

Reg 30  
also children in 2 diff units.

JNBP/BC

Commissioner's File: CSB/62/1985

C A O File: AO 2369/85

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Frank Thomas

Social Security Appeal Tribunal: Chester

Case No: 26/1

1. My decision is that the decision of the social security appeal tribunal ("the tribunal") dated 28 September 1984 is erroneous in law and is set aside. I remit the case for re-determination by a differently constituted tribunal.
2. This is an appeal brought by the claimant with the leave of the chairman of the tribunal against the above-mentioned decision of the tribunal which confirmed the decision of the adjudication officer issued on 27 June 1984 that the claimant was not entitled to a single payment for clothing for his two children.
3. The claimant was at the relevant time divorced and normally living alone, but his three children had been staying at his home at weekends for some considerable time and following a decision of a social security appeal tribunal dated 20 July 1984 were accepted as members of his assessment unit for such periods. Accordingly, the claimant was in receipt of supplementary benefit in respect of the children for the periods they spent at his home.
4. On 26 April 1984 he made a written claim for a single payment for clothing which he said was required for the children for the periods they spent with him. He later said that the clothing was needed because the children's mother did not provide them with adequate clothing for the time they were with him. The claim was disallowed by the adjudication officer for reasons which are fully set out in his submission to the tribunal and I need not repeat them here.
5. On the claimant's appeal, the tribunal recorded their findings of material fact as follows:-

"As stated on form AT2".

After recording their decision that the claimant was not entitled to a single payment for clothing for his children they stated their reasons as follows:-

"The [claimant] fails to satisfy the conditions prescribed in Reg 27 of the Single Payments Regulations in that he did not show that the need arose otherwise through normal wear and tear and in the normal course of events. Reg 30 was not satisfied. There was no risk to health or safety and a single payment was not the only means of meeting the need in question as during the relevant period the children's mother had received their full entitlement."

6. The adjudication officer now concerned with the case supports the present appeal by the claimant against the above-mentioned decision. He refers to the following statement made by the claimant on his appeal to the tribunal:-

"While the children's mother is able to provide clothing for their normal needs she is not in a position to cater for their needs over and above this which arise from their spending time in two domestic units"

and submits that it was incumbent on the tribunal to record adequate reasons for rejecting the claim in respect of the various items claimed. Without such a statement of reasons he submits that the claimant was left in the dark as to why his evidence did not satisfy the tribunal. He further submits that as it was not in dispute that the children were, when with the claimant, members of his assessment unit, the tribunal should in particular have determined the need for the various items claimed with regard to the particular circumstances of that assessment unit at the date of claim and refers to paragraph 16 of the unreported decision on Commissioner's file CSB/943/84. As regards the determination of the question whether a single payment can be made under regulation 27, the adjudication officer points out that such determination calls for consideration of 3 questions, namely,

- (i) whether there is a need under regulation 3 for the item,
- (ii) whether such need arose otherwise than by normal wear and tear, and
- (iii) whether the need arose otherwise than in the normal course of events

and that in the case of a composite claim for clothing and footwear, such as the claim now under appeal, findings of fact on the above questions should, following paragraph 5 of Decision R(SB) 42/83, be made in respect of each individual item.

7. I am in substantial agreement with the submission by the adjudication officer and I consider that the tribunal erred in law in failing to make the appropriate findings of fact and to record adequate reasons. I should add, however, that the requirement to make findings in respect of each individual item claimed can be met without repetitive findings provided that it is clear that each item has been considered. I should also mention that it does not follow from the fact that children are members of two different assessment units at different times that they necessarily need "two of everything" and that that should be borne in mind by the new tribunal to whom, as will appear, I must remit the case for re-determination.

8. As I have found that the tribunal erred in law I must set their decision aside. It would not be expedient for me to give the decision that the tribunal should have given because that would involve first making findings of fact which I have no jurisdiction to make. I must therefore remit the case for re-hearing by a differently constituted tribunal.

9. As regards regulation 30, I agree that the tribunal appear to have misconstrued the effect of the words "only means" by taking into account the means available to the children's mother. Should it be necessary for the new tribunal to consider regulation 30, that is to say, if they decide that no payment can be made under regulation 27, they will have to bear that matter in mind.

10. The adjudication officer now concerned also submits that the tribunal erred in failing to consider whether the claimant could be assisted by regulation 28. I agree that they should have considered that regulation, although it was not specifically mentioned on behalf of the claimant, if the facts indicated the possibility that it might be relevant. From the information available to me it appears that the claimant had not, at the time of his claim, received an amount of allowance to which he was entitled and that it was therefore appropriate for the tribunal to consider possible entitlement under regulation 28. However, I express no view whatever as to what conclusion they should have reached.

11. For the foregoing reasons my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny  
Commissioner

Date: 24 April 1986