

S.P. Jumbao

JBM/FH

Commissioner's File: CSB/98/1985

C A O File: AO 2322/85

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:

Social Security Appeal Tribunal: North Tyne

Case No: 43/03

1. My decision is that the decision of the North Tyne social security appeal tribunal dated 8 October 1984, is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal.

2. This is an appeal by the claimant with the leave of the Commissioner to the Commissioner from the majority decision of the appeal tribunal varying the decision of the adjudication officer. The decision of the adjudication officer issued on 27 July 1984, is set out in box 1 of Form AT2.

3. The facts and history of the case are dealt with in paragraph 1 to 6 inclusive of the submission dated 29 April 1985 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here.

4. The relevant statutory provisions are referred to in paragraph 7 of the submission dated 29 April 1985 of the adjudication officer now concerned. Nothing is to be gained by my setting out those references afresh here.

5. In my judgment, the decision of the tribunal is erroneous in point of law in that they have failed to consider, or if they have considered, they have failed to record such consideration in respect of material facts and give adequate reasons for their decision. It is not clear to the claimant on the face of the record why the arguments put forward on his behalf were rejected. Save for the 3-piece suite and a sideboard, the items in respect of which the claimant appealed to the tribunal, were as the claimant contended "minor" items of household equipment in accordance with regulation 9(b) of the Supplementary Benefit (Single Payments) Regulation, 1981. I deal with two separate aspects of the appeal relating to "minor" items: first the refusal of certain single items of household equipment; and secondly the quantities of items of crockery and cutlery which as awarded by the adjudication officer, were fewer than those claimed.

6. I turn, therefore, to the first issue before me, that of the refusal of certain single items of household equipment and in that regard the appeal tribunal have failed to record adequate reasons for their decision to refuse single payments in respect of certain items while awarding payments for others. Those items which are to be classed as "essential furniture and household equipment" in accordance with regulation 9 of the Single Payments Regulations 1981 include sub-paragraph (L) "minor items such as cleaning implements,

ooking utensils, crockery and cutlery". By definition such "minor items" as those are "essential". I refer to paragraph 5 of decision R(SB) 42/83 for authority that consideration should be given in the case of each item claimed as to whether that item is a minor item within regulation 9(1), then as to whether in respect of that item the claimant is able to satisfy the conditions of regulation 3(2)(a) and (b) of the Single Payments Regulations. The tribunal have sought to refuse claims for certain items on the generalised ground that such items were not essential and in that they have erred in law as to the true tests applicable in the case of claims for "minor items". Entitlement should be approached first from the question "is the item one contemplated by regulation 9(L)?" The regulation does not provide that a payment should be made for an item just because it is minor, it must be of the type in contemplation under regulation 9(L) and need for the item under regulation 3 must be established. The claimant is on the face of the record, unable to ascertain why his claim has failed in respect of such items, in that the tribunal have erred in law.

7. I turn now to the second issue before me and in that regard, the tribunal have failed to dispose adequately of claims for minor items of household equipment additional to those awarded by the adjudication officer. The claimant requested four cups, saucers, dinner plates etc and the adjudication officer awarded payments for two. It may be that the tribunal had in mind the principle set out in paragraph 6(b) of the starred decision CSSB 130/1982 (unreported) in that they gave as a reason that some items "were not considered by the tribunal to be essential items for the use of a single man living alone" but they did not make specific findings of fact and state their reasons in relation to each item claimed. In decision CSSB 130/1982 the Commissioner said,

"... it is not necessarily appropriate to award a claimant who lives alone only one dining chair and one easy chair".

And further:-

"... it is for the determining authorities to decide in all the circumstances the numbers of items which should be allowed in respect of such items as dining and easy chairs and that it should be left to the common sense of those adjudicating authorities what should be awarded having regard to the particular facts and circumstances of any particular case."

In my judgment, this principle applies equally in the case of minor items such as crockery and cutlery claimed in respect of the claimant's "social needs" as opposed to his own immediate needs and indeed the adjudication officer had adopted the above principle in his original determination of the claims made for such items, payments having been made for 2 cups, saucers, plates, etc.

The tribunal erred in point of law in that they failed to record their findings of fact and reasons for decision in the instant case and have rejected claims for those minor items on a generalised basis.

As to the claim in respect of a 3-piece suite (as opposed to the 2 easy chairs awarded by the adjudication officer) in my judgment the correct approach is as set out immediately above in this paragraph.

As to the claim in respect of a sideboard this is not specifically dealt with on the face of the record and in my judgment, the tribunal have made no decision as to this item.

It is apparent from such a case as this how important it is to list clearly the items to which the appeal relates and the facts found, decision given and reasons for decision in relation to each one. This does not mean that the same facts and reasons must be repeatedly written out. If the same facts and reasons apply to several items this may be stated, the facts and reasons recorded and a list given of the items to which they relate.

9. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984, my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the matter shall pay particular attention to all the aspects to which I have referred above. They shall also consider carefully the exact wording of the relevant regulations and make and record their findings of all the material facts and give reasons for their decision. The appeal tribunal must of course consider each item as a separate claim in accordance with the decision of a Tribunal of Commissioners in Decision R(SB)42/83.

10. Accordingly, the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 20 September 1985