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RFMH/ET

Commissioner's File: CSB/1255/1984
C A O File: AO 9383/84
Region: North Western

RECEIVED 20 MAR 1985

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Thomas Pountley

Social Security Appeal Tribunal: Rochdale

Case No: 15/45/07

1. My decision is that the decision of the social security appeal tribunal dated 18 October 1984 is erroneous in point of law and is set aside. I direct that the matter be reheard by a differently constituted appeal tribunal.
2. By a decision issued 24 July 1984 the adjudication officer decided that the claimant was not entitled to single payments for a variety of items of essential furniture and household equipment. The claimant appealed against this decision.
3. In his written submission on the appeal the benefit officer stated the facts to be that the claimant was a single man then aged 22. He lived with his partner then aged 20 and two very young dependent children. He had been in receipt of supplementary benefit since September 1981 and had no capital. On 25 June 1984 he claimed single payments for items of essential furniture and household equipment as listed in paragraph 2 of form AT2. He contended that the items were needed because he was due to move from his father's address to his own tenancy on 2 July 1984 and he did not possess the items in question. On 29 June 1984 the claimant was interviewed in connection with his claim. It was established that prior to living at his father's address he had been the tenant of a 2 bedroom local authority house where he had lived with his partner and their son. They were said to have abandoned the house because it was too damp and because they had been broken into on three separate occasions. Various items had been stolen and damaged. They went to live with the claimant's partner's parents in November 1983 and stored various items of furniture with her sister as listed in paragraph 3 of form AT2. The items were stored in a cellar and within 2 months became mouldy. The claimant disposed of all the items by burning them. He supplied a further list of items which he alleged he had never possessed. The facts were verified with the local council and following the interview the claimant was awarded single payments for the items listed in paragraph 5 of form AT2. The claimant had tuberculosis when he was 15 years old but was reported to be in good health with no recurrence of the illness. The claimant's partner and children were in good health. One child was profoundly deaf and had a deformity of the feet which prevented him from walking unaided.

4. The chairman's note of evidence for the tribunal states that the claimant alleged that he had disposed of the items by burning after 5 months of storage and not 2 months. The adjudication officer submitted that the term 'essential' items refer to items which the claimant did not possess previously and clearly did not apply in the present case. In the event the tribunal allowed the appeal in part by a majority decision and the findings of the tribunal on question of fact material to the decision read as follows:

"The tribunal did not consider the items in respect of which the appeal was made to be essential except as follows: Wooden spoon, 4 bowls to be used as soup plates, cereal bowls, casserole dish, mixing bowl."

The reasons given by the tribunal were as follows:-

"1. The appellant had been given a single payment for a spade. No fork was therefore available (reg 9(m) Single Payments Regulations).

2. With regard to the items successfully appealed against the Tribunal accepted the reasoning set out in the submission by the Appellant's representative dated 17.10.84 (reg 9(i)).

3. With regard to the items disallowed on appeal. The tribunal, having regard to the availability of alternative items and the positive substitution of other utensils, did not consider that these items were substantially needed judged by the modest standard of living to the provision of which the award of Supplementary Benefit is directed. They were not necessary in the sense in which luxuries are differentiated from 'the necessities of life' (R(SB)10/81)."

The claimant now appeals to the Commissioner on a point of law, leave having been granted by the tribunal chairman.

5. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal shall record a statement of the reasons for their determination and of their findings on questions of fact. It is of course a fundamental principle that if a tribunal gives inadequate reasons for their decision, that is an error of law whether or not the actual decision is correct. In my judgment for the reasons belowstated the tribunal failed to comply with regulation 19(2).

6. Regulation 3(2)(a) of the Single Payments Regulations provides that a single payment shall be made only where there is a need for the item in question. Although it is the practice to refer to the claimant as having made a claim to a single payment notwithstanding that it covers a variety of different items, strictly the position is that he has made a separate claim in a respect of each item. Accordingly, there is in effect a series of claims for determination, not a single composite claim covering a variety of different items. Consequently the tribunal had to consider the claim to a single payment in respect of each item named by the claimant. The question has to be determined by reference to the situation as at the date of claim and by reference to the law currently in force (R(SB)42/83). It is impossible to ascertain from the records of the proceedings what items mentioned were under appeal and whether the tribunal considered and dealt properly with such items. Moreover there appears to be a discrepancy as to the items under appeal between the claimant's

letter of appeal and his representative's letter in that the latter makes no reference to a bed and bedding. The new tribunal should ascertain and record as fact which items are the subject of the appeal.

7. Regulation 9 of the Single Payments Regulations lists the items included in the term "essential furniture and household equipment". Single payments for such items may be awarded under regulations 10 and 30 of the Single Payments Regulations subject to the criterion of "need" being satisfied in respect of each item. The new tribunal should record findings as to whether the claimant satisfies one of the conditions of regulation 10(1) and then proceed to consider whether the item in question is an item of essential furniture or household equipment within the meaning of regulation 9 and whether the claimant does not possess the item or in certain circumstances does possess the item but it is unsafe or defective in the terms of regulation 10(2).

8. The decision of a tribunal in respect of "minor items" in regulation 9(1) of the Single Payments Regulations was erroneous in point of law because of the interpretation they placed on the word 'essential'. Regulation 9 sets out the items defined as essential furniture and household equipment and the word "essential", requires no further definition.

9. Regulation 10 sets out the conditions in which a payment will be made. Although regulation 9 provides a list of essential equipment regulation 9(1) refers to minor items "such as cleaning implements, cooking utensils, crockery and cutlery..." and it is for a tribunal to find as fact whether the similar items claimed fall in the category of "minor items". If an item is not listed in regulation 9 a claim can be made under regulation 30 if it can be shown that the lack of the item would result in serious risk or serious danger to health or safety. The word "essential" in regulation 9 must not be confused with the word "sufficient" which is a matter for determination by the tribunal as fact. The word "essential" in regulation 9 is not subject to further refinement such as the tribunal sought to impose by reference to the meaning of that word in regulation 19 of the Single Payments Regulations as explained in R(SB)10/81.

10. For the reasons stated the decision of a tribunal was erroneous in law on several grounds and is set aside. Accordingly the case must be referred to another tribunal which should be differently constituted for determination on the issues in accordance with my directions.

11. The claimant's appeal is allowed.

Signed: R F M Heggs
Commissioner

Date: 14 March 1985

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10. For the reasons stated the decision of a tribunal was erroneous in law on several grounds and is set aside. Accordingly the case must be referred to another tribunal which should be differently constituted for determination on the issues in accordance with my directions.
11. The claimant's appeal is allowed.

Signed: R F M Heggs
Commissioner

Date: 14 March 1985