

SP for funeral exps - meaning of "cemetery fees for a simple funeral" - claim for cost of private "double grave".

ATH/11/SH/LM

Commissioner's File: CSB/28/1988

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Rita Billington

Social Security Appeal Tribunal: Southend-on-Sea

Case No: 15/222

London Council
1 SEP 1988
London Area Office

1. I allow this appeal by the claimant. The decision of the social security appeal tribunal dated 24 August 1987 was erroneous in law and I set it aside. The case must be reheard and redetermined by a differently constituted tribunal.

2. According to Form AT2, the claimant is a single woman who at the date of the claim was living with her non-dependent daughter in local authority rented accommodation. The claimant was in receipt of supplementary allowance and child benefit and had no savings. On 3 January 1987 the claimant's mother died. The claimant received a death grant of £30. On 28 January 1987 the claimant made a claim for a single payment for funeral expenses. The undertaker's original account was for a total sum of £574.50, comprising cost of funeral £431.50 and cost of private grave £143. By a decision issued on 3 February 1987 the adjudication officer decided that the claimant was entitled to a single payment of £401.50 for funeral expenses. On 2 March 1987 the claimant gave notice of appeal. On 24 March 1987, pursuant to a telephone call from the DHSS local office the undertaker sent an account which then showed a total figure of £588.50. On 24 August 1987 the social security appeal tribunal dismissed the claimant's appeal. The claimant now appeals with my leave.

3. At the date of the claim regulation 8 of the Supplementary Benefit (Single Payments) Regulations 1981 provided, so far as is relevant:-

"8. (1) Where any member of the assessment unit takes responsibility for the cost of a funeral or cremation (in this regulation referred to as the 'responsible member') and -

(a) the deceased was -

- (i) a close relative of the responsible member, or
- (ii) a member of the same household as the responsible member;
- (iii) related to the responsible member but, at the time of his death, had had no recent contact with any person more closely related to him than the responsible member;

- (b) there is no other person, being a close relative of the deceased, who could more reasonably, having regard to how closely they were related and the financial circumstances of that person, be expected to take responsibility; and
- (c) the accommodation where the deceased normally lived prior to his death ('the deceased's home') was in the United Kingdom and she died ... (i) in the United Kingdom ...

the claimant shall be entitled to a single payment of an amount sufficient to meet any essential expenses of the funeral or cremation which are specified in paragraph (2) and which fall to be met by the responsible member.

(2) The essential expenses mentioned in paragraph (1) are as follows -

- (a) the cost of any necessary documentation;
- (b) the cost of a plain coffin;
- (c) the cost of transport for the coffin and bearers, and one additional car;
- (d) the reasonable cost of flowers from the responsible member;
- (e) undertaker's fees and gratuities, chaplains, organists and cemetery or crematorium fees for a simple funeral or cremation;
- (f) the cost of any additional expenses arising from a requirement of the religious faith of the deceased, not in excess of £75; ..."

The regulation then went on to describe the deductible items:-

"(3) The following amounts or sums shall be deducted from any amount which would, but for this paragraph, be payable under this regulation and, where more than one amount falls to be deducted, priority shall be given in the following order -

- (a) [not relevant]
- (b) the amount of any death grant payable under the Social Security Act in respect of the deceased's death unless that grant has been spent on any item in respect of which a single payment would otherwise have been made under this regulation;
- (c) [not relevant]
- (d) [not relevant]
- (e) the amount of any contribution which has been received by the responsible member or any other member of the assessment unit from a relative of his or from a relative (but not a close relative) of the deceased, ...
- (f) an amount in respect of any surviving close relative of the deceased equal to a proportionate share of the amount which would, but for this paragraph, be payable after the application of the preceding

sub-paragraphs, less the cost of flowers from the responsible member, except that no such share shall be assumed in respect of a relative -

- (i) to whom a pension or allowance is payable, or
- (ii) from whom, having regard to his financial circumstances, it would be unreasonable to expect such a contribution, or
- (iii) who has had no contact with the deceased in recent years, but this sub-paragraph shall not apply when the responsible member is the surviving spouse of the deceased or where the deceased was a dependant of the claimant."

There is no dispute in the present case that the deceased was a close relative of the responsible member and that the claimant was entitled to a single payment "of an amount sufficient to meet any essential expenses of the funeral or cremation" within the meaning of regulation 8(1). The questions are what were the "essential expenses of the funeral or cremation" under regulation 8(2)(e) and the deductible items under regulation 8(3)(e) and (f).

Form AT2 under paragraph 5 headed "Summary of Facts". It appears that the undertaker's original account was no longer available but in the letter dated 24 March 1987 from the undertaker the revised account specifically refers to "a cremation at Upminster Crematorium" and refers to a "veneered Elm coffin fitted with cremation fittings". In addition there is an item for "grave fees" of £143. That fee is stated to be for "a private double grave". However, under cover of a letter dated 15 June 1987 from the claimant's representative, a welfare rights worker, there is another letter dated 9 June 1987 from the undertaker in which it was stated that they had received instructions for a service and burial at St Nicholas Church and that they had, in effect, obtained details of a double grave but without a headstone and this was in fact difficult to find because the maps were not kept up-to-date and when they found what they thought to be the correct grave no member of the family could definitely identify the area; that St Nicholas had no available space for a new grave and, accordingly, in order to avoid further distress to the family, the undertaker decided to find a space in another of the Council cemeteries. The undertaker explained that the cost of a private grave was £143 and the cost of a "common law" grave was £69. In the case of a private grave "only members of one family are buried in the same grave" and "it also allows them the right to have a headstone if they wish". In the case of a common law grave, however, "they are usually opened up for up to six people" and all decisions are made by the Council; and, the undertaker stated, there may be people from six different families interred in the same grave and no headstone is allowed. The undertaker concluded that they normally only decided to use a common law grave if there were no other members of the family still living but in the case of the claimant there was quite a large family and since the claimant's late father's grave at St Nicholas remained unmarked, the choice of whether to have a private grave or a common law grave was left to the claimant. The undertaker also provided a copy of an account bearing the same date as the letter, 9 June 1987, referring to the funeral arrangements and referring to the coffin as "a burial veneered Elm coffin fitted with burial fittings" with "interior draped with swansdown". The grave fees were shown as £143 being "private grave -2 interments". There is no reference to a cremation in that account or in that letter. Accordingly the adjudication officer made enquiries and in a further submission to the appeal tribunal he stated that the crematorium confirmed that they had no record of the claimant's mother having been cremated at the relevant time, and before the appeal tribunal, according to the chairman's note of evidence, "It was common ground that the deceased lady had been buried and not cremated": Form AT3, box 1.

5. In that further submission, the adjudication officer stated that the deceased had eight other relatives of whom seven were in receipt of supplementary benefit and had no savings but the eighth was a Mrs A who was married to Mr A, and he, Mr A, had claimed supplementary benefit but at the relevant time his income exceeded supplementary benefit requirements by £46.31. The adjudication officer continued:-

"His [Mr A's] income consisted of retirement pension of £65.13, occupational pension of £19.02 and wife's earnings of £33 a week. He had savings of £400."

The adjudication officer stated that the claimant had been awarded a single payment of ~~£401.50 towards funeral costs and £41 for flowers; that the total funeral bill had been~~ £588.50 and £41 for flowers; and that he had revised his decision and awarded a single payment for a further £29.17. It is not necessary to set out all the figures but the "essential funeral expenses" were itemised and included the item "Grave Fees ... £69" and the total sum allowed for funeral expenses was £555.50. Against that figure the adjudication officer deducted the death grant of £30 and an item:-

"Assumed contribution from [Mrs A] ... £53.83."

The adjudication officer went on to explain how he arrived at that figure as an assumed contribution from Mrs A as follows:-

"The adjudication officer decided that [Mrs A] was in a position to contribute to her mother's funeral expenses as she worked and had £400 savings. Including the claimant, there were 9 surviving relatives so the proportion payable would be 1/9th of the essential funeral expenses less the cost of the responsible member's flowers -

£555.50

£30.00 - death grant

£525.50

£41.00 - flowers

£484.50 + 9 = £53.83

Although [the claimant] chose a private grave for £143.00 the adjudication officer did not consider this to be an essential expense and allowed £69 for the common law grave. In conclusion the original decision has been revised and a further payment of £29.17 awarded. The total single payment for funeral expenses being £430.67 and £41 for flowers."

6. It has been necessary to set out those facts in order to reach what are the two issues:-

- (i) the cost of the grave and
- (ii) the assumed contribution from Mrs A.

In their reasons for their decision, in Form AT3, box 4, the tribunal stated:-

"The tribunal agree with [the welfare rights officer representing the claimant] that the 2 issues before them concern the use of a double private grave and the contribution to be made by Mrs [A]. On the first point they have taken into account everything said on the [claimant's] behalf but they bear in mind that the regulations refer to a 'simple' funeral and they are not persuaded that such a funeral necessitates the excavation of a double private grave as was done in this case. They consider that the allowance made

by the Department of £69 for grave fees was adequate for a simple funeral. On the issue of the contribution from Mrs [A] the tribunal reject the contention of [the welfare rights officer] that the matter has to be looked at as at this date. On the contrary the tribunal take the view that it is established by numerous decisions of the Commissioners that they must look at this matter as at the date of claim. As at that date there is reliable evidence before the tribunal of the fact that Mrs [A] at the date of claim was in receipt of part-time income from work of £33 per week. They pay no attention to the capital sum of £400 declared in the claim form completed by the husband of Mrs [A] because there is no evidence of the owner of that amount, but taking into account everything before them and all that has been said by [the welfare rights officer], they are not persuaded on the balance of probability that it would be unreasonable to expect Mrs [A] to pay a contribution towards the funeral of her late mother, having regard to her financial circumstances. This being so, a deduction falls to be made from the calculation of the funeral expenses in respect of a contribution from Mrs [A], and the tribunal consider that the deduction in fact made by the Department of £53.83 is correctly made and is in accordance with the regulations quoted. Therefore, they confirm the adjudication officer's decision."

In their findings of fact, in Form AT3, box 2, the tribunal had found, or at any rate assumed, that Mrs A was "a daughter of the deceased", although in fact in his further submission the adjudication officer had not said so: he had merely described her as the eighth "other relative". However, nowhere in the papers is any question raised by or on behalf of the claimant that Mrs A was not a daughter of the claimant's mother.

7. The Grave

The "essential expenses" for which a single payment may be awarded under regulation 8(1) were set out in regulation 8(2) (see above) and fall within regulation 8(2)(e) -

"undertakers fees and gratuities, chaplains, organists and cemetery or crematorium fees for a simple funeral or cremation."

In other words, the claimant is entitled in the present case to cemetery fees "for a simple funeral". What is meant by a "simple funeral"? In R(SB) 46/84, the Commissioner said at paragraph 11:-

"... They [the tribunal] should also scrutinise each of the listed disbursements and record findings of fact as to which they consider essential expenses under regulation 8(2)(e) in the context of 'a simple funeral'. In my view the word 'simple' means unpretentious and is a question of fact to be determined by the new tribunal. It should be noted that the account refers to 'exclusive right of burial' in a 'new earth grave' costing £258. The benefit (adjudication) officer submitted that £184 represented the excess burial fee over and above £74 which would have been payable for an ordinary grave in a local authority cemetery. No doubt the new tribunal will verify this figure."

In the present case, the claimant claimed the cost of a double grave - "Private grave - 2 interments" - and the adjudication officer allowed £69 for a "common law grave". The appeal tribunal confirmed the adjudication officer's decision. I have no doubt that the adjudication officer and the tribunal were right to reject the claim for the cost of a double grave, since I cannot believe that a double grave comes within the definition of "a simple funeral". On the other hand, there was no evidence other than that given by the undertaker as to the meaning of and as to what was the nature of a "common law grave". It is clear from the words of the Commissioner in R(SB) 46/84 which I have quoted above that "an ordinary grave in a local authority cemetery" would qualify as "a simple funeral" for the purposes of regulation 8(2)(e) and that the cost at the date of the claim in that case, September 1982, was £74. In my judgment, the question to be determined by the tribunal in

the present case was the cost of "an ordinary grave in a local authority cemetery". In my judgment, that does not mean what the undertaker has described as a "common law grave" i.e. a grave into which six unrelated persons would in the course of time be buried and in respect of which there was no right to have a headstone. In my judgment, the tribunal did not apply the right test and their failure so to do constituted an error of law. I must, therefore, set aside the decision. The new tribunal should enquire into and make the relevant findings of fact as to the cost of, as I have said, "an ordinary grave in a local authority cemetery" but a grave which was not one to be shared with other unrelated persons. In other words, a single private grave. I appreciate that in her grounds of appeal the claimant has said that the Council does not allow single graves. But it does not follow, ~~in my judgment, that the claimant is entitled to the cost of a double grave. If no actual~~ figures can be obtained, the new tribunal must assess the figure. It may be that the figures for another local authority cemetery or cemeteries may assist.

8. Mrs A

In her grounds of appeal the claimant has stated that Mrs A had started divorce proceedings at least six months before she, the claimant, made her claim for a single payment; that she, Mrs A, had been maintaining a separate household since about July 1985 and that her income from her employment was only just above supplementary benefit level; that evidence was given to the tribunal that Mrs A was pursuing divorce proceedings "at the time of the tribunal hearing". The proper date for determining whether or not there should be any deduction under regulation 8(3)(f) above of a share which would be reasonable to expect Mrs A to make must be determined at the date of the claim: R(SB) 42/83 at paragraph 7. As will be seen from regulation 8(3)(f) above -

"no such share shall be assumed in respect of a relative -

- ~~(i) to whom a pension or allowance is payable, or~~
- (ii) from whom, having regard to his financial circumstances, it would be unreasonable to expect such a contribution, or
- (iii) who has had no contact with the deceased in recent years ..."

It is clear that no pension or allowance was payable to Mrs A. However, as I have indicated above, although no evidence appears to have been given as to the relationship of Mrs A to the claimant's mother, it does not appear to have been disputed that she was the daughter of the claimant's mother and a Mrs D gave evidence before the tribunal that Mrs A had visited the deceased on at least one occasion "about two years ago". The issue, therefore, is whether or not it would be unreasonable to expect Mrs A to make a contribution "having regard to [her] financial circumstances": regulation 8(3)(f)(ii). According to the chairman's note of evidence, Form AT3, box 1, the welfare rights officer acting on behalf of the claimant stated that Mrs A "was now divorced and was on supplementary allowance". As he was submitting - erroneously - that the tribunal "were entitled to look at the present situation" and not the date of claim, I assume that by "now" was meant the date of the hearing. I appreciate that the tribunal in their reasons for their decision stated that they paid no attention to the capital sum of £400 but nevertheless they were "not persuaded on the balance of probability that it would be unreasonable to expect Mrs [A] to pay a contribution towards the funeral of her late mother, having regard to her financial circumstances". In their findings of fact, they have made no finding as to Mrs A's financial circumstances. All they have stated in their findings of fact, Form AT3, box 2 was that -

"... it was reasonable having regard to the financial circumstances of Mrs [A] to expect her to make a contribution to the funeral expense of her late mother."

In my judgment those findings and those reasons were wholly inadequate and constituted an

error of law: Social Security (Adjudication) Regulations 1986, regulation 25(2)(b); and R(SB) 11/82 at paragraph 14. The new tribunal will have to enquire into and make the relevant findings of fact as to the financial circumstances of Mrs A at the date of the claim, 28 January 1987. Was she living with her husband at that date? If not, was she maintaining a separate household? Was she entitled to any share of the £400? Was £33 a week her only income? If she was not entitled to any share of the £400, how much could she afford to pay out of £33 a week? and so on. In the light of their findings of fact they must then decide, of course, whether or not "it would be unreasonable to expect" a contribution from her.

9. For those reasons, I allow this appeal by the claimant.

(Signed) A T Hoolahan
Commissioner

Date: 11 August 1988
