

T/I/MD

Commissioner's File: CSB/1440/1985

C A O File: AO 3119/85

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

Name:

Social Security Appeal Tribunal:

Case No: 85/040/09

[ORAL HEARING]

1. Our decision is as follows

- (i) insofar as the social security appeal tribunal ("the tribunal") decided on 12 August 1985 that a single payment could not be made in respect of a three-piece suite because it was not one of the items mentioned in regulation 9(a) of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No. 1528], they erred in point of law and their decision must be set aside. However, as it is expedient that we give the decision the tribunal should have given on this point, we decide, for the reasons set out below, that there is no entitlement to a three-piece suite; and
- (ii) insofar as the tribunal decided that the claimant was entitled to a single payment for an easy chair only, they did not err in point of law and accordingly this appeal fails.

2. This is an appeal brought by the claimant with the leave of the chairman of the tribunal against the above-mentioned decision, which dismissed the claimant's appeal against the decision of the adjudicating officer issued on 19 June 1985, that the claimant was not entitled to a single payment for a three-piece suite.

3. The Chief Commissioner directed an oral hearing of the appeal before a Tribunal of Commissioners following requests for such a hearing by the adjudication officer now concerned with the case and the claimant's representative on the ground that there was conflict regarding matters relevant to the appeal between on the one hand the views expressed in the unreported decisions on Commissioners' files CSSB/130/1982 and CSB 212/1985 and on the other hand those expressed in the decision on file CSB/1045/1985. The claimant did not attend the hearing but was represented by Mr. J. Hannan of the Nottinghamshire Welfare Rights Service. The Adjudication Officer was represented by Mr C.A.M.E. d'Eca of the Solicitor's Office, Department of Health and Social Security. We are indebted to both representatives for their helpful submissions.

including a three-piece suite. At the time she was in receipt of a supplementary allowance and had recently taken up the tenancy of an unfurnished local authority flat which she occupied with her son aged four months. On 18 June 1985 the adjudication officer gave a decision which included disallowance of the claim in respect of a three-piece suite and allowance of single payments for one easy chair and for a kitchen table and two kitchen chairs. The claimant appealed against the disallowance and her appeal was dismissed as mentioned above.

5. The tribunal recorded their findings of fact as follows:-

- "1) Claimant lives with her baby son, aged 4 months at date of claim.
- 2) She is aged 18, and is a single parent. Members of her family visit her in her home and in doing so provide her with desirable support in bringing up her child alone. She has 2 sisters living nearby who she would wish to have visit her.
- 3) The claimant has been provided with SP [single payment] for 1 easy chair and cannot provide a chair for those who visit her.
- 4) We find that she has a "need" to provide seating accommodation for her visitors who give this support, so as to entertain them in the reasonable level of comfort that the modest standard of living that is appropriate to a claimant on Supplementary Benefit requires.

After stating their decision the tribunal gave their reasons as follows:-

"The Tribunal find (reluctantly) that the wording of Reg.9(a) confines the provision of armchairs to the number of members in the assessment unit. The wording is to be contrasted with, for example, Reg.9(b) which refers only to "the needs of the assessment unit". Reg.9(a) says specifically "sufficient for the members" and we think the implication of this is that the number is confined to that of the assessment unit. In this case the unit comprises 2 persons; but no S.P. can be made for the baby because of Reg 3(2)(a) - no need can be shown for an item which the baby could not yet use. Therefore the decision appealed from was correct."

6. Provision for single payments for the purchase of items of essential furniture and household equipment is governed by regulations 3, 9 and 10 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No. 1528 as amended by SIs 1982 No.907, 1983 No.1000 and 1984 No.938.] Regulation 3, which is of general application, so far as relevant for the present purpose provides as follows:-

"3.-(1) In these regulations "single payment" means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Parts II to VIII of those regulations apply.

(2) A single payment shall be made only where -

(a) there is a need for the item in question; and

(b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit -

(i) subject to regulation 10(2)(b)(ii)(purchase of essential furniture

and

- (ii) does not have available to it a suitable alternative item, and
- (iii) has not unreasonably either disposed of or failed to avail itself of such an item."

Regulation 9 in Part IV explains the meaning of essential furniture and household equipment and so far as relevant for the present purpose provides as follows:-

"9. In this Part of these regulations 'essential furniture and household equipment' means the following items:-

- (a) sufficient beds and mattresses and dining and easy chairs for all the members of the assessment unit, and a dining table;
- (b) sufficient storage units for clothing, food and household goods (for example crockery) for the needs of the assessment unit;
-
- (c)

Regulation 10 specifies the circumstances in which single payments may be made for the purchase of items of essential furniture and household equipment if there is a need for such items.

7. It is not in dispute that at the date of the claim the requirements of regulation 10 were met and that the claimant was entitled to a payment under that regulation for any items mentioned in regulation 9(a) in respect of which the requirements of regulation 3(1) and (2) were satisfied. The adjudication officer took the view that a three-piece suite was not an item mentioned in regulation 9(a) and disallowed the claim for a suite on that ground but as mentioned above he went on to allow a payment in respect of an easy chair. Although the claimant's appeal to the tribunal was initially framed as an appeal against the disallowance in respect of a three-piece suite, it does not appear from the chairman's note of evidence, or otherwise from the record of the tribunal's proceedings, that the question of entitlement to a payment for such a suite, or for a settee forming part of such a suite, was mentioned before the tribunal. However, by dismissing the appeal and stating that the decision appealed against was correct, the tribunal in effect gave a decision that a payment could not be made in respect of a three-piece suite and also a decision that a payment could not be made in respect of more than one easy chair. We shall consider first the second decision.

8. The tribunal took the view that the effect of words "sufficient..... easy chairs for all the members of the assessment unit..." in regulation 9(a) was to limit the number of easy chairs in respect of which single payments might be made under regulation 10 to the number of members of the assessment unit for whose personal seating requirements easy chairs were needed. Pursuant to that view they did not allow a payment for an easy chair for the claimant's baby son, who was too young to require an easy chair and did not allow payments in respect of easy chairs to meet the seating requirements of the claimant's visitors, although they made a finding that the claimant had a need for seating accommodation for such visitors. To put the matter in another way, they in effect took the view that although the claimant had a need for such extra seating accommodation that was not a need for which a payment could be made under the regulations.

..... of the words of regulation 9(a) was considered in decision CSSB/130/1982

"I accept the submission of the claimant's representative that it is not necessarily appropriate to award a claimant who lives alone only one dining chair and one easy chair. I agree however with the contention put forward by the benefit officer's representative at the oral hearing before me that it is for the determining authorities to decide in all the circumstances the numbers of items which should be allowed in respect of such items as dining and easy chairs, and that it should be left to the commonsense of those adjudicating authorities what should be awarded having regard to the particular facts and circumstances of any particular case."

The above-quoted passage was expressly adopted as correct in the decision CSB/212/1985.

10. A different view was taken by the author of decision CSB/1045/1985. He said in paragraph 4:-

"4....a single payment could only be made under regulations 9 and 10 for dining and easy chairs sufficient for all the members of the assessment unit. This does not mean sufficient dining and easy chairs for all the members of the assessment unit and those with whom they propose to sit, whether those persons are members of the household (though not of the assessment unit) or not. Nor does it include the settee element in a three piece suite at all. There must be many young couples in this country with only two easy chairs who have to press their dining chairs into service and substitute for easy chairs when guests call. In my judgment it was not the intention of the supplementary benefit scheme that single payments should be available for the supply of chairs to accommodate persons who are not members of the assessment unit.

5. One of the grounds on which the claimant appeals seems to me to be that the tribunal interpreted the word "sufficient" in regulation 8(a) too narrowly, and I take them to be submitting that "sufficient" for the assessment unit means sufficient for each members of the assessment unit and a reasonable number of others. But for the reason above indicated I reject that submission."

11. It is clear from the passage quoted in paragraph 9 above that the author contemplated the possibility of payments being made in respect of seating accommodation for persons other than members of the assessment unit. We think it can readily be inferred that the reason why he did so was that he considered that, for the purposes of regulation 9(a), the sufficiency of the number of chairs available to the assessment unit should be judged by reference not only to the needs of the assessment unit for seating accommodation for themselves but also by a need to have seating accommodation available for visitors. Although we do not wish to suggest that the supplementary benefit scheme is indifferent to the normal human need for reasonable facilities for social intercourse we do not consider that the words of regulation 9(a) can properly be interpreted as relating to sufficiency for the purpose of providing seating accommodation for guests. In particular we feel that the use of the words "for all the members" indicates an intention on the part of the draftsman to provide for assessment of what is sufficient on a purely numerical basis of one easy chair and one dining chair for each member, subject to regulation 3(1) and (2). Accordingly, our conclusion is that the tribunal did not err in law in their decision to the effect that a payment could be allowed for only one easy chair and that they adequately stated their reasons for reaching that conclusion. For completeness we should add that in the course of reaching our conclusion we have rejected the submission on behalf of the claimant that the word "essential" in regulation 9(a) should be construed as having the meaning ascribed to it by the author of Decision R(SB) 10/81. In that case it was necessary to decide on the meaning of that word but it is not necessary to do so in the present case because regulation 9(a) expressly states what items are to be regarded as essential.

12. Our conclusion leads to the same result as the reasoning of decision 1007, 1011, although our reasoning is based on the actual words of regulation 9(a) rather than in an assumption as to the intention of the supplementary benefit scheme.

13. So far we have considered the question of the claimant's entitlement under regulations 9 and 10. In our view there was no evidence before the tribunal which made it necessary for them to consider regulation 30 of the Single Payments Regulations.

14. As regards the first decision of the tribunal confirming the adjudication officer's decision that a single payment could not be made in respect of a three-piece suite because it was not one of the items mentioned in regulation 9(a), we consider this erroneous on two grounds; first because no reasons were given for this conclusion, and secondly, and more importantly, because in certain circumstances it is open to the adjudication officer to award a single payment for a three-piece suite within the provisions of regulation 9(a). A three-piece suite necessarily incorporates a settee and a settee is nothing more than a seat for two or more persons. As such it is the equivalent of two or more easy chairs, and easy chairs are within regulation 9(a). Moreover, a settee is normally cheaper than the cost of the corresponding number of individual chairs. Accordingly, where a claimant is entitled to a single payment for two or more chairs, but would prefer to have a settee of the relevant size, there can be no objection to a single payment for such a settee. However, a claimant cannot be compelled to take a single payment for a settee rather than a single payment for a corresponding number of individual chairs, and accordingly in practice a claimant is unlikely to opt for a payment for a settee when he can receive a higher payment for individual chairs. But if a claimant, who is entitled to a single payment for (say) four easy chairs, specifically asks for a payment for a three-piece suite consisting of two easy chairs and a two-seater settee, and the sum involved is no more than would be the case for four individual chairs, there can, in our judgment, be no objection to an award of this nature. However, there can, for the reasons given above, be no question in the present case of entitlement to more than one easy chair, and it follows a fortiori that there can be no entitlement to a three-piece suite. Although it is necessary for us to set aside the tribunal's decision relating to the question of the claimant's eligibility for a single payment for a three-piece suite, nevertheless this is a case where we can conveniently substitute our own decision.

15. For the foregoing reasons our decision is as set forth in paragraph 1 above.

(Signed) J.N.B. Penny
Commissioner

(Signed) D.G.Rice
Commissioner

(Signed) R.F.M. Heggs
Commissioner

Date: 21st July 1986