

JBM/BF

Commissioner's File: CSB/1230/1984

C A O File: AO 9348/84

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

Name: Samuel Hinchley

Social Security Appeal Tribunal: Greater Birmingham

Case No: 53/04

[ORAL HEARING]

1. My decision is that the decision of the Birmingham social security appeal tribunal dated 6 August 1984 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.
2. This is an appeal by the claimant to the Commissioner with the leave of the regional chairman from the decision of the appeal tribunal confirming the decision of the benefit (now adjudication) officer issued on 16 April 1984. "The decision of the Supplementary Benefit Officer is that [the claimant] is not entitled to a single payment for removal expenses because he does not have an exceptional need for which provision of a single payment can be made (Supplementary Benefit (Single Payment) Regulations; in particular Regulations 13 and 30)".
3. The claimant requested an oral hearing to which request I acceded. Accordingly on 29 March 1985 I held an oral hearing. The claimant was present and represented himself. Mrs. A.M. Stockton of the Solicitor's Office of the DHSS represented the adjudication officer. To both of them I am indebted.
4. The facts and history of the case are dealt with in paragraphs 1 to 7 inclusive of the submission dated 6 December 1984 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here.
5. The relevant statutory provisions are referred to in paragraph 8 of the submission dated 6 December 1984. Nothing is to be gained by my setting out those references afresh here.

6. I do not consider that it is necessary to set out the submissions made before me at the hearing here save to state that Mrs. Stockton supported the claimant's submission that the tribunal had erred in law and that the case should be remitted to a differently constituted appeal tribunal.

7. In my judgment the decision of the tribunal is erroneous in point of law in that the tribunal have failed to comply with the requirements of the Social Security (Adjudication) Regulations 1984 regulation 19(2)(b) in that the tribunal failed to include in the record of their decision "a statement of grounds of such decision and of their findings on questions of fact material thereto". (The words "grounds of" have since been replaced by "the reasons for"). The tribunal have failed to give adequate reasons too and to give reasons for their rejection of the main plank of the case made by the claimant. They have also failed to find the date of claim. From the terms of the notice of appeal lodged by the claimant on 18 April 1984 it is manifest that his claim under regulation 13(1) of the Single Payments Regulations was based upon the contention that at the date of his claim his removal into the accommodation occupied since 7 March 1983 had not been completed in that he had been prevented from removing his furniture from the former marital home. The claimant was still at that time in the process of moving.

. Regulation 13(1) so far as relevant provides as follows:-

"A single payment shall be made ... in respect of the cost of removal within the United Kingdom ... where the assessment unit and any other member of the same household is moving to a new home and ..."

Paragraph 12(1) of R(SB) 39/84 is authority for the proposition that the reference in the regulation to the payment of a single payment "where the assessment unit is moving" prevents a successful claim by a claimant who has already moved prior to the date of his claim. However, the Commissioner states "is moving" although expressed in the present tense "does not in my view contemplate in any narrow sense the immediate time of the transit but carries the broader sense of covering the period between a decision to move and its accomplishment". The tribunal have failed to have due regard to what is the "accomplishment" of the claimant's removal.

9. The Commissioner in the unreported decision on Commissioner's file CSB 237/1984 considered the question of the accomplishment of a removal as raised in R(SB) 39/84 and at paragraph 7 of his decision states as follows:-

"In my judgment a move is not necessarily accomplished at the instant that the claimant or other relevant member of the assessment unit has moved; it is accomplished only when the furniture and household equipment moved as part of the general removal has been moved also".

In the instant case the tribunal have failed to consider whether in the circumstances the protraction of the claimant's general removal, arising from an injunction made against him preventing any form of contact with the former marital home, might mean that as at the date of claim he had not moved but was still in process of moving.

10. The claim in April 1984 was brought in respect of the cost of removal of certain articles of furniture from the claimant's former home in Berkshire to his present accommodation in Birmingham. I infer that it was in respect of the removal between these specific locations that the estimate of the cost was obtained by the claimant. The adjudication officer now concerned submits that it appears from the presenting officer's report of the tribunal's proceedings that there is some uncertainty as to the present whereabouts of the claimant's furniture. At paragraph 6 of the decision of a Tribunal of Commissioners in R(SB) 42/83 it was held that "A crucial characteristic of a claim for a single payment is that it deals with a specific need existing at a specific point of time". A point of time is as decided in decision R(SB) 26/83 the date of the claim. (See also paragraph 7 of R(SB) 42/83).
11. I considered whether a new claim should be made when furniture is moved, for example into storage, pending the outcome of a claim for a single payment for removal expenses but concluded that this could cause difficulties in a ~~claimant satisfying the provisions of regulation 13(1) of the Supplementary Benefit (Single Payments) Regulations 1981.~~ The tribunal to whom this case is remitted should find whether the claimant is able to bring himself within the conditions of regulation 13(1) of the Single Payments Regulations. The date at which need and satisfaction of the conditions of regulation 13(1) are to be established is the date of claim.
12. The tribunal should enquire into the location of the furniture as there is doubt as to whether it is still where it was at the time the claim was made and estimate or estimates supplied. It appears that the claimant has already furnished one estimate on 9 April 1984 in accordance with instructions given to him by the local office. He told me that another firm informed him that they had sent an estimate direct to the D.H.S.S. I am not empowered to make findings of fact and anyway it will be open to the claimant to provide up-to-date estimates if the furniture is still at that location. If it has been moved new estimates must be provided for the cost of removal from the new location. If the furniture has been destroyed estimates cannot be provided and payment for its removal costs cannot, in my judgment, be made.
13. I note that in the instant case single payments were made in March 1983 in respect of the purchase of several of the items (table and chairs, bed and cooker) that the claimant seeks to recover. I have considered the principle of abatement in R(SB) 38/84 which has the effect of precluding duplicate provision from public funds. I do not see that that principle applies here in that that decision was concerned with two claims for the same items. It is not for my consideration in the case before me whether the single payments made in March 1983 were rightly made or not.
14. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out above. I direct that the tribunal to whom I remit this case in rehearing this matter shall pay particular attention to all the aspects to which I have referred above and they shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

15. Accordingly, the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 20 September 1985

7/11/84

S3/04

IN CONFIDENCE

APPEAL TO THE GREATER BIRMINGHAM APPEAL TRIBUNAL

Ref. No.	94097/108968
ST	2
CDA	04
DHSS Office B'HAM (EDGBASTON) ILO CLARENDON HOUSE DUCHESS ROAD EDGBASTON BIRMINGHAM B16 8NU	

SURNAME	OTHER NAMES	Age
Name of claimant * (Mr/Mrs/Ms/Miss).....	HINCHLEY SAMUEL	54
Address.....		
25 Hubert Croft Selly Oak		
BIRMINGHAM 29		

1 DECISION APPEALED AGAINST

Appeal lodged on 18 4 84 against the following decision of the Supplementary Benefit Officer
sued on 16 4 84

the decision of the Supplementary Benefit Officer is that Mr Hinchley is not entitled to the payment for removal expenses because he does not have an exceptional need for which provision of a single payment can be made
Supplementary Benefit (Single Payment) Regulations; in particular Regulations 13 and 30)

2. RELEVANT PROVISIONS OF THE ACT AND REGULATIONS

Regulations 13 and 30 of the Supplementary Benefit (Single Payment) Regulations (Yellow Book pages 1917 and 1935)

3. RELEVANT REPORTED DECISIONS OF THE COMMISSIONER

- SB) 2/81 (paras 7 and 8)
- SB) 13/81 (para 9 et seq)
- SB) 3/82 (paras 7 and 8)

Claimant's name S HINCHLEY

Ref No 9409 / 108536

4. CLAIMANT'S GROUNDS OF APPEAL DATED 18 4 84

"I wish to appeal the decision of the Supplementary Benefits Officer who refused my claim for Removal Expenses.

My grant is as follows

1) Although I left Berkshire in 1982 I had not completed my move until the divorce from my wife became final. There has been an Injunction placed upon me preventing me from visiting or even writing to her until I received her letter dated 1 4 84 see copy enclosed. I believe the regulations refer to moving.

2) My home is poorly furnished, I have the following items:-

- 4 x Chairs
- 1 x Table
- 2 x Beds
- 1 x Wall Cabinet
- 1 x 3 piece suite
- 1 x Cooker

I share the property with my 20 year old daughter who is also unemployed.

"S The property I have in Berkshire are worth over £800 pound."

LT 206
attached

Tick if relevant

5. FACTS BEFORE THE SUPPLEMENTARY BENEFIT OFFICER

- A) Mr Hinchley is receiving supplementary benefit because he is not fit for work and he is submitting medical certificates. His income consists of Invalidity Benefit which is combined and paid together with his supplementary benefit. He has no other income. Mr Hinchley is divorced from his first wife and separated from his second wife. He has no savings.
- B) Mr Hinchley lives in council accommodation at 25 Hubert Croft. He has been the tenant since 7 3 83. Because he is entitled to supplementary benefit he is entitled to housing benefit. ~~A rebate is awarded against his rent and rates. He does have to pay some rent and rates since his non-dependant daughter also lives in his household.~~ The property is centrally heated.
- C) Before moving to his current address Mr Hinchley lived at 21 Staple Hall Road rthfield Birmingham which is the home of his ex-wife. He joined her household in March 1982. Up to March 1982 Mr Hinchley had been living with his wife in Berkshire. X
17/4/80
- D) When Mr Hinchley moved to his present home in March 1983 he was awarded a single payment for a dining table and 2 dining chairs, a bed, and a cooker along with several other items of household equipment.
- E) In April 1984 Mr Hinchley telephoned the local office to request a single payment to cover the cost of removing several items of furniture from his wife's home in Berkshire. He was asked to forward an estimate of the removal expenses so that his request could be considered. He had been unable to move the furniture from his wife's home in Berkshire when he had moved to Birmingham in March 1982. He had been unable to get the furniture at a later date because there was an injunction order against him preventing him going to his wife's home. However on 1 4 84 his wife wrote to him telling him to fetch certain items of furniture, namely, two wardrobes, a dressing table, a bed frame, 2 bed ends and a sideboard. Mr Hinchley forwarded an estimate of £155 for the removal of these items of furniture. The supplementary benefit officer decided that Mr Hinchley was not entitled to a single payment.
- F) Mr Hinchley suffers from nerves and depression and has a slipped disc. He is also suffering from a duodenal ulcer and is required to follow a fat free diet.

6. REASONS FOR THE SUPPLEMENTARY BENEFIT OFFICER'S DECISION

- G) The supplementary benefit officer considered Mr Hinchley's request for removal charges under Regulation 13 of the Single Payment Regulations which states "that a single payment shall be made in respect of the cost of the removal, within the United Kingdom, of the household goods and personal effects of any member of the same household as the claimant where the assessment unit and any other member of the household is moving to a new home"
- H) Mr Hinchley has been the tenant of his home since 7 3 83 and is not moving to a new home. The supplementary benefit officer therefore decided that he did not satisfy the provisions of Regulation 13 and therefore a single payment could not be awarded under that Regulation.
- I) The supplementary benefit officer also considered Mr Hinchley's claim under Regulation 30 of the Single Payment Regulations because Regulation 30 provides that a single payment shall be made in certain circumstances, where a claim for a single payment fails to satisfy the conditions under any of the Regulations in Parts II to VII of the Single Payments Regulations.

J) The circumstances in which a single payment is to be made under Regulation 30 are where:-

1) there exists a likelihood of serious damage or serious risk to the health or safety of a member of the assessment unit which can be prevented by the award of a single payment; and

2) a single payment is the only means by which that serious damage or serious risk can be prevented

K) In the opinion of the Supplementary Benefit Officer Mr Hinchley's claim did not satisfy the first condition because there was no evidence of any serious damage or serious risk to the health or safety of the claimant which would be prevented by the award of a single payment. Mr Hinchley already has a bed and in the opinion of the benefit officer the lack of a wardrobe, dressing table and a sideboard would not cause serious damage or serious risk to Mr Hinchley's health and safety. The supplementary benefit officer therefore decided that Mr Hinchley was not entitled to a single payment to remove the items from Berkshire under Regulation 30.

In reaching this decision the Supplementary Benefit Officer had regard to Commissioner's decision R(SB) 3/82 in which the Commissioner held (paras 7 and 8) that the Tribunal had erred in law in failing to explain where exactly lay the serious damage or serious risk to health and safety, and had failed to consider whether a single payment was the only means of avoiding a serious risk to health.

REQUIREMENTS

Claimant's name S. HINCHLEY

25/3539

LIVING EXPENSES (the Requirements Regulations 1980 Part II)		Weekly amount £	
For the claimant *and his wife		34	10
For the claimant's children	aged.....		
	aged.....		
	aged.....		
TOTAL LIVING EXPENSES		34	10
B) ADDITIONAL REQUIREMENTS (the Requirements Regulations 1980 Part III)		Weekly amount £	
Central heating addition		4	10
Dietary addition		2	85
Because the claimant receives the long-term rate of benefit deduct			
TOTAL ADDITIONAL REQUIREMENTS		6	95

C) HOUSING COSTS (the requirements Regulations 1980 Part IV)		Weekly amount £	
Amount paid £	Weekly equivalent £	HOUSING BENEFIT	
rent paid for weeks		Amounts to be deducted:-	
rates (general) per		For items included in the rent	
rates (water) per	
rates (sewerage) per		For subletting	
Total weekly equivalent		
Mortgage interest		For someone living in the	
rates (general)		claimant's household	
rates (water)		For a rent rebate/allowance	
rates (sewerage)		For a rate rebate	
ground rent or feu duty		Because of high housing costs	
allowance for repairs		Total deductions	
insurance		
total annual cost		Claimant is a non-householder	
Total weekly equivalent		TOTAL PAID FOR HOUSING COSTS	

D) INCOME (the Resources Regulations 1980)			
Type of Income	Amount received per week	Amount disregarded	Amount taken into account
Invalidity Benefit	37.18	-	£ 37 18
.....
.....
.....
TOTAL OF INCOME TAKEN INTO ACCOUNT			37 18

CLAIMANT * AND HIS FAMILY * HAS/HAVE CAPITAL AMOUNTING TO £..... (the Resources Regulations 1980 Part II)

E) CALCULATION OF BENEFIT		Weekly amount £	
Requirements (Boxes A, B and C)		41	05
Total resources (Box D)		37	18
Adjustments for			
Claimant is entitled to		3	87
adjustments		-	-
TOTAL OF SUPPLEMENTARY BENEFIT		3	87
Supplementary Pension/ Allowance where paid separately		3	87
Invalidity Benefit		37	18
Combined payment of:			
TOTAL PAID TO CLAIMANT EACH WEEK FROM ..21.11.83		41	05

EVIDENCE

' of proceedings of..... GREATER BIRMINGHAM..... Social Security Appeal Tribunal held on...6./8.... / 1984

Full name of Appellant	(Surname) HINCHLEY	(Other names) Samuel	Case List No. /
Local office	EDBGASTON		Tribunal Reg No. 53/ 04

Constitution of tribunal		Names of others present (write "None" where appropriate)	
*Full/Chairman and one member		Appellant's representative (state organisation if any) Miss D Hinchley S/A (daughter)	
Names of Tribunal Chairman and Members Mr W Gore Mr J Robinson Mr A Rodway		Witness(es)	
Appellant notified hearing on26...../.....7.....1984	Appellant Present*/ XXXXXXXX	Others (state capacity)	
		Adjudication officer J Lakin	

Consent to hearing by less than full Tribunal

*Appellant's consent given on tear-off portion of form AT6.
I consent to this case being proceeded with in the absence of a member of the Tribunal other than the Chairman.

I understand the Chairman will have a casting vote if required.

Appellant's signature

Chairman's note of evidence (ie concise details of all oral and written evidence put before the Tribunal)

PRESENTING OFFICER LT 205 and LT 206, put before the Tribunal

Mr Hinchley has been the tenant of his house since 7 3 83. and is not moving to a new home.

Letter from S A Turner put before the Tribunal.

Appellant was offered £600 for a bedroom suite by an antique dealer in 1979.

~~THE APPELLANT~~ is attending Rubery Hill Hospital at present.

APPELLANT S Hinchley.

2 Findings of Tribunal on questions of fact material to decision (ie the relevant facts accepted from the evidence available)

In April 1984 the appellant telephoned the local office to request a Single Payment to cover the cost of removing several items of furniture from his wife's home in Berkshire.

He had been unable to get the furniture as there was an injunction order against him.

On 14 84 his wife wrote to him regarding the removal of certain items of furniture.

3 Full text of *unanimous/*majority decision on the *Appeal/*Reference (including amounts and effective date(s) as appropriate)

The Supplementary Benefit Officer's decision is confirmed.

*Reasons for dissent if Tribunal not unanimous

Reasons for decision (ie an explanation of why, when applying the facts to the statutory provisions and case-law, a particular conclusion has been reached. And why, if it is not clear from box 2, certain evidence has been accepted or rejected).

The Appellant does not meet the conditions as laid down in Regulation 13 Supplementary Benefits(Single Payments) Regulations because he has been the tenant of his home since 3 83 and is not moving to a new home.

There was no evidence that a Single Payment would be the only means of preventing any serious damage or serious risk to the health or safety of any member of the assessment unit. Mr Hinchley already has a bed no payment can therefore be made under the provisions of Regulation 30 Supplementary Benefit (Single Payments) Regulations.

6 August 1984

Chairman's Signature *[Signature]*

Clerk's use only

Form AT 22 noted

T decision notified to

interested parties on

19

Initials *[Signature]*

Date

19

nb

SUPPLEMENTARY BENEFITS ACT 1976

Decision of the Social Security Commission: Appeal remitted to SSAT

Claimant - Samuel Hinchley. Tribunal - Birmingham

Address - 25 Hubert Croft
Selly Oak
Birmingham
B29 6DU

Local Office - Edgbaston

113 DEC 85

FURTHER SUBMISSION BY AN ADJUDICATION OFFICER

BACKGROUND TO THE PRESENT SUBMISSION

In April 1984 Mr Hinchley claimed a single payment in respect of the cost of removing several items of furniture from his wife's home in Berkshire. He had in fact left that home in March 1982 and has lived at his current address since 7 3 83. See original appeal submission for full details.

The Supplementary Benefit Officer considered Mr Hinchley's request under Regulation 13 of the Single Payment Regulations which states "that a single payment shall be made in respect of the cost of the removal within the United Kingdom, of the household goods and personal effects of any member of the same household as the claimant where the assessment unit and any other member of the household is moving to a new home..." The Supplementary Benefit Officer decided that Mr Hinchley had been the tenant of his home since 7 3 83 and was not moving to a new home. The Supplementary Benefit Officer concluded that Mr Hinchley did not satisfy the provisions of Regulation 13(1) and refused to allow a single payment.

Mr Hinchley then appealed against this decision and there was an appeal hearing on 6 8 84. The Appeal Tribunal upheld the decision of the Supplementary Benefit Officer. (See copies of tribunal's decision). Mr Hinchley appealed to the Social Security Commissioner against the decision of the Appeal Tribunal. The Commissioner decided that the decision of the Appeal Tribunal was erroneous in point of law and the decision is set aside.

The Commissioner points out that paragraph 12(1) of R(SB) 39/84 is authority for the proposition that the reference in the regulation to the payment of a single payment "where the assessment unit is moving" prevents a successful claim by a claimant who has already moved prior to the date of his claim. However, the Commissioner states "is moving" although expressed in the present tense "does not in my view contemplate in any narrow sense the immediate time of the transit but carries the broader sense of covering the period between a decision to move and its accomplishment."

The Commissioner in the unreported decision on Commissioner's file CSB 237/1984 considered the question of the accomplishment of a removal as raised in R(SB) 39/84 and at paragraph 7 of his decision states "In my judgement a move is not necessarily accomplished at the instant that the claimant or other relevant member of the assessment unit has moved; it is accomplished only when the furniture and household equipment moved as part of the general removal has been moved also."

The Supplementary Benefit Officer noted that at the time of the request (9 4 84) Mr Hinchley had not in fact completed his removal because some of his furniture was still at his wife's home in Berkshire. The Supplementary Benefit Officer now accepts that the removal of the furniture had not been completed and so the condition of Regulation 13 of the Single Payment Regulations - "the claimant is moving" was satisfied i.e. Mr Hinchley was still in the process of moving.

The Supplementary Benefit Officer further accepts that the conditions of Regulation 13(1) are satisfied because removal of the furniture was as a consequence of the breakdown of Mr Hinchley's marriage.

The Supplementary Benefit Officer now has regard to R(SB) 42/83 in which the Tribunal of Commissioners held (para 6) that "a crucial characteristic of a claim ~~for a single payment is that it deals with a specific need existing at a specific~~ point of time." That point of time is as decided in decision R(SB) 26/83 the date of the claim. A claim for removals is made specific only by Regulation 13/3 of the Single Payment Regulations which requires the furnishing of estimates which by their nature will be specific to the starting and finishing points of transit. The claim made on 9 4 84 could then be seen as being brought in general terms for the cost of removal of certain items to the claimant's present home. The Adjudication Officer submits that this would be a "specific need" in terms of R(SB) 42/83 without reference to the existing location of the items in question. It is therefore open to the Secretary of State to direct that one or more estimates should now be obtained from Mr Hinchley in respect of the removal which is now in question. The Secretary of State has advised that he will not accept the estimate furnished by Mr Hinchley on 9 4 84 as being of any current validity. Mr Hinchley must provide estimates for the cost of removal now. If the furniture has now been disposed of or is otherwise no longer available, the Supplementary Benefit Officer submits that it would be an undesirable consequence of R(SB) 26/83 that a single payment be made for a removal which cannot take place.