

S.B. Cooper

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Region: London North



SUPPLEMENTARY BENEFITS ACT 1976

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

ORAL HEARING

1. This appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 15 August 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. I held an oral hearing of this appeal. The claimant did not appear and was not represented. The adjudication officer was represented by Mr E.O.F. Stocker.
3. The claimant, a man of 70 living with his wife also aged 70, on 16 March 1984 asked for help with what he described as the hire purchase payments on a new cooker which he had had to purchase at the beginning of 1983 because his old cooker had broken down. Neither he nor his wife have any savings. On 27 April 1984 an adjudication officer decided that the claimant was not entitled to an additional allowance in respect of the repayments for the cooker because it had in fact been purchased on a credit sale agreement. In so doing, the adjudication officer stated, on form AT2, that he had had regard to the distinction between a hire purchase agreement (to which regulations 11 and 13 and Schedule 4 paragraph 16 of the Requirements Regulations apply) and a credit sale agreement (to which they do not): see decision R(SB) 25/82.
4. The claimant appealed against this decision to a social security appeal tribunal. In his written submission to them he stated that he had a pension of £40.21 on which to live and pay all bills such as electric and cooker, water rates, tele licence, fire insurance, fares to launderette and that they were on a starvation diet.
5. The tribunal heard the appeal, at which the claimant did not appear, on 15 August 1984. The record of their decision states, under "Findings of Tribunal on questions of fact material to decision":
"The appellant had purchased a cooker under credit sale agreement and it was therefore his property to dispose of as he wished."
The tribunal's decision was "to confirm the A.O's decision"
Their recorded reasons for decision were:
"Requirements Regulations under certain circumstances provide for a weekly addition for Hire Purchase instalments, but there is no provision in the regulations for help with payments under a credit sale agreement".
6. In the light of decision R(SB) 12/85, which is that of a Tribunal of Commissioners, it is clear that the tribunal, and the adjudication officer, should also have considered the claim under Regulation 28 of the Single Payments Regulations. As regards the tribunal, it was made clear to them in the letter setting out the grounds of appeal that the claimant was

saying that he and his wife were going short of necessities because of the burden of the credit sale instalments.

7. Regulation 28, as it stood at the material time, provided as follows:

Costs where supplementary benefit not paid or not claimed

28. (1) A single payment shall be made where a claimant or his partner either -

(a)...; or

(b) has spent, on any item for which had he or his partner claimed it a single payment would have been made under these regulations, money set aside to provide for any item-

(i) to which the category of normal or additional requirements applies; or

(ii) to which regulation 14(1) of the Requirements Regulations (items to which housing requirements relate) applies; or

(iii) of expenditure of a kind for which housing benefit may be granted,

and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he or his partner should meet.

(2) The amount payable in a case to which paragraph (1) applies shall be the amount of the cost, or where more than one item is concerned the aggregate amount of the costs, which he is unable to meet, subject to a maximum of -

(a) in a case to which paragraph (1)(a) applies, the total amount of pension or allowance not received:

(b) in a case to which paragraph (1)(b) applies, the amount of the single payment which would otherwise have been made.

(3) Where subsequent to the award of a single payment under paragraph (1)(a) it is determined that arrears of pension or allowance are payable to the claimant in respect of the whole or any part of the past period there mentioned, that single payment shall be treated as paid on account of those arrears.

8. Since the tribunal failed to consider regulation 28, their decision was erroneous in point of law. It is neither expedient nor possible for me to give the decision that the tribunal should have given, because the necessary facts have not been found. The case must accordingly be referred to another tribunal for decision which should, in accordance with the usual practice be differently constituted.

9. The tribunal to whom the decision is now referred should

(1) consider whether the claimant would have been entitled to a single payment for a cooker if, at the date when he entered into the credit sale agreement (3 March 1983), he had made a claim for it. Since the claimant was aged over 65 at the material time and thus over pensionable age, he falls squarely within paragraph 10(1)(b)(i) of the Supplementary Benefit (Single Payments) Regulations 1981, as in force immediately before the credit sale agreement was entered into (3 March 1983). He is therefore entitled to a single payment for a cooker provided that (a) regulation 10(2)(b)(i) was satisfied (b) he had an exceptional need for it in terms of regulation 3(1) immediately prior to entering into the credit sale agreement, and (c) he did not already possess that item or have available to him

a suitable alternative item and had not unreasonably disposed of or failed to avail himself of such an item: see regulation 3(2).

- (2) if the claimant would have been entitled to a single payment for a cooker, determine its amount as at 3 March 1983. That amount must not exceed the cost of a reconditioned cooker if one was available on 3 March 1983: see regulation 10(3)(c). If the cooker to which the credit sale agreement related was reconditioned, that amount will be £119.95p, the purchase price of the cooker referred to in the credit sale agreement. If no reconditioned cooker of reasonable quality was available, the amount of the single payment should be taken to be the £119.95p referred to in the credit sale agreement unless a cooker of reasonable quality (see regulation 3(3)(b)(i)) could have been purchased by the claimant for less
 - (3) determine the cost of delivery and installation, if not included in the purchase price: see regulation 10(5).
10. (1) The tribunal should then determine whether the claimant had spent on the cooker money set aside to provide for any item to which regulation 28(1)(b)(i)(ii) or (iii) applies and if so how much has been so spent.
- (2) Next, the tribunal should consider whether, as a consequence of such expenditure the claimant was unable and could not reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he or his partner should meet. They should specify what the items in questions are.
 - (3) The upper limit of any award by the tribunal is the lesser of the following:
 - (a) the £119.95p referred to in the credit sale agreement together with the cost of delivery and installation if not included in the sale price. This limit may be less than £119.95p because there may be a cheaper reconditioned or new item which was available to the claimant.
 - (b) the amount of the cost, or where more than one item is concerned the aggregate cost, of the items referred to in (i), (ii) and (iii) of paragraph (b) of regulation 28(1) which the claimant or his partner is unable to meet: see the opening words of regulation 28(2) which refer back to the condition in 28(1)(b) that as a consequence [the claimant] is unable and cannot reasonably be expected to meet the cost of the item or items.
 - (4) The amount of the cost which the claimant or his partner is unable to meet in my judgment cannot be more (and may be less) than the amount spent by way of payment of instalments prior to the date of claim in this case (16 March 1984). No greater sum could be a consequence of such expenditure. I reject Mr Stocker's suggestion that only the last instalment paid prior to the claim for assistance can be awarded under these provisions.
 - (5) In making their findings on the above points, reasons should be given for each finding and the tribunal should ensure that each requirement in regulation 28(1) is met before an award is made. If an award is not made, it should be made clear in the reasons for decision what the reason for this is.
 - (6) The chairman of the tribunal should ensure that the material facts found, are recorded and reasons given as required by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984, as amended and that findings on all relevant specific contentions advanced by or on behalf of the claimant or the

adjudication officer are duly recorded.

11. My decision is set out in paragraph 1.

(Signed) V.G.H. Hallett
Commissioner

Date: 27 June 1985