CSB 45/1983

Fuel < Need
Severe weather

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

JGM/SH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Reginald Neal

Supplementary Benefit Appeal Tribunal: Wolverhampton

Case No: 6/123

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 15 October 1982 is erroneous in point of law and it is set aside. The matter must be referred to another tribunal.

2. I have given my decision in this case without waiting for the decision of the Tribunal of Commissioners to which reference has been made in the submission of the benefit officer now concerned, because I have been informed that hearing has been postponed, and I do not think it right to impose further delay on the claimant. In the event that the Tribunal of Commissioners reach a different conclusion on points of law from that reached by me, the supplementary benefit appeal tribunal to whom this matter is now referred will of course prefer the rulings of the Tribunal to those given by me where they differ.

3. The claimant on 16 April 1982 made a claim for a single payment to meet fuel bills. Provision is made for single payments for fuel costs in regulation 26 of the Supplementary Benefit (Single Payments) Regulations 1981 (the Single Payments Regulations) which so far as material provides are as follows:-

> "26(1) A single payment shall be made in respect of a claimant's fuel costs where they are greater than the amount which he has put aside to pay for them because -
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> (a) a period of exceptionally severe weather has resulted in consumption greater than normal, having regard to any available information on previous levels of consumption; or
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> (b) .....
>
> (2) The amount payable in a case to which paragraph (1) applies shall be
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> (a) in a case to which paragraph 1(a) applies, the cost of the amount of the excess over normal consumption;
>
> (b) .....

4. The claimant's fuel bills in respect of which he claimed were an electricity bill of £78.37 for the quarter ending 22 March 1982 and what was described as an extra 150 kilogrammes of solid fuel costing £16.74. By the date of his claim he had paid all bills partly out of a loan of £25 from his son and as to the balance out of other resources (probably his supplementary allowance). The claim so far as based on regulation 26 above cited was rejected by the benefit officer on the ground that the claimant having paid the bills had no need for the item in question.

5. The claim was considered in the alternative under regulation 28(1)(b) of the above regulations which applies where a claimant has spent, on any item for which had he claimed it a single payment would have been made, money set aside to provide for any item to which the category of normal, additional or housing requirements relates and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which any of those categories relates which it is essential that he should meet. A payment under this provision was refused because it was not shown that as a consequence of expending money on the fuel he was unable to meet the cost of any such item as above mentioned. He had stated in reply to a question directed at seeing if regulation 28 was satisfied "that he did not subscribe to the bad housekeeping principle of paying one bill at the expense of another". The decision was confirmed by the appeal tribunal broadly on these grounds.

6. I will take first the point on regulation 28. The decision on that point does not appear to me to have been erroneous in law. If the claimant had repaid the £25 and as a result had been unable to meet the expense of any relevant matter the position might perhaps have been different. But it appears that he had not done so and that question did not arise.

7. I now come to what was the main ground of the decision. The claim under regulation 26 was rejected by reference to regulation 3(2) of the above regulations, which qualifies all subsequent regulations and at the time of the claim read as follows:-

> "A single payment shall only be made where -
>
> (a) there is a need for the item in question; and
>
> (b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item, or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

8. It was decided in Commissioner's Decision R(SB) 8/81, on which the appeal tribunal specifically relied, that where there was a claim for a single payment for the cost of a new pump which had already been obtained and paid for out

of borrowed money there was no need and regulation 3(2) of the then regulations applied.

9. Regulation 3(2)(a) however speaks of there being a need for the "item in question". This means a need at the date of claim (see the decisions to be reported as R(SB)26/83). The Single Payments Regulations cater for a wide variety of circumstances and it is not always clear just what is the "item" in relation to which regulation 3(2)(a) applies. For instance regulation 10(2) provides for the making of a single payment for the purchase of items of essential furniture or equipment, a phrase defined at length in regulation 9. It would seem to be reasonably clear that the item for purposes of regulation 3(2)(a) for which a need must be shown to exist is the item of essential furniture and equipment itself, and that the item which for purposes of regulation 3(2)(b) the assessment unit must not possess is the same item of essential furniture or equipment. This easy conclusion is somewhat weakened by the terms of regulation 10(3)(a)(i) which appear to contemplate a payment for a bed which has already been acquired, and regulation 3(2)(b) (but not 3(2)(a)) has now been amended to in an endeavour to stabilise the position. It has however been taken in general that (subject to regulation 28(1)(b) above referred to) a single payment cannot be made for an item of essential furniture and equipment if it has been purchased in advance of the claim. It follows that the prudent beneficiary who wants a single payment for such an item should make a point of claiming before buying the item however urgently it is required. Although one can see the logic of a rule that if you have by any means whatever obtained the item you have no need of public funds to enable you to obtain it, the nice distinction between the case where the claim precedes the acquisition and that where the acquisition precedes the claim is difficult to justify. This is especially the case when it is remembered that regulation 5 of the Single Payments Regulations seems to contemplate that a claimant with assets of up to £300 may qualify for a single payment of much less than this, and that a claimant who has managed to borrow the money to acquire an item may well have done so from someone almost as hard-pressed as he is. The anomaly could be overcome if the power to backdate claims where good cause is shown conferred by regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 were extended to cover not only claims for a supplementary pension or allowance but also claims for single payments.

10. While it is reasonably clear in relation to single payments for the purchase of items of essential furniture or equipment that the item referred to in regulation 3(2) is the item of furniture or equipment itself, the position is more obscure in relation to some other matters in respect of which single payments are to be made. Indeed under regulation 30 of the Single Payments Regulations (the residual provision) the matter is entirely at large. It may be however that in this case the requirement that a single payment shall be the only means by which serious damage etc, may be prevented has the effect that the obtaining of a loan even after the claim is evidence that at the date of the claim a single payment was not the only means of preventing such damage etc.

11. A number of the other provisions relating to single payments provide for the making of a single payment in respect of the cost of something or other. Thus regulation 13(1) of the Single Payments Regulations provides for a single payment in respect of the cost of removal; regulation 17 provides for the making of a single payment in respect of the cost of repairs to the home; regulation 19 makes provision for the making of a single payment in respect of the expense of essential internal redecoration; and regulation 26, with which this appeal is concerned, makes provision for the making of a single payment in respect of a claimant's fuel costs. It would seem to me that in these cases the need that has to be established is in respect of "the cost" or "expense" in question and that this is the item to which regulation 3(2)(a) relates and there is in these cases nothing to which regulation 3(2)(b), which concerns items which a claimant possesses etc., can relate. If and so far as Decision R(SB) 8/81 is based on the proposition that the item needed was the pump rather than in respect of the cost of repairs to the home I question whether it was right. This does not of course mean that the conclusion in that case cannot be supported on the basis that the need in respect of the cost of repairs had been met at the date of the claim. This is a point to which I have to revert to in the present case (see paragraph 13).

12. Whatever be the position in relation to the other provisions for making single payments in respect of the cost or expenses of the other matters above mentioned it is clear to me that the need relevant under regulations 26 is not the need for the fuel itself, but in respect of the cost of it, i.e. the need to meet the debt incurred in respect of it. The terms of the regulation are such that a claim cannot be made until after the fuel has been supplied and it has been ascertained that the cost exceeds the amount put aside to meet it. It follows therefore (and I do not think that the benefit officer suggests otherwise) that if in the present case the fuel had not been paid for at the date of the claim, the claimant would (provided the conditions of regulation 26 were satisfied) have been entitled to a single payment in respect of his fuel costs to the extent allowed by the regulation.

13. But he submits that the tribunal were right when they found that the fuel had been paid for to hold that the need had ceased to exist. In making this submission he accidentally substituted the word "for" for "in respect of" when he submitted that the combined effect of regulation 3(2)(a) and regulation 26 was to preclude the award of a single payment <u>for</u> fuel costs. I can follow that a payment to enable a debt in respect of financial assistance towards fuel cost is not a single payment for fuel costs. But, as I see it, it may be a single payment in respect of fuel costs.

14. The phrase "in respect of" is a wide one. It has been the subject of High Court decisions on section 1 of the Gaming Act 1892, which provides that any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement made void by the Gaming Act 1845 shall be null and void. Cases have arisen under that Act relating to persons who have given financial assistance by loan or otherwise to enable others either to enter into or to discharge "liabilities" under

void betting transactions. I will refer to the person giving such assistance as the lender though in strictness the transaction may not always be one of loan. In Tatam v Reeve [1893] 1 QB 44 a person had lost a bet and the lender at his request discharged the betting debt. The lender was unable to recover from the loser of the bet because the implied promise to reimburse him was a promise to pay money paid not "under" but "in respect of " the void betting debt. If the debt had instead been a debt for fuel supplied, the debtor's need to pay the lender would by parity of reasoning have been a need in respect of the cost of the fuel. Subsequent decisions (notably MacDonald v Green [1951] 1 KB 594) show that under the Gaming Act the same result followed if the lender paid the money to the loser of the bet stipulating that it be applied in paying the winner, but not if he was just lent the money to the loser without any such stipulation even if the lender knew of the lost bet; and not where it was lent for the purpose of making bets (see CHT Ltd v Ward [1965] 2 QB 63) at page 86. On this principle in my judgment the need under regulation 26 is in respect of the cost of fuel if a single payment is required to enable the supplier of the fuel to be paid or to repay a "lender" who has either paid the supplier direct or who has lent the money with a stipulation express or implied that it shall be used to pay the supplier, but not otherwise. I therefore remit this case a different tribunal to ascertain the terms on which the claimant's son lent the £25 and to apply the above accordingly.

15. In the event that the tribunal reach a conclusion that the cost of repaying the son or any other cost is a need in respect of the cost of fuel they will have to decide whether there was a period of exceptionally severe weather which resulted in the claimant's fuel consumption being greater than normal (regulation 26(1)(a)) and whether the costs were greater than the amount put aside to meet them (opening words of regulation 26(1)), and if so the cost of the amount of the excess over normal consumption, which under regulation 26(2)(a) seems to be the measure of the single payment, irrespective of the amount put aside to meet fuel costs. Increases in costs due to inflation will be disregarded in computing the excess due to exceptionally severe weather. The figures produced so far seem incomplete as the total electricity bill has been mentioned but only the cost of what is said to be some extra coal.

16. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

(Date) 6 June 1983

Commissioner's File: CSB/45/1983
C SBO File: 1281/82