

S P for furniture. Sufficient chairs for MASTER members of assessment unit only refers to the members at the date of the claim. Equally assessment unit in reg 13(1) only refers to the existing assessment unit.

MJG/SH/20/MD

Commissioner's File: CSB/78/1987

C A O File: AO 3179/SB/1986

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION
OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George Askew

Social Security Appeal Tribunal: Sheffield

Case No: 64/10

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 20 August 1986 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101(5), as substituted by paragraph 7(3) of Schedule 5 to the Social Security Act 1986.

2. This is an appeal to the Commissioner by the claimant, a single man aged 23 years at the relevant time, who had been unemployed since 1980 and whose only income was supplementary benefit. The appeal is from the unanimous decision of the social security appeal tribunal dated 20 August 1986 which upheld the decision of the local adjudication officer issued on 24 May 1986, to the following effect,

"A single payment under the Supplementary Benefits (Single Payments) Regulations for the cost of furniture and household equipment is not payable because the claimant does not satisfy the conditions prescribed by Regulation 10 of the Supplementary Benefit (Single Payments) Regulations. Neither does he satisfy the condition that such a payment is the only means of preventing serious damage or serious risk to health (Supplementary Benefit (Single Payments) Regulations, regulation 30)."

3. At the claimant's request the appeal to the Commissioner was the subject of an oral hearing before me on 22 July 1987, at which the claimant was present and was represented by Dr P Martinez and the adjudication officer was represented by Mr P Darby. I am indebted to Dr Martinez and to Mr Darby for their assistance to me at the hearing.

4. The new tribunal that rehears this case will need of course to investigate the facts in detail but essentially they appear to be these. From October 1983 the claimant was living with and claiming benefit for a Miss A M and her daughter M. A further child S M was born on 9 April 1985. On 24 June 1985 the claimant notified the local office of the Department that he had gone to live with his sister and made a claim for benefit for himself only. On 25 April 1986 the claimant reported to the local office that he was moving to his own local

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authority tenancy of a two-bedroomed flat on 28 April 1986. The claimant made a written claim for a single payment for a number of items of furniture and household equipment and bedding for the new flat stating,

"At the moment I am on my own but I am waiting for access to my two sons S aged one and A aged two weeks who are at the moment with my ex-girlfriend."

It is clear that the claimant wished to have the children to stay with him in the flat during periods when he was exercising his right to access under an access agreement made with Miss A M.

5. The claim was refused by the local adjudication officer on the ground that the claimant could not satisfy any of the requirements of regulation 10(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1981. Although undoubtedly the claimant satisfied regulation 10(1)(a)(iii), namely that, "the claimant has, in the opinion of the adjudication officer, no immediate prospect of employment and... has been a person in receipt of an allowance for a continuous period of six months...", nevertheless he was held by the local adjudication officer not to be able to satisfy the proviso required in regulation 10(1)(a), namely that he had not shown that there was "no suitable alternative furnished accommodation available in the area."

6. At the local tribunal, the claimant largely based his case not on that particular provision of regulation 10(1)(a) but on the provision in sub-paragraph (i) of that regulation namely that "one of sub-paragraphs (a) to (g) of regulation 13(1) [of the Single Payments Regulations] applied to or in respect of his previous home". I deal with that matter below but I note that the tribunal also dealt with the question of whether or not the claimant could show that there was "no suitable alternative furnished accommodation available in the area". As to the way in which the tribunal dealt with that matter, the adjudication officer now concerned in paragraphs 14 and 15 of a written submission dated 22 January 1987 submits as follows,

"Although the claimant's representative had indicated that the appeal was not being based on this particular provision in regulation 10(1)(a) in my submission it was nevertheless incumbent on the tribunal when faced with the claimant's evidence to make findings of fact as to whether or not he had satisfied them that any available furnished accommodation was unsuitable having regard to his own particular need. Had the tribunal rejected the claimant's evidence, as they appear to have done from their reasons for decision, then, I submit, they were required to identify with reasonable particularity the grounds for such rejection (see R(SB)33/85, paragraph 15). In my submission the claimant has been left in the dark as to why his evidence failed to satisfy the tribunal (see paragraph 14 of R(SB)6/81)".

7. At the hearing before me, Mr Darby resiled from that submission and submitted that as the claimant's representative had indicated to the local tribunal that the appeal was not being based on that particular provision the tribunal were not at fault in not dealing with it. However, I do not think it was as simple as that. The tribunal clearly did take the matter 'on board' and in my view on the facts of this case in exercise of their inquisitorial jurisdiction they should have fully investigated and given detailed reasons and made findings of fact in relation to it. It appears that the evidence of furnished accommodation being available was very sparse, though of course the onus is upon the claimant to demonstrate that suitable alternative furnished accommodation does not exist (see R(SB)8/84). I consider that the new tribunal ought to deal fully with this particular matter because it is obviously more desirable to deal with this issue first where it is clear beyond doubt that the claimant otherwise satisfies regulation 10(1)(a)(iii), than to proceed to the more difficult question of whether the claimant could bring himself within regulation 10(1)(a)(i) referring to regulation 13(1) (see below).

8. If the new tribunal should find that the claimant does discharge that onus of proof (as

to furnished accommodation) and therefore can bring himself within regulation 10(1)(a)(iii), they will then need to go through the list of items claimed by the claimant to ascertain whether or not the claimant had a "need" for those items as at the date of claim. That is essentially a question of fact for the tribunal but, so far as the claim for four dining chairs and a three-piece suite is concerned, the tribunal will need to have regard to the decision of a Tribunal of Commissioners on Commissioner's file CSB/1440/1985 (not reported) where the tribunal held that because of the reference in regulation 9(a) to "sufficient... dining and easy chairs for all the members of the assessment unit" (my underlining), a claim could not be made for dining and easy chairs for those who were not members of the assessment unit eg guests. I hold that the claimant's children would come within that category with the result that only one dining and one easy chair could be awarded. I do not consider that at the relevant time the claimant's children could be considered to be part of his assessment unit for the reasons set out in paragraph 13 below. So far as the other items are concerned the matter is entirely up to the new tribunal as a question of fact since the limitation to "all the members of the assessment unit" does not occur in the other matters listed in regulation 9 of the Single Payments Regulations.

9. I direct that, should the new tribunal should conclude that the claimant cannot satisfy regulation 10(1)(a)(iii) because he cannot satisfy the proviso that "there is no suitable alternative furnished accommodation available in the area", then they will need to proceed to a consideration of regulation 10(1)(a)(i) which refers to sub-paragraphs (a) to (g) of regulation 13(1). The relevant sub-paragraph here is sub-paragraph (b) of regulation 13(1) which refers to a situation where,

"13. (1) (b) Having regard to the age, state of health or any physical disability of any member of the assessment unit, the size of the assessment unit and whether any other person lives in the home, the existing home is unsuitable either in size or structure or because it is too far removed from close relatives."

10. The original tribunal that heard this case concluded that that paragraph was not applicable to the claimant because it was not suggested that his existing home in his sister's flat was "unsuitable either in size or structure" nor was it "too far removed from close relatives". They also held that, when taking into account the phrase "the size of the assessment unit", they could not take into account the fact that the claimant was hoping to have his children stay with him. It was that particular part of the decision that was principally challenged on appeal to the Commissioner but for the reasons given below I hold that it was correct and that a claim under this head, unless there are some other relevant facts of which I am not aware, must fail. The new tribunal should, therefore, decide accordingly.

11. At the hearing before me, Dr Martinez submitted that the matters to which regulation 13(1)(b) directs regard to be had are not exhaustive but are merely examples and that one ought to read some such words as "in particular" after the words "having regard" in the regulation. I reject that submission. I cannot read words into a regulation that are not there, nor do I consider that the general context of the regulation bears this meaning. I hold that the examples in the sub-paragraph are exhaustive. I do not consider that reported Commissioner's decision R(SB)42/84 is to the contrary effect because that decision was construing a different provision of regulations (paragraph 2 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983) where the words "in particular" are expressly inserted in the regulation.

12. I therefore proceed to consider Dr Martinez' other submissions that, even if the examples in regulation 13(1)(b) are exhaustive, they nevertheless must be construed in a commonsense manner so as to contemplate future possible additions to an assessment unit, eg the children of the claimant in this case. I appreciate the force of this argument, though of course some other provisions of regulation 13(1) take care of some of these situations

(eg sub-paragraph (d)). But I consider that in deciding whether or not the existing home is "unsuitable either in size or structure or because it is too far removed from close relatives", that what has to be taken into account under the head of "the size of the assessment unit" or "the age, state of health or any physical disability of any member of the assessment unit", only the existing assessment unit, ie in this case the claimant himself, can be taken into account and not persons who are contemplated possibly to join that assessment unit in the future.

13. Dr Martinez drew attention in this context to the definition of "assessment unit" in regulation 2(1) of the Single Payments Regulations, which definition includes in an assessment unit a "dependant". "Dependant" in turn is defined in regulation 2(1) as meaning a person "whose requirements and resources ... are or would be aggregated with and treated as those of the claimant" (my underlining). Dr Martinez drew attention to the fact that the words "or would be" occur in the Single Payments Regulations and also in the Supplementary Benefit (Urgent Cases) Regulations 1981 (regulation 2(1)) but do not occur in the definition of "dependant" in other regulations eg the Supplementary Benefit (Requirements) Regulations 1983 or the Supplementary Benefit (Resources) Regulations 1981. He submitted that the words "or would be" might well include the situation here where it was contemplated that the children should at least for part of the week join the claimant's assessment unit.

14. I consider, however, that this submission must be rejected. In my view the reason for the inclusion of the words "or would be" in the definition of "dependant" in the Single Payments Regulations is because of the provision of regulation 4 of those Regulations that a single payment may be claimed, not only by a person who is actually entitled to supplementary benefit, but also to a person who would be entitled to it if he made a claim for it and otherwise satisfied the conditions for it (compare regulation 4 of the Urgent Cases Regulations). I do not therefore consider that the words "assessment unit" in either regulation 9(a) or regulation 13(1)(b) of the Single Payments Regulations include persons other than those who are actually members of the assessment unit as at the date of the claim for a single payment. The result is that I must direct the new tribunal that a claim which had to rely on regulation 13(1)(b) of the Single Payments Regulations must in the circumstances of this case fail and the original tribunal was correct in so holding.

15. Lastly, I should say that the possible applicability of regulation 30 of the Single Payments Regulations in this case (serious risk to health or safety) was expressly disclaimed by Dr Martinez on behalf of the claimant, though there was some discussion by me with Dr Martinez and Mr Darby about it. Consequently, I direct the new tribunal that in the circumstances, unless informed otherwise at the new hearing, they need not consider the applicability of regulation 30.

(Signed) M.J. Goodman
Commissioner

Date: 24 August 1987