

Medical need - need for "medical item" - not
item in ordinary use.

12 FEB 1987



T/SH/2

Commissioner's Files: CSB/1360/1986
CSB/88/1987
CSB/89/1987

C A O Files: AO 3237/SB/86
AO 3238/SB/86
AO 3239/SB/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF COMMISSIONERS

Name: Derick Bird

Social Security Appeal Tribunal: Birmingham

Case Nos: 55/06, 55/08, 55/09

1. We allow the appeals of the claimant from the three decisions of the social security appeal tribunal, all dated 1 December 1986 (tribunal register numbers 55/06; 55/08; and 55/09), as those decisions are erroneous in law and they are set aside. We remit the three appeals to a differently constituted social security appeal tribunal for rehearing and redetermination in accordance with the directions in this decision: Supplementary Benefits Act 1976, section 2 and the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451 as amended] regulations 19 and 27.

2. The claimant is a single man living on his own in a one-bedroomed ground floor flat. For the past four to five years the claimant has unfortunately suffered from multiple sclerosis. The original tribunal found as a fact that "his condition is slowly deteriorating. He suffers from spasms which affect all muscles and limbs and has had several falls recently, during some of which he has suffered from hypothermia having been left overnight on one occasion without assistance". There was before the original tribunal detailed medical evidence as to the claimant's state of ill-health and the risk to him of hypothermia resulting from his susceptibility to cold because of his illness.

3. The appeals were first heard as a matter of urgency by Mr Commissioner Goodman on 13 January 1987. At that hearing the claimant was present and was represented by Ms F Robinson of the Birmingham Tribunal Unit and the adjudication officer was represented by Miss R Kearns of the Office of the Solicitor to the Department of Health and Social Security. There was then raised for the first time the question of "medical need" (see below). As a result of that and of the difficulty of the definition of "medical need", Mr Commissioner Goodman adjourned the hearing and subsequently the Chief Commissioner

directed a further hearing of the appeals by a Tribunal of Commissioners. That further hearing took place on 29 January 1987 at which the claimant was again present and again represented by Ms F Robinson. The adjudication officer was represented by Mr E O Stocker. We are grateful to all who have attended and assisted at these hearings.

4. The appeals arise from claims made on 16 June 1986 for single payments in respect of the following items: thick lined curtains for the bedroom, bathroom and living-room of his flat (the subject of tribunal decision on tribunal register number 55/07); fitted seamless carpets for the lounge, bedroom, kitchen and hall of the flat (tribunal register number 55/08); and for a microwave oven, double glazing (not by glass) and electric night storage heaters (tribunal register number 55/09). The local adjudication officer refused all those claims on the basis that the claimant could not show "need" for them within regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528 as amended]. Those decisions of the local adjudication officer were unanimously affirmed on the same ground by the appeal tribunal.

5. Both the claimant's representative and the adjudication officer now concerned, in written and oral submissions, have contended that the original tribunal was in breach of regulation 19(2)(b) of the Adjudication Regulations, in that it did not record adequate reasons for its decisions as required by that regulation. Although it is clear to us that the original tribunal took considerable care with these difficult appeals, we find that undoubtedly those submissions are correct. Basically the local tribunal merely denied the claims on the ground that there was no "need" eg because the claimant had "a suitable alternative item" (regulation 3(2)(ii)) available to him, without indicating what that item or items were or whether indeed they were "suitable" within the subjective test of suitability in reported Commissioner's decision R(SB)1/84.

6. Consequently we must set the tribunal's decisions aside. As there are unresolved questions of fact which need determination and as appeal to the Commissioner in this jurisdiction lies only on a question of law, the cases must be remitted for rehearing and redetermination, in accordance with regulation 27 of the Adjudication Regulations, to a differently constituted social security appeal tribunal. That tribunal will first need to have regard to the definition of "need" in regulation 3 of the Single Payments Regulations, since it is only if there is a "need" under that regulation that there can be any possibility of a single payment under the subsequent Single Payments Regulations. If the new tribunal determines that there is a "need" in relation to any given item (and of course each item must be considered separately), it will then have to consider the subsequent provisions of the Single Payments Regulations that may be applicable. Examples are:

Regulations 9 and 10 - essential furniture and household equipment;

Regulation 18 - draught-proofing. This is essentially a question of fact and the new tribunal should consult the decision on Commissioner's file CSB/109/1982;

Regulation 30 - single payment to meet an exceptional need where such a payment is the only means by which serious damage or serious risk to the health or safety of the claimant may be prevented. It was rightly conceded on behalf of the adjudication officer that the claimant's mobility allowance and attendance allowance should not be taken into account as "other means".

As to all the items, the ruling in R(SB)1/84 as to need being determined by the subjective needs of a given claimant within an overall boundary of reasonableness should be followed. Subject to the matters mentioned above and to the "medical need" prohibition (see below) the remainder are issues of fact for the new tribunal that rehears this case. Our having allowed the claimant's appeal does not represent any indication by us of any opinion as to whether, on the merits, the appeals should succeed.

7. There is, however, the further question for which this Tribunal of Commissioners was appointed, namely whether or not any of the claims are to be refused by reason of the prohibition in regulation 6(2)(n) of the Single Payments Regulations of a single payment for any "medical, surgical, optical, aural or dental need". On behalf of the adjudication officer Mr Stocker contended that that particular prohibition applied only to the claim for the microwave oven. For the reasons set out below we hold that the need for the microwave oven was not "a medical need". It is of course not a "surgical, optical, aural or dental need". We are also satisfied that the concession made by Mr Stocker as to the other items not involving a medical need was properly made.

8. Regulation 6(2) of the Single Payments Regulations begins -

"(2) Notwithstanding any provisions in these regulations, in particular regulation 30, no single payment shall be made in respect of the following:"

There then follow fourteen sub-paragraphs, (a) to (n), listing various matters such as, to take random examples, school uniform, garaging, telephones, televisions, holidays and domestic assistance. These, in general, are items or services which are either to be considered as luxuries (although then it is hard to see how they could be regarded as needs within regulation 3, far less needs which could fall within regulation 30) or, and more to the point, as matters which are or could be dealt with by other bodies, particularly local authorities throughout their social services and education departments. The only such sub-paragraph we need set out in full is -

"(n) a medical, surgical, optical, aural or dental need"

The words of this sub-paragraph are, we note, taken verbatim from section 1(3) of the Supplementary Benefits Act 1976, although there the context is, of course, different as the words are prefixed by "The requirements of any person to be taken into account for the purposes of this Act ..." (our emphasis). That, and the fact that the sub-paragraph was added as a matter of urgency, with effect from 5 November 1983, by SI 1983 No 1630, following the decision of a Tribunal of Commissioners in R(SB)52/83, promulgated on 2 November 1983, may perhaps account for the fact that it has the appearance - at any rate to someone familiar with the Single Payments Regulations and regulation 6 in particular - of a "cuckoo in the nest".

9. A discussion of regulation 6 is to be found at paragraph 7(3) of Commissioner's decision on file no. CSB/1482/1985, a decision which also contains helpful references to the history of this legislation and to other Commissioners' decisions on or relevant to this regulation. We should say at this point that we were referred to a number of decisions by both Mr Stocker and Ms Robinson. We are grateful to them for bringing these to our attention but, while we have considered them all with care in reaching our decision, we do not think it necessary for us to refer to them in detail.

10. We are firmly of the opinion that the effect of regulation 6(2)(n) cannot be and is not to abrogate or limit those other Single Payment Regulations which specifically depend upon the claimant suffering from some illness, chronic sickness or mental or physical disability. Particular instances of these are to be found in:

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|---------------------|---|--|
| Regulation 9(i)(ii) | - | a washing machine where a laundry or launderette cannot be used because the claimant or his partner is mentally or physically ill or disabled; |
| Regulation 9(j) | - | a vacuum cleaner, where the claimant or a member of the assessment unit is allergic to a house dust; |

- Regulation 9(k) - a refrigerator, where, for medical reasons, a special diet necessitates the keeping of foodstuffs at refrigerated temperatures;
- Regulation 10(1)(a)(ii) and (b)(i) - the purchase, repair and installation of essential furniture and household equipment where the assessment unit includes a dependant or a member who is chronically sick or mentally or physically disabled;
- Regulation 13(1)(b) & (d)(i) - Removal expenses, when the health or physical disability of any member of the assessment unit or the chronic sickness or mental or physical disability of a close relative, are factors to be considered;
- Regulation 16(1)(b)(i) - Payments in respect of housing requirements to discharged prisoners who are chronically sick or mentally or physically disabled;
- Regulation 20(b) - The resiting of pre-payment fuel meters in positions accessible to chronically sick or mentally or physically disabled claimants;
- Regulation 23(2)(d) - The fees of a medical examination required by the prospective employer of a claimant;
- Regulation 27(1)(a)(ii) & (iv) - Clothing and footwear, where the need arises from heavy wear and tear or from the necessity for particular items by reason of the claimant's mental or physical illness, handicap or disability;
- Regulation 30 - A single payment to meet an exceptional need where 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.

11. It follows, in our judgment, that the Commissioner was right when he said, at paragraph 12 of CSB/1482/1985, "regulation 6(2)(n) must be given a meaning which does not conflict with or negate the provisions in all those regulations, including regulation 30". The learned Commissioner continued -

"The only way in which regulation 6(2)(n) can be defined so as to be consistent with those regulations is to define a "medical....need" as being a need for a medical item - such as an insulin gun in the decision CSB/870/1984. But where there is a need, arising from a medical condition, for an item in ordinary, everyday use, such as a cotton sheet or a duvet, that need is not, in my judgment, excluded by regulation 6(2)(n)."

We agree that that is a correct construction of sub-paragraph (n).

12. In those circumstances we are content to adopt the argument and reasoning leading to that conclusion in CSB/1482/1985. In the light of the existing conflict between Commissioners' decisions it may help adjudicating authorities if we say that, in our judgment, each word in sub-paragraph (n) "must be given its own separate meaning" (see

paragraph 7(2) of CSB/1482/1985), and that no word is more important than another. With respect to the authors of Commissioners' decisions which have held otherwise, we therefore find that the word "medical" must bear the restricted sense of "pertaining or related to medicine" or, in other words, matters normally dealt with by a physician as distinct from a surgeon, dentist or other specialist practitioner.

(Signed)

**M J Goodman
Commissioner**

(Signed)

**J Mitchell
Commissioner**

(Signed)

**M H Johnson
Commissioner**

Date: 6 February 1987

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(Signed)

M J Goodman
Commissioner

(Signed)

J Mitchell
Commissioner

(Signed)

M H Johnson
Commissioner

Date: 6 February 1987