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IEJ/BOS

Chairman's Notes of Evidence

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Borrowed bed
- 'need'

Name: Phillip White

Supplementary Benefit Appeal Tribunal: Leeds

Case No: 07/156

[ORAL HEARING]

- 1. (1) This is a claimant's appeal from so much of the unanimous decision dated 4 August 1981 of a supplementary benefit appeal tribunal ('the tribunal') as upheld the decisions of a benefit officer rejecting the claims by the claimant for single payments in respect of items below mentioned. The appeal is brought by my leave, the claimant contending that the tribunal's decision was in the respects in which it upheld the benefit officer's decisions erroneous in law.
- (2) My decision upon the appeal follows an oral hearing in private on 26 April 1983 at which the claimant was represented by Mrs C M Smith of the Tribunal Assistance Unit, Chapeltown Citizens Advice Bureau, and the benefit officer was represented by Mr E O F Stocker of the Solicitor's Office, DHHS. I am indebted to both Mrs Smith and Mr Stocker for their helpful submissions.
- (3) The appeal is allowed. I set aside the tribunal's decision in so far as it upheld the benefit officer's decisions adverse to the relevant claims by the claimant, and direct that the claimant's appeals from such decisions of the benefit officer be re-heard by a differently constituted tribunal.

- 2. (1) On 19 June 1981 the claimant, who had then recently moved into unfurnished rented accommodation together with his fiancée, instituted claims for single payments in respect of the following items namely:-

a bed, a cooker, carpets, pots, pans, curtains, settee, blankets, sheets, curtain rails, wardrobe

indicating that they had none of such items and 'we are having to go to my mother's to eat and cook our meals, sometimes to sleep, and that's on the floor because her house is overcrowded'. A home visit was made in the light

of which a grant of £45.00 was made in respect of a gas cooker, but by benefit officer's decision of 29 June 1981 single payments in respect of all the other items claimed were refused.

- (2) I pause here to interpose that in correct analysis the respective claims for separate items (or at least each separate category of item) constituted separate claims, and that the global appeal against the refusals which the claimant then instituted is properly to be regarded as a series of separate appeals, though it would unduly complicate the phrasing of my decision to reflect this throughout.
- (3) It is convenient also to indicate here that the tribunal reversed the benefit officer's decision in regard to the claim for bedding, awarding the sum of £60.25 in respect of that claim - so that in the context of the present appeal, the claims in issue are those originally instituted less the claim for a cooker and the claim for bedding.

3. It has not been in dispute that the claimant was at the date of claim in receipt of supplementary allowance and was, subject to establishing need and satisfying other requirements of the regulations under which single payments are awarded, eligible to receive single payments in respect of such items as were claimed. The regulations so in point were the Supplementary Benefit (Single Payments) Regulations 1980 as amended and in force with effect from 24 November 1980, and references below to particular regulations are to those. Such regulations have been further amended and consolidated in the 1981 Single Payments Regulations, which have themselves by now undergone further amendment; but:-

- (i) the tribunal re-hearing the claimant's appeals will still be concerned with the 1980 regulations; and
- (ii) any relevance of my present decision to other cases will not be affected by the amendments which have ensued to date.

4. The right of appeal to a Commissioner from the decision of a supplementary benefit appeal tribunal is by the Social Security Act 1980 restricted to appeals by leave on a point of law. In this respect it is on all fours with the right of appeal from the decision of a medical appeal tribunal, and I therefore respectfully adopt with approval the formulation in Decision R(I) 14/75 which indicates that an appeal will be allowed on a point of law only if:-

- (1) there has been a breach of the rules of natural justice; or
- (2) the tribunal has not stated its reasons and findings of fact adequately; or
- (3) the decision contains a false proposition of law ex facie; or
- (4) the decision overlooks an applicable and established principle of law; or

- (5) the decision is not supported by any evidence; or
 - (6) the tribunal's findings of fact were such that no reasonable body acting judicially and properly instructed under the law could have reached the conclusion it arrived at.
- 5.
- (1) It is to be noted also that a supplementary benefit appeal tribunal is by rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 expressly required to include in the record of its decision its findings of fact and the reasons for its decision; and compliance with that requirement necessarily requires that there be so recorded findings and reasons adequate in the circumstances of a particular case.
 - (2) It is settled law also that whilst a tribunal's decision need not set out every step in the reasoning, the statement of reasons must be so formulated as to make it clear to the parties why their respective contentions were accepted or rejected.

6. There is no statutory requirement upon a supplementary benefit appeal tribunal that a note of the evidence adduced before it be taken and recorded by the chairman of the tribunal, or by anyone else. It was, however, recommended by the Chief Commissioner soon after the addition to the jurisdiction of the Social Security Commissioners of the appellate jurisdiction from decisions of supplementary benefit appeal tribunals that a note of evidence be made by the tribunal chairman and be available to the Commissioner in the event of an appeal from the tribunal's decision; and I understand this recommendation to be widely if not universally observed. Under at least two of the above tabulated grounds for appeal, namely (2) and (4), it is essential to the proper determination of the appeal for the Commissioner to know what was the evidence given before the tribunal; whilst under heads (1) and (2) - the latter as to 'reasons' - it will frequently be material to a proper determination of the appeal for the Commissioner to be informed as to course the appeal took before the tribunal.

7. There is nothing in the relevant legislation, which lays down in terms what materials, and of what provenance, a Commissioner is to admit, or reject as inadmissible, in the determination of such an appeal as this. But I respectfully adopt and concur in the conclusion expressed in paragraph 15 of Decision R(SB) 10/82 that the Commissioner is not confined to the documents before the tribunal and the formal record of their proceedings but has a judicial discretion as to this as on other procedural matters not expressly dealt with elsewhere (see rule 10(9) of the Appeals Rules). I further accept gratefully from the same source the proposition that the Commissioner is at liberty to look at the note of evidence of the chairman of the tribunal and to admit such other evidence as to what happened at the tribunal as he thinks fit in the circumstances of the case.

8. In Decision R(SB) 10/82 the learned Commissioner then goes on to indicate that such discretion of a Commissioner 'should, however, be exercised on similar principles to those followed in the High Court and in the Court of Appeal.' I do not in any way dissent from that

proposition if read, as I gauge its author intended it to be read, with the emphasis on the "principles". But in truth the different rules of procedure and practice appertaining to the adjudication of appeals before the High Court and the Court of Appeal from those under which appeals before supplementary benefit appeal tribunals, and from their decisions to a Commissioner, are regulated in my judgment necessitate considerable reserve in applying decisions of those higher courts in the present jurisdiction without close regard to the 'ground rules' applicable to the particular character of proceedings in which such decisions have been given. Thus in Thompson v Andrews [1968] 1WLR778; [1968] 2ALL ER419 the question in issue was whether there had been an error of law on the part of an official referee - the contention being that there was no evidence on which he could properly reach the conclusion he did. There Salmon L.J. at page 420 stated as the normal practice: 'save in the most exceptional circumstances if this Court' - that is the Court of Appeal - 'is asked to look at something other than the shorthand note or the judge's note, it usually will only look at an agreed note of the evidence'. But in High Court cases the judge takes a full note of the course of the proceedings - not merely of the evidence, of which there will normally be a full transcript - which includes the contentions advanced on either side. But in this jurisdiction even if the Chief Commissioner's recommendation as to taking a note of evidence has been followed, it does not follow that there is any contemporary note of the fuller scope represented by the 'judges note' which Salmon L.J. had had in contemplation..

9. What is, however, a clearly applicable point of principle to be derived from the authorities in regard to the procedure of the Appellate Courts is that a Commissioner cannot in this jurisdiction enter into an adjudication upon conflicting versions as to what evidence was given or what was the course of events before the tribunal below, and must in general have regard to only such materials as are the subject of consensus between the tribunal chairman, the presenting officer, and the claimant or his representative - though the contents of any authenticated note of evidence made by the tribunal chairman which has been confirmed by such chairman in the light of any representations as to its inaccuracy made by either party after it has been supplied to them for the purposes of the appeal will normally be accepted as prevailing over any conflicting contentions.

10. (1) It is now established that it was the practice of the particular tribunal chairman in the present case to take a note of evidence, and to do so in a notebook used for the purpose in successive appeals, from which would be transcribed the chairman's note of evidence required for an appeal to the Commissioner if and only when bespoken.
- (2) Any note of evidence taken in proceedings may reflect the haste in which it will often have had to have been made and require an element of 'editing' before it will be intelligible to others in the sense that the maker would wish it to communicate. This need may stem from any one or more of a number of factors such as illegibility to others than the author, the use of abbreviations not in common usage,

correction of a misattribution to one witness of a statement given by another, inadvertent admission from the note of a crucial 'not', and similar matters the correction of which is wholly legitimate (for example and analogy see the categories of correction and amplification recognised as legitimate in Lowery v Walker [1911] AC10).

11. However, the note of evidence to be supplied for the purposes of an appeal should with those qualifications have the character of being a 'contemporary note' unless the contrary is clearly indicated when it is furnished. For, other considerations apart, the longer the time elapsing after the evidence has been given and before the note is put into the form in which it is in fact furnished the greater the possibility of error due to mis-recollection or lapse of memory.

12. There was in the present case a contemporary note made in the chairman's notebook and there occupying some 30 relatively short lines. But when asked to furnish her note of evidence for the appeal the chairman - in a desire to be as helpful to the Commissioner as possible, and, due to the intervention of a vacation period, coming to the task only some weeks after the hearing date - did not furnish that note as it stood, or with such character only of 'editing' as I have above indicated to be recognised as permissible. Instead she submitted an entirely fresh compilation, in narrative form, expanded to something over 60 closely written lines. This document demonstrated by its own tenor that it was not a contemporary note of evidence but in the nature of a 'reconstruction' of the course of the proceedings. When it became available to the claimant's representative before the tribunal (who was professionally engaged in the field of social services but was not Mrs Smith) he took issue upon a number of the statements in it and also asserted a number of omissions from it. In the light of the representations so made I enquired of the chairman whether it had been put forward as a contemporary note and ascertained the surrounding circumstances I have above indicated to have been the reality. The original note was then photocopied from the notebook and added to the case file.

13. The contentions on the claimant's behalf as to the errors and omissions in the 'expanded' version were by my direction put to the presenting officer, as it had occurred to me that if he agreed with the claimant's representative in those respects it would be appropriate to put the consensus so reached to the tribunal chairman and seek confirmation or otherwise. But in the event it transpired that the claimant's representative and the presenting officer were unable to reach any substantial agreement between themselves as to corrections they thought requisite, so that it became in my view of no practical value to me to trouble the chairman further in the matter.

14. I have therefore embarked upon the determination of the present appeal on the basis that the evidence before the tribunal of which I should take account is that which is constituted by the aggregate of:-

- (i) the express findings of fact included in the record of the decision;
- (ii) the material in the contemporary note of evidence so far as additional to (i); and

- (iii) such additional materials as are recorded in the 'expanded note' by the Chairman and are also accepted by both the claimant's representative and the presenting officer as properly so included - this material being, in practical terms, of minimal extent.

15. Mr Stocker was rightly concerned that I should not fall into the error of seeking to judge between competing assertions as to what the evidence had been, indicating the undesirable consequences which would attend any decision by a Commissioner that this arena was opened up for debate upon future appeals. I trust that what I have above indicated to be my view of the correct position will allay his fears in those respects. However, in support of his argument in that connection he pressed upon me the decision of May, J. in Imrie v S.B.C. [1980] SB27 as authority that, as I understood Mr Stocker to contend, it was my duty to require the tribunal chairman to furnish a note of evidence but outside my proper jurisdiction to do other than accept at its face value the material which resulted from that request, and then to decide the present appeal by reference to the formal record of the decision as, and only as, it might be so amplified.

16. I do not accept that decision as constituting such authority. 'Cases are not talismans', and judicial pronouncements in the course of a decision have to be construed in the context of the particular case in which they are expressed and the issues which arose for determination in it. On close analysis of such decision it is apparent that although the tribunal whose decision was under appeal before the learned judge was, I accept, bound by a rule as to stating reasons indistinguishable from that applicable to the tribunal in the present case, the appeal was not fought upon any issue as to the sufficiency of the tribunal's findings of fact or as to what had been the evidence before it, but was sought upon the issues first as to whether the tribunal had 'asked itself the right questions' and secondly as to whether the tribunal's reasons had been sufficiently given, or were reasons which could not on their face support the decision. What May J. there decided was that the tribunal had asked themselves the right questions, and that though the reasons for their decision might be regarded as inadequate if read in isolation, they were sufficiently stated when read, as was permissible, in the light of the note of the evidence provided by the tribunal to the High Court pursuant to the rule of the Supreme Court requiring such a note so to be furnished. At page 213F (in the print of the decision in the 'little Yellow Book') he expressly left undecided the point which might have been, but had not been, taken as to the sufficiency of compliance with the rules of procedure if the expressed reasons were considered in isolation. And what he did indicate was that it was unsatisfactory that the appeal should have been proceeded upon, in breach of the rules of the Supreme Court in point, before the tribunal's note of evidence had been bespoken, indicating that had the correct procedure there in point been followed the appellant's advisers could have ascertained for themselves that the reasons were adequate when read in the light of the note of the evidence as it had been given, and that the prosecution of the appeal might therefore have been avoided.

17. I do, however, accept that decision as authority for the proposition, which I accept as binding on me, that a statement of reasons which may be

inadequate standing in isolation may be an adequate compliance with the obligations of the tribunal in point when it is read in context in the light of a (proper) note of the evidence given. And I have taken that proposition into due consideration in arriving at my own decision in the present case.

18. I am conscious that my decision has now run for a substantial length before coming to grips with the substantive issues in play upon this particular appeal; but it has seemed to me in the circumstances of the present case essential to clear the foregoing ground as a pre-requisite. In now coming to the main issues I will first indicate that it is common ground that the only provisions of the Single Payments Regulations in point in regard to the items in issue are regulations 3, 9 and 30. As in force at the material times they respectively provided as follows:-

Meaning of single payment and amount payable

- "3. - (1) In these regulations "single payment" means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Part II to VIII of these regulations apply.
- (2) A single payment shall be made only 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.
- (3) Except in so far as regulation 5(1) provides that no amount or a reduced amount shall be payable, the amount of a single payment which falls to be made by virtue of any regulation in Parts II to VII of these regulations shall be -
- (a) subject to paragraph (3B), where the amount is specified in that regulation, that amount; or
 - (b) where that regulation provides that the payment is to be made in respect of the purchase of an item such amount as is necessary to purchase an item of reasonable quality; or
 - (c) where that regulation provides that the payment is to be made in respect of costs of services provided, the amount of such costs to the extent that they are reasonable.
- (3A) Except in so far as regulation 5(2) provides that a reduced amount shall be payable, the amount of a single

payment which falls to be made by virtue of regulation 30 shall be -

- (a) Where the payment is to be made in respect of the purchase of an item -
 - (i) subject to paragraph (3B), if that item, and an amount for that item, is specified in any regulation in Parts II to VII of these regulations (including the Schedules to these regulations), that amount,
 - (ii) in any other case, such amount as is necessary to purchase an item of reasonable quality, and if provision is made for the purchase of that item in the said Parts II to VII (for example, that the amount shall be in respect of the purchase of a secondhand item) that provision shall apply;
 - (b) where the payment is to be made in respect of costs of services provided, the amount of such costs to the extent that they are reasonable.
- (3B) Where pursuant to regulation 9 of the Supplementary Benefit (Deductions and Payments to Third Parties) Regulations 1980 (payment of single payments to third parties) a single payment is payable direct to the person who or the body who supplied the item in respect of which it is made, the amount of the single payment shall, notwithstanding any provision in these regulations, be the amount applicable under paragraph 3(a) or (3A)(a)(i) or the actual cost of the item in respect of which it is made, whichever is less.
- (4) Nothing in these regulations shall be construed as precluding the payment of two or more single payments payable by virtue of one or more regulations by means of a single instrument of payment.

Essential furniture and household equipment

9. - (1) Where a claimant has recently become the tenant or owner of an unfurnished or partly furnished home, a single payment shall be made for the purchase of any item of furniture and equipment to which paragraph (4) applies which, either -
- (a) he does not possess, or
 - (b) he does possess, but which is defective or unsafe and the cost of repair to which regulation he would otherwise apply would exceed the cost of the replacement,

and one or more of the conditions in paragraph (2) is satisfied.

(2) The conditions mentioned in paragraph (1) are:-

- (a) the claimant is entitled to a single payment under regulation 13 (removal expenses);
- (b) a member of the assessment unit is over pensionable age, aged 15 or less, pregnant or chronically sick or mentally or physically disabled;
- (c) the claimant has been in receipt of an allowance for a continuous period of 6 months or more and has, in the opinion of a benefit officer, no immediate prospect of employment;
- (d) immediately preceding the circumstances to which paragraph (1) applies the claimant was a prisoner or living in a resettlement unit or accommodation provided for an analogous purpose by a voluntary organisation, or in - accommodation provided by a statutory authority or voluntary organisation for the purpose of providing special care and attention for him, or had been a patient for a continuous period of more than one year,

and in a case to which sub-paragraph (c) or (d) applies there is no suitable alternative furnished accommodation available in the area.

(3) A single payment shall be made for the purchase of any item of essential furniture and equipment to which paragraph (4) applies where -

- (a) the item is one which
 - (i) the claimant does not possess, or
 - (ii) he does possess but which is defective or unsafe and the cost of repair to which regulation 10 would otherwise apply would exceed the cost of replacement; and
- (b) either -
 - (i) one of the conditions mentioned in paragraph (2)(b) or (c) is satisfied, or
 - (ii) the item is a cooking or heating appliance, or
 - (iii) the item is a bed and the claimant has entered the home without permission of the owner but permission to occupy the home has been granted to him as a temporary expedient,

so however that, except in a case to which head (iii) applies, no payment shall be made by virtue of this paragraph to a claimant who has entered the home without

permission of the owner, notwithstanding that permission to occupy that home as a temporary expedient has or has not been granted.

- (4) The items of essential furniture and household equipment to which this regulation applies are as follows:-
- (a) sufficient beds and mattresses and dining and easy chairs for all the members of the assessment unit, and a dining table;
 - (b) sufficient storage units for clothing, food and household foods (for example crockery) for the needs of the assessment unit;
 - (c) a cooker;
 - (d) space heating appliances, but excluding items which are part of a central heating system within the meaning of paragraph 3 of Schedule 3 to the Requirements Regulations;
 - (e) fire guards;
 - (f) where a member of the assessment unit is elderly or infirm, a covered hot-water bottle;
 - (g) curtains and fittings;
 - (h) polyvinyl chloride (or equivalent) floor coverings;
 - (i) a washing machine, but only where an additional requirement (under paragraph 17 of Schedule 3 to the Requirements Regulations (laundry) is not appropriate because -
 - (i) there is no laundry or laundrette which the assessment unit can reasonably be expected to use, or
 - (ii) where there is such a facility, it cannot be used for the assessment unit's laundry because the claimant or his partner is mentally or physically ill or disabled or because there is no public transport to it.
 - (j) a vacuum cleaner, but only where a member of the assessment unit is allergic to house dust;
 - (k) a refrigerator, but only where a member of the assessment unit requires for medical reasons, a special diet for which it is necessary to keep foodstuffs at refrigerated temperatures;
 - (l) minor items such as cleaning implements, cooking utensils, crockery and cutlery, but only where paragraph (1) applies;

- (m) a garden fork or spade and shears, but only where the home includes a garden and digging, or cutting of lawns and hedges, is necessary;
 - (n) an iron;
 - (o) light fittings;
 - (p) towels;
 - (q) a pushchair;
 - (r) a high chair.
- (5) The amount payable by virtue of the preceding paragraphs of this regulation shall be -
- (a) in the case of a bed or mattress, the cost of a new item, except that where the claimant -
 - (i) has already acquired or negotiated for a second-hand item, the amount shall be the cost of that second-hand item,
 - (ii) is a person to whom paragraph 3(b)(iii) applies, the amount shall be the cost of a second-hand item or of a new sleeping bag if preferred;
 - (b) in the case of any other furniture, a pushchair or gardening tools to which paragraph (4) applies, the cost of a second-hand item, if such item is available;
 - (c) in the case of a cooker or any electrical or gas appliance to which paragraph (4) applies, the cost of a reconditioned item, if such item is available; and
 - (d) in the case of any other item, such amount as is necessary to purchase a new item of reasonable quality,
- and in the case of an item to which paragraph (4)(a), (b), (c), (d), (h), (i), (j) or (k) applies shall include the cost of delivery.

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Discretionary payments

30. Where a claimant is entitled to a pension or allowance and he -
- (a) claims a single payment for any exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or

- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts, a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, 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."

19. It is convenient to set out in full at this point the tribunal's expressed findings of fact and reasons for decision:-

"Findings of Fact:

The Appellant has no need for a bed having been lent one by his mother but has need of the other items claimed. The Appellant has not been in receipt of an allowance for a continuous period of six months.

Reasons for Decision:

The Appellant is entitled to a single payment for bedclothes under the provisions of regulation 12 of the Single Payments Regulations 1980. He is not entitled to a single payment under Regulation 9 of the Single Payments Regulations 1980 or Regulation 30."

20. It is a reasonable inference from the sequence of findings of fact that the tribunal considered the position in regard to regulation 3 as to need before considering the position in regard to regulation 9 or regulation 30. Mr Stocker suggested that this was an incorrect approach, but I will say no more than that there is no mandatory requirement in point and that the choice in fact adopted appears to me entirely logical and sensible. Their conclusion, as above indicated, was that need was established in regard to all the items in issue apart from the bed. From the sequence of entries in the (contemporary) note of evidence it can be inferred that until a late stage in the evidence the tribunal were proceed- in the belief that the assessment unit were without the use of any bed, but that following evidence that the claimant had received accelerated provision of unfurnished local accommodation on medical grounds it emerged that 'sleeping better now because Mother's given bed'. It does not appear from the notes of evidence or the findings of fact that the circumstances in regard to the bed were explored in any great detail, although the reference to 'given' in the note of evidence is represented by a finding of 'lent'. Mrs Smith submitted that in the light of the Commissioners' Decisions C.S.B. 29/81 and C.S.B. 13/82 the tribunal erred in this respect, and should have investigated the circumstances in regard to the loan of the bed in greater depth and expressed additional material findings of fact in regard thereto before properly concluding that the claimant failed to establish need under regulations 3. Mr Stocker contended that there was nothing included in or omitted from the findings of fact to cast doubt upon the tribunal having reached the conclusion it did in the light of an adequate investigation. I am inclined to the view that Mrs ~~White~~ ^{Smith's} submission is to be preferred. But it is unnecessary for me to rule substantively as to that, because what is to my mind clear beyond doubt

is that even if the findings of fact were reached after due investigation there was need for inclusion in the stated reasons for decision - which, as will be observed from the citation above, are in fact no more than a statement of the provisions and of the conclusion - of an appropriate explanation as to why the claimant's contentions in respect of the bed had been rejected. For that reason the tribunal's decision in regard to the bed at least must in my judgment be set aside.

21. It can be inferred also from the record of the tribunal's decision that having found a need established in regard to all of the other items in issue the tribunal next considered the position in regard to regulation 9. Whilst it would have been better practice to have indicated this in their reasons for decision, reading the findings and the stated reasons in conjunction (as is permissible) I do not consider that any substantial criticism can be directed at the tribunal in so far as (as is clearly so) they have determined, that in the light of their finding that the claimant had not been in continuous receipt of supplementary allowance over the period of six months immediately preceding the claim he could not succeed in reliance upon regulation 9(2)(c).

22. However, no mention is made in the record of the decision of any of the other heads of possible qualification under regulation 9(2). It is not necessary for a tribunal to encumber their decision with a catalogue of provisions of the regulations as to which no contentions have been advanced before them and as to which no tenable argument could be mounted as to their having application in the instant case. However, in the instant case there was clearly an element of 'medical grounds' put forward in support of the claims - the (contemporary) note of evidence in addition to referring to that factor in the context of the allocation of the new home records 'gets boils when nerves bad'; and Mrs Smith submits that the tribunal erred in expressing no findings of fact or reasons for decision in the context of regulation 9(2)(b). I am inclined to think that she is correct in that respect since there clearly were medical factors adverted to; but it is something of a borderline case and in view of what I will be indicating in the separate context of regulation 30 shortly below I do not propose to found my decision (to set aside as regards the items other than the bed) upon the foundation of any established error of law in this particular respect.

23. (1) What is in my judgment abundantly clear is that regulation 30 had been taken into contemplation in the original decisions of the benefit officer - the form LT205 statement by the benefit officer, which was before the tribunal, makes this clear - and that both submissions and evidence (though not medical evidence) directed to support of the claims under this regulation were actively pursued at the hearing. That being the position, it is in my judgment clear beyond doubt that the entire absence from the findings of fact of any findings material to regulation 30, and the omission from the stated reasons for decision of any material reference save for the bare intimation 'or regulation 30' in combination constitute a substantial shortfall as to due compliance with rule 7(2)(b) of the Appeals Rules, and thus a substantial error of law upon which grounds I must set aside the tribunal's decision in respect of all the items claimed for other than the bedding (and the decision as to the bed already above set aside).

- (2) I should perhaps here add that whilst Mr Stocker did not formally concede this, neither did he in the light of Mrs Smith's submissions before me seriously contend otherwise.

24. Since further findings are required I do not consider it expedient to seek to give myself the decision which the tribunal ought to have given. As it is probable that over two years will have elapsed since the original date of claim by the time the matter comes before the tribunal rehearing the claimant's appeals from the benefit officer's decision their task, I recognise, will not be an easy one. I am anxious not to add to the difficulties of such task by giving any complex directions for the re-hearing. but set out next below what I regard as a 'minimum code' in the circumstances of the case.

25. My directions to the tribunal for the re-hearing are as follows:-

- (1) the tribunal shall reach and express findings of fact and reasons for decision in respect of the several items remaining in issue and in the context of regulation 3, treating each item claimed as formally constituting the subject of a separate appeal;
- (2) as regards all (if any) items as to which need is held to be established under regulation 3 the tribunal shall next reach and express findings and reasons for decision in reference to regulation 9, taking into contemplation in this behalf all the provisions of paragraph (2) of regulation 9 and not merely sub-paragraph (c) of that paragraph (although any which they regard as clearly not in point can be treated of quite briefly in their statement of reasons);
- (3) if and so far as the requirements of regulation 3 are satisfied but it is held that award is not to be made under regulation 9 the tribunal shall proceed to reach and express findings of fact and reasons for decision in reference to regulation 30.
- (4) the tribunal's reasons for decision shall throughout be so formulated as to enable the claimant and the benefit officer to ascertain therefrom the grounds upon which their respective contentions have (as the case may be) been accepted or rejected.

(Signed) I Edwards-Jones
Commissioner

Date: 13 June 1983

Commissioner's File: C.S.B. 60/1982
CSBO File: 948/81