

JM/BW

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the benefit officer from a decision of the supplementary benefit appeal tribunal dated 12 October 1981 which reversed a decision of the benefit officer issued on 24 August 1981.

2. I held an oral hearing of this appeal. The claimant did not attend. The benefit officer was represented by Miss L Shuker, of the Solicitor's Office of the Department of Health and Social Security. I am indebted to Miss Shuker for the brevity with which she made her submissions.

3. The claimant is a single woman aged about 22. At the material time she had been in receipt of a supplementary allowance since 2 July 1981. On 27 July 1981 she made a claim for a single payment in respect of furniture. The circumstances surrounding that claim appear to have been a matter of dispute between the claimant and the Department. The appeal tribunal saw and heard the claimant. There is in the papers a careful note of the evidence which was given to the appeal tribunal. Form LT 235, moreover, contains a gratifyingly full record of the findings of the appeal tribunal on questions of fact material to that tribunal's decision. Those findings were amply justified by the evidence. I set them out, accordingly, as being the central facts upon which my own decision is based:

"The Tribunal accepted that the Appellant telephoned the Local Supplementary Benefit Office on 15 7 81 when she was told that she might be given a grant for furniture; that a visit was made to her on 13 8 81 when her entitlement to a grant was confirmed by the Visiting Officer, and the Appellant was told to get estimates for the required furniture and measurements for the required lino and to send these to the local office, and was also told that she would be reimbursed £26.00 for money already spent on furniture (a bed, two chairs and a kitchen cabinet); that as a result of this visit the Appellant obtained estimates,

etc and sent these to the local office; that a refusal was sent by the local office on receipt of these estimates (letter of refusal dated 24 8 81 examined by the Tribunal) and that this refusal had not been made at the time of the visit and confirmed immediately afterwards in writing - as stated by the Presenting Officer; that in the meantime the Appellant was offered furniture, etc at a bargain figure of £90.00 as a result of a quick sale, and relying on the Visiting Officer's statement that a grant would be made, she bought it; and that as a result she increased her overdraft and her Bank is pressing for this to be reduced."

4. The unanimous decision of the appeal tribunal was that the claimant be awarded a single payment of £116.00 to meet the cost of furniture and lino. The reasons were set out thus:

"The Tribunal were satisfied that since the Department's local office had not only stated on the telephone that a grant might be allowed to the Appellant (the situation in Wassel's case), but had followed this up by a visit during which the Visiting Officer had confirmed her entitlement, and that the appellant had acted on this information and had altered her position to her detriment, that therefore the Department should in equity be estopped from denying that she was entitled to a grant. (Wassell's case (March 1980) distinguished because the misleading information in that case was only contained in a telephone conversation.)"

5. I have more than a little sympathy with the lengths to which the appeal tribunal went in its attempt to afford relief in a manifestly deserving case; and I admire the frank and forthright way in which it set out its reasoning. (By the same token, I find singularly unedifying the Department's attempt to present a narrative which was irreconcilable with the documentary evidence.) I am afraid, however, that the appeal tribunal's reasoning will not stand up in law. It is important to realise the fundamental distinction between the position of the visiting officer and the position of the benefit officer. The visiting officer is an agent of the Secretary of State, working directly for him. The visiting officer's duties and functions are of an investigative and advisory nature. The visiting officer has no authority to determine any question as to the entitlement of any person to supplementary benefit or as to the amount of any such benefit. The determination of such questions is (subject to the appellate procedures) the function of the benefit officer (see section 2(1) of the Supplementary Benefits Act 1976, as amended by the Social Security Act 1980). In discharging that function the benefit officer acts independently of the Secretary of State. It is a quasi-judicial function; one with the exercise of which the Secretary of State cannot lawfully or properly interfere. It is the benefit officer's duty to determine each case upon the basis, and solely upon the basis, of the relevant legislation. If that legislation does not confer entitlement upon a claimant, the benefit officer cannot lawfully make an award; and if he does in such circumstances make an award it is the duty of the appellate authorities to strike that award down. Public funds are at stake. They can only be disbursed as provided by Parliament. Neither the benefit officer nor the appellate authorities have any power to disburse them other than as provided by Parliament.

6. It can now be seen how little scope there is for applying the doctrine of estoppel to the functions of the benefit officer; and least of all where the representation relied upon by the claimant is made by a party over whom the benefit officer has no control and for whom he has no responsibility. In Decision R(P) 1/80, at paragraph 14, the then Chief Commissioner said:

"An estoppel cannot prevent a duty enjoined by statute from being carried out (Maritime Electric Company Ltd v General Daires Ltd [1937] AC 610 PC)."

In my view this represents the correct approach to the facts of this case. (A like view has been taken in Scotland, where the equivalent of estoppel is personal bar - see Decision CSP 1/76, not reported.)

7. I do not think that the claimant can derive any assistance from Wassell v The Supplementary Benefits Commission [1980] SB 31, in "Decisions of the Courts relating to Supplementary Benefits and Family Income Supplements Legislation", page 241. In his judgment Woolf J said this:

"This is a situation where the member of the public gets in touch with a member of the staff of the Supplementary Benefits Commission by telephone seeking to arrange an appointment. If in such circumstances a view is expressed as to the position of an applicant for supplementary benefit it would be wholly undesirable, in my view, that that view should be regarded as one which is binding upon the Supplementary Benefits Commission thereafter." (At pp 248-9)

Certainly the claimant in this appeal has a stronger case on the merits than had Mrs Wassell. This does not, however, go to the essence.

8. Because of the view which it took on the estoppel issue the appeal tribunal enquired no further into the claimant's entitlement to a single payment. Had it proceeded to such enquiry, it would have been bound to determine that the claimant had no entitlement to any part of the award of £116.00. All of the furniture the subject of that award had already been purchased by the date of the benefit officer's decision. At the date of that decision, accordingly, the claimant no longer had a need for the items in question (see regulation 3(2)(a) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985] and Decision R(S.B.) 8/81, paragraphs 6 and 7). Moreover, since the claimant was in a position to avail herself of overdraft facilities there is no realistic prospect that she could successfully invoke regulation 26(1)(b) of the said Regulations. It would, in my view, be a gratuitous waste of time and public money were I to refer this case for determination by another tribunal. I am satisfied that it is expedient that I myself should give the decision which the appeal tribunal should have given.

9. My decision is, accordingly, as follows:

- (1) The appeal of the benefit officer is allowed.
- (2) The decision of the appeal tribunal dated 12 October 1981 is erroneous in law and is set aside.
- (3) The appeal of the claimant from the decision of the benefit officer issued on 24 August 1981 is disallowed.

10. I have this to add. It is a lamentable story. It is little short of scandalous that the Department's officers, having misled the claimant, should have set out to mislead the appeal tribunal. Whether or not the claimant has in law a good cause of action against the Secretary of State is not for me to say; but I should be dumbfounded if in these circumstances the Secretary of State did not think it proper to make to the claimant an ex gratia payment.

(Signed) J Mitchell
Commissioner

Date: 3 August 1982

Commissioner's File: C.S.B. 10/1982
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