

RAS/6/LS

E. Palmer
Sp's Reg 30 re-wiring
alternative "non-financial" means
not readily available

Commissioner's File: CSB/65/1987

C A O File: AO 3194/SB/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Greater Birmingham

Case No: 02/02

1. My decision is that the decision of the social security appeal tribunal dated 20 August 1986 is erroneous in point of law and I set it aside. As it is expedient to do so I give the decision that the tribunal should have given. My decision is that the claimant is entitled under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 to a single payment of £605.00 for the cost of re-wiring his home.

2. This case has a long history. I need not go into it in any great detail because there is now really only one point of contention. That point is whether the making of the single payment to which I have referred was the only means by which serious damage or serious risk to the health or safety of the claimant could be prevented. That matter arises in this way. The claimant was at the material time a 36 year old single man living in a house which he had purchased from his father. He was in receipt of a supplementary allowance and made a claim for single payments for the cost of various repairs to the house including the cost of having it re-wired. The re-wiring is the only repair now in question. It is not in dispute that the cost was £605. An adjudication officer turned down the claim under both regulations 17 and 30 of the Single Payments Regulations. There was an appeal and the tribunal upheld the adjudication officer's decision. But the tribunal's decision was set aside by the Commissioner because of want of compliance with regulation 19(2) of the Social Security (Adjudication) Regulations 1984. The case was then reheard by another tribunal. They again upheld the adjudication officer. This appeal is against that decision.

3. Regulation 17 of the Single Payments Regulations provides for single payments to be made for essential repairs and maintenance of the home. But the claimant could not get a single payment under that provision in this case because the cost of the repairs exceeded £325. That left regulation 30 which provides so far as relevant that -

"30(1) Where a claimant is entitled to a pension or allowance and he -

(a) claims a single payment for an 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 an adjudication 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."

The tribunal considered regulation 30 with great care. It is implicit in their decision that they were satisfied the claimant had an exceptional need. They had no doubt that the defective state of the wiring constituted a serious risk to the claimant's health or safety. They satisfied themselves by reference to the words "the only means" that the claimant had no other financial means of averting that risk. And then, with reference to R(SB) 4/86 where it was held that "the only means" was not restricted in meaning to financial means but extended to cover other available expedients which might reasonably be taken into account, they considered whether there were on the facts as they found them other such means. They decided that there were, giving as their reasons that -

"Finally, the tribunal considered whether there were other means (non-financial) whereby the likelihood of serious risk to the safety of the Appellant could have been prevented (R(SB) 33/84). It had guidance from R(SB) 4/86 to consider only those other means which might reasonably be adopted.

If the Appellant had switched off the electricity supply at the mains when it appeared to him that the wiring was dangerous he could have prevented any likelihood of serious risk to his safety. Had he done so he would not have been without means of heating water (but would have needed to go to a public baths for a bath) or cooking meals for he had a gas cooker. He would not have been without the means of providing himself with personal warmth for he had a gas fire and there was no suggestion that his stocks of bedding were inadequate.

The tribunal was convinced that the fact that the Appellant had received a gas bill for over £400 would not have deterred a reasonable person from using gas as he normally did. Disconnection did not take place nor was it threatened because the Gas Board realised it was an error on their part.

In order to have light when natural daylight was not available he could have used (as he did use between the date of disconnection, shortly after the 9 10 84 and the date of reconnection on the 12 or 13 December 1984) candles. The tribunal noted that the Appellant appeared to be nervous during the hearing but there was no evidence that he had ever had a mishap when using candles to provide light. Furthermore, the Appellant could have purchased a safe paraffin lamp from the money he was not spending on electricity.

Thus, the tribunal concluded that there were other means which the Appellant could reasonably be expected to avail himself of, namely cutting off the electricity supply."

In relation to that the claimant's solicitors have submitted that "the decision was so extreme as to be perverse, but even if it were found not to be perverse...it...was erroneous in point of law because the tribunal heard neither evidence nor argument on the subject of the reasonableness of using candles and public baths instead of electricity, and in the alternative because it misconstrued the meaning of "reasonably" as used in R(SB) 33/84". In fact the relevant decision with regard to "reasonably" is not R(SB) 33/84 but R(SB) 4/86. The adjudication officer now concerned with the case supports the tribunal's decision. He says "The tribunal have identified the risk and the means available to the claimant of averting that risk. In my submission the only question remaining is whether cutting off the electricity can reasonably be taken into account as other means having regard to the particular circumstances of this case. I submit that in deciding this matter it is clear that the tribunal had regard to R(SB) 4/86 and considered that cutting off the electricity supply was a reasonable means of averting the serious risk to the claimant's health which they had identified. Although it may be that another tribunal would have come to a different conclusion I submit that unless it can be shown that the decision of the tribunal was so

extrême as to be perverse it cannot be considered erroneous in law. In my submission that is not the case here."

4. In the tribunal's view it was reasonable for the claimant to live without electricity notwithstanding that that meant that he would not be able to have a bath in his home and would have to use candles or a paraffin lamp after dark. Now it has often been said that it is not the purpose of the supplementary benefit system to keep claimants in luxury. But nor is it supposed to keep them in penury without things that are essential to an adequate standard of living in a civilised community. So a claimant's normal requirements as set out in regulation 4(1) of the Supplementary Benefit (Requirements) Regulations 1983 are described as relating to "all items of normal expenditure on day-to-day living, other than housing benefit expenditure and items within Part IV of these regulations, including in particular food, household fuel, the purchase, cleaning, repair and replacement of clothing and footwear, normal travel costs, weekly laundry costs, miscellaneous household expenses such as toilet articles, cleaning materials, window-cleaning and the replacement of small household goods (for example crockery, cutlery, cooking utensils, light bulbs) and leisure and amenity items such as television licence and rental, newspapers, confectionery and tobacco". These are of course no more than examples of normal expenditure on day-to-day living but they do illustrate that supplementary benefit is intended to be directed at securing more than the most basic or spartan of living conditions. If that were not so the examples would not have included the leisure and amenity items. So the standard while modest is not intended to be degrading. With that in mind I do not accept that a means of averting the serious risk to the health or safety of the claimant in this case which left him without baths and without light except candle light or a paraffin lamp could reasonably be regarded as constituting "other means which might reasonably be taken into account as being available in the circumstances of the case" (see paragraph 12 of R(SB) 4/86). And the words which I have underlined seem to me clearly to indicate that an electricity supply is not to be regarded as an abnormal requirement. In my view the tribunal's conclusion was so unreasonable as to be insupportable in law and I do not hesitate to set it aside. My decision is set out in paragraph 1.

(Signed) R A Sanders
Commissioner

Date: 31 July 1987