

JMe/1/MD

Commissioner's File: CSB/37/1991

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that

- (a) the purported correction of the original form of the decision of the Lewisham social security appeal tribunal dated 26 February 1988 is of no effect, having been done without jurisdiction under regulation 10 of the Social Security (Adjudication) Regulations 1986; and
- (b) that decision is not erroneous in point of law.

2. This case starts with a claim made as long ago as 12 February 1987 and has been affected by several unsatisfactory delays. The claim was for a single payment for clothing (taken as covering coat, shoes, dresses, jumper, cardigan, girdle, bras and petticoats) under the Supplementary Benefit (Single Payments) Regulations 1981. The adjudication officer rejected the claim, a request for review was apparently turned down and an appeal was taken to the social security appeal.

3. The claimant attended the appeal hearing on 26 February 1988, represented by Miss Lashley of New Cross CAB, and gave evidence. The tribunal decided that although the claimant was not entitled to a payment under regulation 27 of the Single Payments Regulations, there was in view of her bronchitis and arthritis a serious risk to her health or safety if she did not have adequate clothing to enable her to go out of doors and her existing clothing was inadequate for that purpose. The tribunal therefore decided that the claimant was entitled to a payment for such clothing under regulation 30 of the Single Payments Regulations. In my view, this is a conclusion to which the

tribunal were fully entitled to come on the evidence before them. There was also adequate consideration of the issue of need under regulation 3.

4. What has led to subsequent problems is the form of the tribunal's decision. What was entered in box 3 of the form AT3 signed by the chairman on 26 February 1988 was the following -

"The Tribunal award a single payment for the purchase of 1 overcoat, 1 dress, 1 pair of shoes, 1 cardigan and 2 bras under Regulation 30 of the SB (Single Payments) Regulations, the amounts to be determined by agreement with the Adjudication officer. In the event of any dispute over the amount involved either party has liberty to restore the appeal for final determination by the Appeal Tribunal."

5. On 31 May 1988 the local office of the Department of Health and Social Security wrote to the clerk to the appeal tribunal saying "This decision is now causing some confusion as to whether the tribunal meant [the claimant] to receive amounts to enable her to purchase outside clothing as there is no specific reference to this, but [the claimant] states this is what she needs. I would be grateful if it would be possible to clarify this matter with the chairman in order to allow the correct payment to be made."

6. The clerk put this letter to the chairman and asked for his advice on a form AT10. On 9 June 1988 the chairman wrote on that form, "Properly, to clarify the position the decision should be amended under Reg.10 of the Adjudication Regs.86 to specify the amount applicable to the items awarded since these are fixed sums specified in Schedules 1 to 2 of the Regulations. Reg.30(3)(a) does not give the Tribunal" At that point there is a reference to a continuation sheet, which is not in the papers. However, the chairman's view is clear from what has already been quoted and it would be pointless to allow further delay in what would probably be an unsuccessful search for the missing page.

7. By some procedure which is not made known in the papers a new typed version of the tribunal decision form AT3 was prepared. In this version box 3 was filled in as follows -

"The Tribunal award a single payment for the purchase of items as follows under Regulation 30 of the Supplementary Benefit (Single Payments) Regulations:

1 Overcoat	£44.00
1 Dress (winterweight)	£19.00
1 Pair shoes	£15.00
1 Cardigan	£11.00
2 Brassiers @ £5.00	£10.00
Total	<u>£90.00</u>

A paragraph (d) was also added in box 4 (reasons for

decision) reading -

"(d) The amount of the award is prescribed by Regulation 30(3)(a)(i) incorporating Regulation 27 and Schedule 2 Part III. It is immaterial whether or not the amount covers the cost of the items."

This version of the AT3 was signed by the chairman "Amended under Reg.10 of the Adjudication Regs."

8. An application for leave to appeal against both versions of the decision was made by the claimant and leave was granted by the tribunal chairman on 8 January 1989.

9. It is plain that the purported correction is of no effect. First, it is only "accidental errors" which may be corrected under regulation 10 of the Social Security (Adjudication) Regulations. Here what was done went far beyond the correction of a slip of the pen or some arithmetical error or anything of that kind. Second, the correction must be made by the adjudicating authority who gave the decision or an authority of like status. The definition of "adjudicating authority" in regulation 1(2) includes a social security appeal tribunal, but not the chairman of a social security appeal tribunal. Here, so far as it is possible to tell, the correction was made by the chairman acting alone. There is no record of the reconvening of the members of the tribunal or their consultation or of a determination by a differently constituted tribunal. The chairman had no jurisdiction to correct the tribunal's decision once it had been promulgated to the parties, as it had been.

10. The only effective decision by the tribunal is therefore the original version signed on 26 February 1988, even though payment was made on the "corrected" version. The appeal to the Commissioner is to be continued against the original version.

11. In the application for leave to appeal the claimant submits that the tribunal should have made an award under regulation 30(3)(a)(ii) of the Supplementary Benefit (Single Payments) Regulations 1981 (which is set out in the submission dated 11 April 1991 by the adjudication officer now concerned with the appeal). Regulation 30(3)(a)(i) required an award under regulation 30 for an item that had an amount specified elsewhere in the regulations to be for that specified amount. Amounts for the clothing awarded were specified under regulation 27, but subject to an exception in regulation 27(2) where the specified amount was not appropriate because the person concerned was outside or disabled. The claimant submits that since the tribunal had found as a fact that she was overweight for her age and height the specified amounts were inappropriate, so that no amounts were specified and the award should have been of the amount necessary to purchase items of reasonable quality (regulation 30(3)(a)(ii)). The adjudication officer now concerned with the appeal makes a similar submission.

12. The impact of these submissions on the original version of the tribunal's decision is not clear. The decision was to make an award for specific items and leave the amounts to be determined by agreement. Paragraph 21 of decision R(SB) 16/83 positively encouraged tribunals to leave the quantification of awards to the adjudication officer rather than adjourn for estimates or other evidence to be produced, providing that it was made clear that in the event of any dispute the appeal could be restored to the tribunal for final determination. Here the tribunal did make it very clear that that was to happen in the event of disagreement. I have considered whether the tribunal should have given more explanation of the principles on which the amount of the payment should be determined. The case is near the borderline, but I have concluded that they did not need to do so. There was only a point in leaving the amounts of the single payment to be determined by agreement if the tribunal were accepting that the amount should be determined under regulation 30(3)(a)(ii) rather than 30(3)(a)(i). Otherwise, the amounts could simply have been read off from the regulations and entered into the decision. I consider that an adequate decision was given and I have already recorded that the findings of fact and reasons were adequate to support that decision. Therefore, the decision reveals no errors of law, and stands as it is.

13. The result is that following the tribunal's decision there was a dispute over the amount of the payment. Under the terms of the tribunal's decision, the appeal should have been returned to the tribunal for final determination. It has not been returned. In my view, the appeal should now be returned to a social security appeal tribunal for final determination, unless the dispute can be resolved beforehand. The adjudication officer now concerned with the appeal has supported the claimant's submission. The claimant in her application for leave to appeal has said that the items cost her £145.96. The relevant office of the Department of Social Security will presumably have the details of the amounts which the claimant spent on particular items. It may be that the adjudication officer is able to make a suggestion as to the amount of the award which is acceptable to the claimant.

14. I note that in her observations dated 9 May 1991 the claimant's representative requests that consideration be given to the making of a compensatory payment to take into account the loss of value of the amount claimed over the long period of delay. Such a matter is outside the jurisdiction of the Commissioner.

15. My decision is as set out in paragraph 1.

(Signed) J. Mesher
Deputy Commissioner

(Date) 27 February 1992