

DGR/MP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S.B. 11/81

1. The decision of the supplementary benefits appeal tribunal given on 4 February 1981 is erroneous in point of law, and accordingly I set it aside.

2. On 8 April 1981 I gave leave to the supplementary benefit officer to appeal against the decision of the supplementary benefits appeal tribunal of 4 February 1981. The supplementary benefit officer asked for an oral hearing of the actual appeal, a request to which I acceded. At that hearing the benefit officer was represented by Mr P Milledge of the solicitor's office of the Department of Health and Social Security. The claimant did not appear.

3. The facts of the case are simple and straightforward. On 12 December 1980 the claimant, who had been released from prison the previous July, claimed a single payment in respect of a jacket, shoes, trousers and shirts. He explained that he had come out of prison with one set of clothing only and that this was all he had to wear. The benefit officer disallowed the claim, whereupon the claimant appealed to the supplementary benefits appeal tribunal. By a majority decision they reversed the decision of the supplementary benefit officer, authorising payment for an anorak (£18.25), shoes (£12.00), one pair of trousers (£12.00) and one shirt (£6.30). The reasons for their decision were expressed in the following terms:-

"The tribunal considered a payment should be made under Regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980. They accepted that Mr Byrne has no clothes of his own and failure to make a payment would be a serious risk to his health."

The dissenting member of the tribunal was not satisfied that there would be a serious risk to the claimant's health if the payment were

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not made. The benefit officer now appeals against that decision on the ground that it was erroneous in point of law.

4. Mr Milledge began by submitting that the tribunal had failed to consider adequately or at all the provisions of regulation 27 of the Supplementary Benefit (Single Payments) Regulations 1980 (S.I. 1980 No 985) and whether the claimant had complied therewith. For it was only when they were satisfied that there had been a failure to comply that they were justified in concluding that the claimant could invoke regulation 30 of the above Regulations. In the submission of Mr Milledge, the failure on the part of the tribunal to consider properly regulation 27 must necessarily mean that the tribunal's award under regulation 30 proceeded on an erroneous basis.

5. It is a prudent practice for a tribunal purporting in any given instance to apply regulation 30 to explain, at least briefly, why they have adopted this course. It may be important to the claimant. For, in order to qualify for an award under regulation 30 the claimant has severe obstacles to overcome. For example, he has to show that in addition to there being an exceptional need for which the single payment is required such 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 above requirement may prove a severe impediment, and if the claimant is able to satisfy one of the regulations in Parts II-VII of the Single Payments Regulations e.g. regulation 27, he will escape the need to comply with the stringent conditions imposed by regulation 30. It is obvious that, if the tribunal blandly purports to consider the claim under regulation 30 in circumstances in which the claimant might expect to have satisfied one of the regulations in Parts II-VII, reasons must be given by the tribunal for their action. They are important to the claimant.

6. However, in the present appeal it does not lie in the mouth of the benefit officer to complain of the tribunal's approach, in that he does not maintain, and never has maintained, that the claimant satisfied regulation 27. The benefit officer has accepted all along that the tribunal were at liberty to apply regulation 30, if they thought that the claimant satisfied all the conditions there specified. Moreover, the claimant has not contended otherwise. Accordingly, on the facts of the present case I find the first ground of appeal put forward by Mr Milledge pedantic. There is nothing to suggest that the tribunal did not consider regulation 27 and conclude that the claimant could not rely on it. Admittedly no specific reference was made in their decision to this particular issue, but seemingly it was not a matter of contention.

7. The second ground on which Mr Milledge based the appeal was that the tribunal failed to identify the serious risk to health entailed in the refusal of a single payment. The benefit officer was left wondering as to how the claimant satisfied regulation 30. Of course, there may be occasions when the serious risk to health is obvious, and in those circumstances it would be unnecessary to require the tribunal to spell out exactly in what respect there existed such serious risk to health. But in the present case the

matter is not obvious, particularly if proper weight is given to the word "serious". Mr Milledge went on to say that, irrespective of the failure to identify the relevant serious risk to health, there was no evidence in support of the view that such serious risk in fact existed. In other words, there was no evidence on which a tribunal acting judicially and properly instructed as to its role would have come to the conclusion that the claimant was likely to incur serious risk to his health if the single payment were not forthcoming. I agree with those submissions of Mr Milledge.

8. Mr Milledge also went on to contend that the tribunal had not indicated why, even if there was an identifiable serious risk to the claimant's health in the event of the single payment not being forthcoming, and even if its existence was capable of being supported by the evidence, the making of a single payment was the only means by which the **risk in question could be avoided**. I accept that submission as well.

9. It follows from what has been said above that I am satisfied that the majority decision of the tribunal was erroneous in point of law and that it must be set aside.

10. I allow this appeal, and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 28 August 1981

Commissioner's File: C.S.B. 86/1981

CSBO File: S.B.O. 105/81