

medical need = need for medical item, not item
in everyday use, even if needed because of medical condition



ATH/SH/2/MD/LS

Commissioner's File: CSB/1482/1985

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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: Ronald Greaves

Social Security Appeal Tribunal: Bolton

Case No: 13/03

[ORAL HEARING]

1. I dismiss this appeal. The appeal tribunal made no error of law in their decision dated 11 September 1985.
2. The claimant is aged 36 and lives in a local authority property with his wife and four dependant children, one of whom, S, is aged 2 and has asthma. The claimant made a number of claims for single payments but the only one with which I am concerned is a claim for a single payment for bedding, namely cotton sheets and a quilt for his son, S. The claimant also claimed a Dunlopillo pillow but the adjudication officer and tribunal have not given decisions on this and it is therefore not before me. The adjudication officer should deal with the claim for this item. The adjudication officer at first allowed the claim but subsequently disallowed it on review. The claimant appealed and on 11 September 1985 the appeal tribunal allowed the appeal. The adjudication officer now appeals to the Commissioner with leave of a Commissioner.
3. I heard the appeal on 25 July 1985. The claimant was present and was represented by Mr Rodger of the Free Representation Unit and the adjudication officer was represented by Mrs Huka of the Solicitor's office, Department of Health and Social Security. I am grateful to them for their submissions.
4. I should point out that one of the claims made by the claimant was for a single payment for repair to his vacuum cleaner and a single payment to purchase attachments to the cleaner. Those claims were disallowed by the adjudication officer but in their decision on 11 September 1985 the appeal tribunal allowed a single payment for repair to the vacuum cleaner but the claim for a single payment for purchase of attachments was not dealt with. Mrs Huka understandably did not feel able to deal with that claim at the hearing before me as it was not known what attachments would be sought to be purchased by the claimant. It was agreed that the claimant must, if he wishes, take further steps to deal with that matter e.g. by way of correction under regulation 9 of the Social Security (Adjudication) Regulations 1984 (SI 1984 No.451), if appropriate.
5. The appeal tribunal found, Form AT3, Box 2, that "it was necessary for the child to have non-allergic bedding i.e. a Terylene filled duvet and cotton sheets". By their unanimous decision, Form AT3, Box 3, they awarded three cotton sheets and a Terylene filled duvet, and they made the award under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 (SI 1981 No.1528) on the ground that "without non-allergic bedding there is a serious risk to the [claimant's] child's health which can only

be avoided by the award of a single payment": Form AT3, Box 4. I should note, in passing, that the claimant stated in evidence that he had two sheets and two blankets and a nylon eiderdown. In reply to my enquiry as to whether this constituted an adequate stock Mr Rodger informed me that the 'S' manual recommends three sheets but the award of a single payment for only one sheet would not be sufficient.

6. On behalf of the adjudication officer Mrs Huka submitted that no single payment could be made for the bedding by virtue of regulation 6(2)(n) of the Single Payments Regulations.

Regulation 6(2) of those regulations provides:-

"Notwithstanding any provisions in these regulations, in particular regulation 30, no single payment shall be made in respect of any of the following:-

...

(n) a medical, surgical, optical, aural or dental need."

Mrs Huka submitted that the bedding was a medical need within the meaning of that regulation, although she conceded that the term "medical...need" was nowhere defined.

7. On behalf of the claimant, Mr Rodger made four submissions, and I am greatly indebted to him for his argument. His four submissions were to the following effect:

(1) Since supplementary benefit provides a safety net, the regulations should be interpreted as liberally or generously as possible, and he referred to Rv. West London Supplementary Benefits Appeal Tribunal ex parte Wyatt reported in Decisions of the Courts relating to Supplementary Benefits and Family Income Supplements Legislation at page 107 (SB13) where May J., as he then was, said:-

"...supplementary benefit is the ultimate source of financial assistance which, subject to the provisions of the Act, is available to the ordinary citizen who may need it. For instance, for medical purposes it is available, if at all, only after recourse has been had to the National Health Service, to which reference has been made in the course of the argument. It is available, if at all, only after the provision of the relevant equipment itself under other legislation which applies to the local authorities. But if and to the extent that in circumstances such as the present these electrical running costs cannot be obtained from any other authority, I think it only right that one should seek to construe the Supplementary Benefits Act 1976 if one can in such a way that these costs are within its scope either as a "requirement" not excluded under subsection (3) of section 1, or, alternatively, under paragraph 4 of the First Schedule to the 1976 Act."

See also (1978) 2 All ER 315 at page 317. Mr. Rodger also referred to the decision CSB/870/1984, paragraph 7, to which I will refer in paragraph 9 below. He said that cotton sheets are an ordinary, everyday item, that they are not made specially for asthmatic children and many people have them simply from preference; and that the insulin gun in that decision i.e. CSB/870/1984, had a special application and was not an ordinary, everyday item.

(2) In interpreting regulation 6(2)(n) of the Single Payments Regulations, each word must be given its own separate meaning. That is to say, there must be a "medical" need or a "surgical" need or an "optical" need or an "aural" need or a "dental" need; and a "medical...need" must have a precise meaning which does not overlap "surgical" or the other needs.

- (3) "Medical...need" in regulation 6(2)(n) must be given a restricted meaning; that is to say, it must be given a meaning which is consistent with the regulations in Parts II to VIII of the Single Payments Regulations. Regulations 1-6 must be complied with before consideration can be given to regulations 7-30, in Parts II to VIII, of the Regulations: Decision R(SB) 15/81. If regulation 6(2)(n) were given a wide meaning, it would negate those regulations in Parts II to VIII which contain medical "aspects". Those regulations, to which he specifically referred, were regulation 9(i)(ii),(j) and (k); 10(1)(a)(ii) and (1)(b)(i); 13(1)(b) and (3); 16(1)(b)(i); 20(b); 23(2)(d); 27 (1)(a)(ii) and (iv); and 30. I do not need here to cite all those regulations, but a reference to them will show that in each case (save possibly for regulation 23(2)(d), a single payment is dependent upon the state of health or some other medical aspect of the claimant or a member of the assessment unit. For example, regulation 9(j) provides that a vacuum cleaner is "essential furniture and household equipment" "only where a member of the assessment unit is allergic to house dust". Where a member of the assessment unit is allergic to house dust, the need for a vacuum cleaner could be said to arise from a medical condition of that member of the assessment unit; and if a need arising from a medical condition is a "medical...need" the single payment for a vacuum cleaner would be precluded by regulation 6(2)(n). A "medical...need" for the purpose of regulation 6(2)(n) cannot, therefore, Mr. Rodger submitted, mean a "need arising from a medical condition" neither could it mean a need arising from medical advice as that would be too wide.

A further example is contained in regulation 27(1)(iv) which provides for a single payment for clothing or footwear where the need has arisen because of:-

"physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear."

If the physical or mental illness or disability constituted a "medical...need" for the purchase of a particular or additional item of clothing or footwear, a single payment would be precluded by regulation 6(2)(n).

Another example is regulation 30 which provides for a single payment for an exceptional need where 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."

That regulation suggests or indicates that a single payment may be made where there is, in the widest sense, a medical need. But if regulation 6(2)(n) was given a wide interpretation, it would neutralise regulation 30.

I think that those examples will illustrate the point that Mr Rodger was making when he referred to each of the regulations enumerated above.

- (4) Mr. Roger's fourth submission was based on decision CSB/728/1984 at paragraph 11(4) and (5). In that case a claim was made for a single payment for purchase of a mattress. The claim was for payment of "such amount as is necessary to purchase an item [i.e. the mattress] of reasonable quality" within the meaning of regulation 3(3)(b)(i) of the Single Payments Regulations. In paragraph 11(4) of that decision, the Commissioner stated that:-

"...the fact that the intended user suffers from an established medical condition such as permanent back trouble would be relevant in determining whether the quality of a mattress was reasonable in the circumstances. (There is a suggestion in the case papers that the claimant and his wife

have had back trouble which should be investigated.)"

The type of mattress required in that case arose from a medical condition but, submitted Mr Rodger, it was not a "medical...need" because if it were a medical need, it would have been excluded by regulation 6(2)(n). He submitted, therefore, that "medical...need" must mean a need for a medical item and not a need for a special type of bed even though the need for that type of bed arose from a medical condition.

I have found Mr Rodger's arguments very convincing.

8. Regulation 6(2)(n) contains no definition of "medical...need" or "surgical...need" or any other specified need. It is interesting to relate the history of this particular regulation. It was made by the Secretary of State for Social Services by way of statutory instrument on 3 November 1983 to come into operation on 5 November 1983: SI 1983 No. 1630. It was made by the Secretary of State, according to the preamble,

"In exercise of the powers conferred upon him by section 3(1) of the Supplementary Benefits Act 1976, and of all other powers enabling him in that behalf, without having referred any proposals on the matter to the Social Security Advisory Committee since it appears to him that by reason of urgency it is inexpedient to do so..."

The reference to "urgency" was a reference to section 10(2)(a) of the Social Security Act 1980 which provides that the Secretary of State shall not be required to refer any proposals to the Committee if:-

"it appears to the Secretary of State...that by reason of the urgency of the matter it is inexpedient so to refer the proposals."

The "urgency" arose in this way. On 2 November 1983 a Tribunal of Commissioners held, in Decision R(SB)52/83 at paragraph 5, that the word "requirements" in section 1(3) of the Supplementary Benefits Act 1976, which provides that:-

"The requirements of any person to be taken into account for the purposes of this Act do not include any medical, surgical, optical, aural or dental requirements..."

had a specialised meaning which was set out in detail in Schedule 1 to the 1976 Act (referring to normal, additional and housing requirements) and which clearly related only to weekly allowances or pensions and not to single payments, and that, accordingly, as is set out in the headnote,

"section 1(3) of the Supplementary Benefits Act 1976 did not operate to exclude payments under section 3(1) in respect of needs of a type specified in section 1(3)."

Regulation 6(2)(n) was, therefore, "inserted to plug the gap", to quote the phrase of Mr John Mesher in his "Supplementary Benefit and Family Income Supplement: The Legislation" Second Edition at page 252. Whether or not the matter was as urgent as the Secretary of State considered it was, I cannot say. The fact that the Secretary of State did not refer his proposal to the Social Security Advisory Committee well may have caused or contributed to the insertion of this regulation which, on the face of it, as Mr Rodger has cogently argued, is, if widely construed, inconsistent with other regulations in Parts II to VIII of those regulations. The regulations are complex and any new, additional regulation, requires and merits careful consideration before its introduction so as to ensure that it does not conflict with the existing regulations. Regulation 6(2)(n) gives the appearance of having been introduced without that careful consideration which it required and merited.

9. It falls to me to consider the interpretation of regulation 6(2)(n). What is a "medical...need"? Some help can be obtained from the decision CSB/870/1984, to which I

have referred in paragraph 7(1) above. In that case the claimant claimed a single payment for an insulin gun, the claimant being a diabetic. In paragraph 7 the Commissioner stated that the question was simply what was meant by the expression "a medical...need" under regulation 6(2)(n). He referred to Wyatt's case, cited in paragraph 7(1) above, and to R v Peterborough Supplementary Benefits Appeal Tribunal ex parte Supplementary Benefits Commissioner (1978) 3 All ER 887; and in paragraph 8 he stated:-

"...the claim in the present case for a single payment for the insulin gun was in my judgment undoubtedly for "a medical...need". Mr D'Eca cited to me the following definition of "medical" from the Shorter Oxford English Dictionary.

"Pertaining or related to the healing art or its professors.

Also in a narrower sense, pertaining or related to medicine, as distinguished from surgery, obstetrics, etc."

The root meaning and the etymological derivation of the word "medical" relates to healing. Insulin in a sense merely replaces in the body something which is deficient there. Nevertheless I consider that it undoubtedly is a medical i.e. healing need for those unfortunate enough to suffer from the disease of diabetes. That being so, equipment for its injection would also constitute a "medical need" and I do not accept the claimant's contention to the contrary. There may of course be borderline areas where equipment etc is alleged not in any sense to heal but merely to be designed to prevent the arising, resurgence, or worsening of a condition e.g. an orthopaedic mattress for a person suffering from a back condition or cotton sheets for someone having an allergy to synthetic sheets. Such cases will need careful consideration when and if they come up for decision. I express no opinion on them here but merely record that they were mentioned in the course of argument before me."

The present case is one of the examples given by the Commissioner requiring careful consideration, namely "cotton sheets for someone having an allergy to synthetic sheets".

10. In decision CSSB/33/85, the claimant made what the Commissioner said was clearly a claim for an additional requirement for disposable napkins for her daughter. The claimant had stated that her daughter was allergic to towelling napkins, and that she had to resort to disposable ones which involved her, the claimant, in additional expense. The Commissioner upheld the determination of the adjudication officer that that requirement arose due to a medical condition and that there was no provision in Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 which would warrant payment of an additional requirement in respect of disposable napkins and in particular that paragraph 20 of Part II of Schedule 4 to those regulations did not assist the claimant. In reaching that decision, the Commissioner, at paragraph 4, referred to section 1(3) of the Supplementary Benefits Act 1976 (to which I have referred in paragraph 8 above), which provides that "requirements" for the purposes of the Act excludes "any medical, surgical, optical, aural or dental requirements"; and he cited regulation 11(1) of the Supplementary Benefits (Requirements) Regulations 1983, which specifies by reference to Schedule 4 to those regulations the items to which the category of "additional requirements" relates, and regulation 11(3) which specifies those items in the schedule which are, and those items which are not, caught by the exclusion of section 1(3) viz the exclusion of any medical etc requirements. He then stated, at paragraph 6:

"The tribunal in question reached their decision on the basis that the claimant's claim was for a claim for a single payment under the Supplementary Benefit (Single Payments) Regulations 1981, and they decided that regulation 6(2)(n) of the said regulations which came into operation on 5 November 1983 precluded any payment in respect of disposable napkins. In fact the claimant's claim was not for a single payment but was clearly for an additional requirement. The tribunal reached in my

view the correct decision but they reached it by applying the wrong regulations."

The Commissioner expressly decided the case, therefore, as a claim for an additional requirement and not as a claim for a single payment; and although it is perhaps implicit that he would have rejected any claim for a single payment by virtue of regulation 6(2)(n), his observations in that regard were obiter. Furthermore, the Commissioner did not, it would seem, have the benefit of the very full and helpful argument such as I have had in the present case. I also note, in passing, that Schedule 4 to the Requirements Regulations does not include bedding or bedclothes as an item.

11. In the present case, the appeal tribunal have awarded the claimant a payment for three cotton sheets and a Terylene filled duvet under regulation 30 of the Single Payments Regulations on the ground that "without non-allergic bedding there is a serious risk to the [claimant's] child's health which can only be avoided by the award of a single payment". Mrs Huka, on behalf of the adjudication officer, has submitted, as I have indicated, that that need was a "medical...need" and that the claim was precluded by regulation 6(2)(n).

12. In my judgment, regulation 6(2)(n) must be given a meaning which does not conflict with or negate the provisions in all those regulations, including regulation 30, which I have listed in paragraph 7(3) above. The only way in which regulation 6(2)(n) can be defined so as to be consistent with those regulations is to define a "medical...need" as being a need for a medical item - such as an insulin gun in the decision CSB/870/1984. But where there is a need, arising from a medical condition, for an item in ordinary, everyday use, such as a cotton sheet or a duvet, that need is not, in my judgment, excluded by regulation 6(2)(n).

A need for cotton sheets and a Terylene filled duvet, is not a "medical...need" even though it is a need arising from a medical condition.

13. The appeal tribunal having found, as they were entitled to find, that a payment for the three cotton sheets and the Terylene filled duvet was the "only means by which...serious risk to the health...of any member of the assessment unit may be prevented", came to a correct decision in awarding a single payment under regulation 30. The items claimed were items in ordinary, everyday use - they were not medical items - and a single payment was not excluded by reason of regulation 6(2)(n).

14. In my judgment, the appeal tribunal made no error in law and I disallow this appeal.

(Signed) A. P. HOOGLAND
Commissioner

Date: 5 November 1986