant had telephoned the local office of the Department about a reimbursement of his removal expenses before he had actually paid the bill. The new tribunal should take evidence on this matter, and should determine whether that telephone

(15)

call could constitute a claim for a single payment. That is a proper function for the tribunal, the Secretary of State being limited to a consideration of whether or not, if there were such a claim, it was made in sufficient manner (compare reported Commissioner's Decision R(U) 9/60 - paragraphs 4-6).

7. If the new tribunal should determine that a claim was made by the telephone call and the Secretary of State accepts the claim as being made in sufficient manner, then the claim would have been made at a time when there was still a "need" within regulation 3. The tribunal will wish to go on to consider regulation 13(3) of the above cited Single Payments Regulations, dealing with reimbursement of removal costs. As to the requirement in that regulation of (normally) two competitive estimates I accept as correct the submission of the benefit officer concerned that "the requirement in regulation 13(3) of the Single Payments Regulations to provide two competitive estimates (unless the Secretary of State directs that only one estimate be furnished) is concerned only with a pursuance of an extant claim and that the fact that a claimant may not yet have obtained estimates, does not of itself debar him from the making of a claim. ... In my submission the furnishing of competitive estimates after the actual removal has taken place is not a bar to payment, provided of course that a claim had been made prior to the event, even when, as in this case the 'estimate' is in the form of a receipted account. It is submitted that it would be open to the Secretary of State to accept such evidence of the cost of removal as an, or the, estimate in satisfaction of regulation 13(3)".

Signed: M J Goodman  
Commissioner

Date: 7 December 1983

Commissioner's File: C.S.B. 1140/1982  
C SBO File: 1261/82  
Region: London South