

CFA

RFMH/SH/6

Commissioner's File: CSB/1347/1989

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 8 December 1988 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters referred to below.

2. This is the claimant's appeal against the decision of the social security appeal tribunal of 8 December 1988, leave having been granted by the tribunal chairman.

3. At the material time the claimant was divorced and then aged 37. She lived alone in her present local authority accommodation since 11 May 1987. She was responsible for internal decorations. She claimed single payments for a refrigerator and fuel costs and on 25 February 1988 she claimed a single payment in order to redecorate kitchen, bedroom, toilet, hall and stairs. The claims were rejected in due course and the claimant appealed to the tribunal.

4. In his written observations on the claimant's appeal the adjudication officer submitted that single payments could not properly be made because the claimant did not satisfy the conditions of entitlement under the provisions of the Supplementary Benefit (Single Payments) Regulations 1981, as amended. He accepted that the claimant was in poor health because she suffered from backache and incontinence. He noted that she was not required to follow a special diet.

5. The claimant was notified that the hearing of her appeal before the tribunal had been fixed for 8.12.1988 and she indicated on the relevant form that she intended to attend. In the event however she failed to do so and the tribunal proceeded

to hear the appeal in her absence and dismiss it.

6. Regulation 4(3) of the Social Security (Adjudication) Regulations 1986 gives an adjudicating authority the discretion to proceed with an oral hearing in the absence of an interested party who has been given notice of the time and place of the hearing provided "all the circumstances including any explanation offered for the absence" are considered. In the present case the claimant offered no explanation although the tribunal were aware that the claimant suffered from poor health. In those circumstances I consider the tribunal should have adjourned the hearing or made some enquiries as to whether the claimant's absence was due to health or any other reasons. The claimant was denied the right to be heard and in my view there was a breach of natural justice. The decision was erroneous in law in consequence. In her grounds of appeal to the Commissioner she stated that she did attend because "I am back and forth to hospital because I had a spine operation also a bladder operation ..".

7. Regulation 25(2)(b) of the Adjudication Regulations provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present case for the reasons set out below the tribunal chairman failed to comply with the statutory requirements and as a result the decision is erroneous in law on this ground also.

8. Regulation 3(2) of the Single Payments Regulations provides that a single payment shall be made only where there is a need for the item in question. 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). The tribunal failed to record any finding of fact as to the date of claim for the single payment for the refrigerator and no precise date for the claim for the single payment in respect of the fuel costs although they noted it was made in February 1988.

9. With regard to the claim for a single payment for a refrigerator the new tribunal should have regard to the provisions of regulations 9(h) and 10 of the Single Payments Regulations, subject to the criterion of "need" in terms of regulation 3(2) being satisfied as at the date of claim. If these conditions are found not to be satisfied the new tribunal should proceed to consider the provisions of regulation 30 which provides that a single payment to meet an exceptional need shall be made if in the opinion of the adjudication officer such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented.

10. With regard to the claim for a single payment for redecoration the new tribunal would have regard to regulation 19(1) with particular reference to paragraph (a) and also record a finding as to whether the criterion of "need" is satisfied. If they conclude that the provisions of regulation 19(1) are not

satisfied they should proceed to consider whether the claimant is assisted by the provisions of regulation 30.

11. With regard to the claim for fuel costs for heating the tribunal should consider regulation 26(1) of the Single Payments Regulations which is subject to the criterion of "need" in terms of regulation 3(2) being satisfied. In their reasons for decision the tribunal stated:-

"The local authority states that no new heating system has been recently installed. At the date of claim which was February 1988 the claimant had been the tenant of the accommodation for approximately 9 months and therefore it cannot be said that she was unfamiliar with the costs of running the heating system."

I agree with the submission of the adjudication officer now concerned that as the claimant moved into her home at the beginning of the summer it is possible that she had no need to use the heating system until nearer the end of the year. In that case she would not be familiar with the heating system at the date of claim.

12. The claimant should make every effort to attend the hearing of the appeal before the new tribunal. For the reasons stated above the claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

(Date) 7 February 1992