

Money stolen from meters - Reg 10 UC Regs.



RAS/3/LS

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Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: John Alexander Rose

Social Security Appeal Tribunal: Chester

Case No: 14/1

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 29 August 1985 is erroneous in point of law. I set it aside and direct that the case be reheard by a differently constituted tribunal.
2. The claimant was at the material time 53 years of age and living alone in rented accommodation. He had been in receipt of a supplementary allowance for several years. On 2 April 1985 his home was broken into. Some of his money was stolen. His gas and electricity pre-payment meters were broken into and £48.46 was taken from them. A claim was made for single payments to meet the cost of reconnecting the electricity meter and of replacing the money stolen from the two meters. An adjudication officer, after considering the claim under regulation 26 (fuel costs) and regulation 30 (discretionary payments) of the Supplementary Benefit (Single Payments) Regulations 1981 and regulation 24 (discretionary payments) of the Supplementary Benefit (Urgent Cases) Regulations 1981 and deciding that none of those was applicable then made his decision disallowing the claim by reference to regulation 10 of the Urgent Cases Regulations. The claimant appealed. His appeal was dismissed. This present appeal is brought with leave granted by the tribunal chairman. I granted the claimant's request for an oral hearing. At the hearing the claimant was represented by Mr R. Atkinson, a Welfare Rights Officer of the Chester Unemployed Centre. The adjudication officer was represented by Mr O. Stocker of the Solicitor's Office of the Department of Health and Social Security. I am grateful to them for their assistance.
3. At the outset, notwithstanding the submission of the adjudication officer now concerned with the case that the tribunal's decision was erroneous in law for not dealing with the claim under regulation 30 of the Single Payments Regulations, Mr Atkinson accepted that, as there was no evidence of risk to the health or safety of the claimant, neither regulation 30 of the Single Payments Regulations nor regulation 24 of the Urgent Cases Regulations could assist. He also conceded, rightly in my view, that the claim could not be sustained under regulation 26 of the Single Payments Regulations because it was not in its nature a claim to meet fuel costs. What is left therefore is the application of regulation 10 of the Urgent Cases Regulations. For his part Mr Stocker accepted that under the Conditions of Supply of electricity the claimant had a liability to the Electricity Board in respect of the money stolen from the meter. He did not accept, because there was no evidence, that that was also true in the case of the Gas Board. He accepted that £48.46 was the amount stolen from both meters. I am not clear whether he accepted that the charge

for reconnecting and repairing the electricity meter was £31. It is clear from the Conditions of Supply that the consumer is liable for repair charges however the damage is caused. However no submission was made to me in respect of the claim for the cost of repairing the electricity meter and that does not appear to be a live issue. I should also mention at this stage that there is nothing in the case papers to indicate whether or when the claimant paid either the £48.46 or the £31 to the two Boards, although the tribunal did find as a fact that "at the date of the claim there was a need."

4. A claimant who fails to satisfy conditions of entitlement under other provisions relating to supplementary benefit may, as a last resort, be entitled to payment under the Urgent Cases Regulations. Regulation 8 deals with emergency relief cases where the need has arisen from what the regulations refer to as a disaster. Regulation 9(a) provides for payments to be made where there is a need of any of a limited number of items and the Single Payments Regulations do not apply. Regulation 9(b) provides for payment of an amount of pension or allowance in respect of living expenses in cases to which regulations 10 to 23 apply. Finally, under regulation 24 single payments may be made in circumstances where there is no other basis of entitlement and the payment is the only means of preventing serious risk to health or safety. Except in a regulation 23 case (benefit ceasing because of a decision that resources and requirements are required to be aggregated) the amount of any pension or allowance payable under the Regulations is to be determined in accordance with regulation 5.

5. Mr Atkinson who also represented the claimant before the tribunal has throughout contended that the claimant is entitled to an allowance under regulation 10. That provides

- "10(1) Where a sum of money other than a sum to which paragraph (2) applies is lost, including any sum stolen or destroyed, but excluding any sum the loss of which is foreseeable, there shall be payable to the claimant an amount of pension or allowance determined in accordance with regulation 5, except that in aggregate the amount paid under this regulation shall not exceed the amount of that sum.
- (2) This regulation shall not apply to any instrument of payment on account of payment under the Act, the Social Security Act 1975, the Child Benefit Act 1975, the Family Income Supplements Act 1970, or on account of any war disablement pension or war widow's pension as defined in the Duplication and Overpayment Regulations."

As indicated above, regulation 10 is one of the provisions which depends on regulation 9(b). That provides -

- "9(b) [where] a claimant to whom any other regulation in this Part of these regulations applies is in need of living expenses in circumstances to which that regulation applies, there shall be payable to him in respect of those living expenses an amount of pension or allowance as specified in that regulation."

So if regulation 10 applies to the claimant's case and he is in need of living expenses "in circumstances to which that regulation applies" the claimant would be entitled to an amount of allowance determined in accordance with regulation 5 but not exceeding the amount stolen. Regulation 5 is inordinately long and complex and I do not think it would be helpful to reproduce it here. It will suffice to say that it provides in effect that the amount to which a claimant is entitled is the amount by which his resources fall short of his requirements, assessed in accordance with the relevant provisions of the Supplementary Benefits Act 1976, the Supplementary Benefit (Requirements) Regulations 1983 and the Supplementary Benefit (Resources) Regulations 1981 but subject to the modifications set out in regulation 5 and subject of course to the condition imposed by regulation 10(1) that the amount is not to exceed the amount lost. Regulation 5(3) sets out the modifications to

requirements. Regulation 5(4) does likewise for resources. For the purposes of my decision in this case I do not need to be concerned with the effect of any modifications which may apply in the circumstances of the claimant's case except that I must mention, because it has been contended that it has a bearing on the question whether regulation 10 applies at all, paragraph (4)(b) of regulation 5 which provides, so far as relevant to this case,

- "(b) any resource which would fall to be taken into account under the Resources Regulations, but including any capital or income otherwise disregarded, shall be taken into account, except -
 - (i) that in a case to which regulation 10 applies the sum lost...shall be disregarded."

Those as I see it are the provisions relevant to this case.

6. It is not in dispute that once the claimant had fed his coins into the pre-payment meter they belonged to the Electricity Board and not to the claimant. The Board's Conditions of Supply expressly provide that. Mr Atkinson contended that regulation 10 applied to the claimant's case whether the money stolen belonged to him or not. That was because under the Conditions of Supply the claimant was liable to the Board for the amount stolen and it was therefore just as much a loss to the claimant as if he had had his own money stolen. Certainly regulation 10 itself contains nothing to suggest that it applies only to money belonging to the claimant though no doubt in almost all cases if regulation 10 applies at all the money in question would have belonged to the claimant at the moment when it was stolen. Furthermore, in principle there seems to be no reason why regulation 10 should not apply to a situation such as this claimant's. The Regulations have the purpose of meeting needs where requirements exceed resources and if such a need has arisen in consequence of a loss of money it seems unnecessarily arbitrary and technical to say that if the money belonged to the claimant at a given moment the need can be met but if it did not it cannot. Regulation 10 does not in my view make such a distinction. The adjudication officer now concerned with the case in his written submission had contended, without explaining why, that the inference to be drawn from the wording of the regulation was that urgent needs should be met only where the claimant had incurred what the adjudication officer referred to as a direct loss i.e. of his own money. He then contended that regulation 5(4)(b)(i) supported his interpretation because, he said, it provided (by way of modification of the Act) that in a case to which regulation 10 applies the money lost was to be disregarded as a resource. And as money which does not belong to the claimant was not a resource of his it followed that such a case was outside regulation 10. Mr Stocker was in my view right to abandon that submission. He said that regulation 5 contained the rules for assessing the amount to be paid where entitlement had arisen under the Regulations including regulation 10. Regulation 5(4)(b)(i) is necessary for situations in which the money lost would otherwise have to be treated as a resource but that does not mean to say that entitlement can arise under regulation 10 only in such cases. That would be a supreme instance of the tail wagging the dog. Furthermore, regulation 10 should be taken as broadly as possible as otherwise it would not apply to a case where for example the money lost belonged to another member of the assessment unit.

7. What Mr Stocker contended, as I understood it, is that where the consequence of the loss falls on the claimant regulation 10 is capable of applying. The claimant must of course show that in consequence of the loss he was in need of living expenses. That is because he also has to satisfy regulation 9(b). The claimant must therefore show something more than that the money was stolen and that he incurred a liability to the Gas or Electricity Boards. He must show when and in what circumstances he met the liability and why he chose to do so. He must also show how that affected his living expenses for any relevant week. Notwithstanding that the inter-relation of regulations 9(b) and 10 is, to say the least, not exactly plain on the wording of those provisions, in general I agree with Mr Stocker, at least so far. So, happily, did Mr Atkinson. However Mr Stocker went on to say that there are

problems in a situation such as the claimant's because when he has satisfied the requirements of regulations 10 and 9(b) an assessment has to be made under regulation 5. And, said Mr Stocker, if you do not disregard the sum lost under regulation 5(4)(b) because it was not a resource of the claimant because it did not belong to him, an assessment based on the amount by which the claimant's resources fall short of his requirements will not produce a sum that is actually payable to the claimant. Therefore Mr Stocker doubted whether regulation 10 could apply to this sort of case at all. In my view that is looking at regulation 5(4)(b) too narrowly. Regulation 5 requires that a claimant's resources which would fall to be taken into account in the ordinary way (including however resources which would otherwise be disregarded), are to be taken into account except that in regulation 10 cases the sum lost is not to be taken into account. Now in my view that cannot be taken too literally because it is not the sum lost which would as such be a resource. The question is whether it would have been a resource but for the fact that it happens to have been lost. So that if for example a claimant's resources which would fall to be taken into account for any benefit week were his unemployment benefit and child benefit (see regulation 11(2)(a) and (b) of the Supplementary Benefit (Resources) Regulations 1981) then the sums paid in respect of those benefits are resources of the claimant whether they are stolen from a shelf next to the electricity meter or from the meter itself. And because they are stolen regulation 10 applies and for the purposes of the calculation under regulation 5 they are to be disregarded. It is perhaps also worth mentioning that by virtue of regulation 11(2)(q) of the Resources Regulations supplementary benefit is itself a resource to be taken into account.

8. In my view regulation 10 is capable of applying to the facts of this case and the tribunal were wrong in law in deciding otherwise. The new tribunal are directed to proceed on the basis that regulation 10 is not inapplicable by reason of the fact that the money stolen from the meters did not belong to the claimant once it had been placed in the meters. They must then take account of the matters referred to above, particularly in paragraph 7, because before any sum becomes payable the claimant must satisfy regulation 9(b) and an assessment must be made under regulation 5. Whether that will produce an amount to which the claimant is entitled will depend on the evidence and the facts to be found by the tribunal. In any event the sum awarded may not exceed the amount lost.

(Signed) R A Sanders
Commissioner

Date: 5 December 1986