

CSB 109/1982 7/155

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IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Jayantilal Kanji Sachdev

Supplementary Benefit Appeal Tribunal: Leicester

Case No: 7/177

1. (1) This is a claimant's appeal from the unanimous decision dated 2 October 1981 of a supplementary benefit appeal tribunal ("the tribunal") brought by my leave and contending that the tribunal's decision was erroneous in law. The appeal to the tribunal was against a benefit officer's decision which whilst awarding a single payment in respect of some items for which the claimant had claimed disallowed others, and the tribunal's decision awarded a single payment in respect of a few items which had originally been disallowed, but substantially upheld the benefit officer's decision as to the items disallowed. In correct analysis the claimant was appealing to the tribunal only in respect of the items which then stood disallowed and is now appealing to the Commissioner only in respect of the items still standing disallowed in the light of the tribunal's decision. For a reason later below indicated the present appeal is supported by the benefit officer now concerned.
- (2) The appeal succeeds. I set aside the tribunal's decision insofar as it upheld the original decision as to disallowances by the benefit officer and direct that the claimant's appeal from that decision be, as regards the items in respect of which the tribunal upheld it, re-heard by a differently constituted tribunal. I do not consider it expedient to give myself the decision which the tribunal should have given, as there are in my view additional findings of fact material to such a decision which cannot be made upon the materials before me. The tribunal re-hearing the appeal are to observe my directions set out as an Appendix to this decision.

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2. In March 1981 the claimant, a married man living with his wife and eight year old daughter (who was attending school), requested a single payment in respect of the purchase of draught-proofing materials for the doors and windows in his home, indicating that he "wished to reduce his heating costs" thereby, since the doors and windows in the house were draughty. He indicated that he was seeking the cost of the materials, having it in mind to do the necessary work himself, and referred expressly to the reduction of draughts by simple measures, and to the provisions of the Single Payments Regulations which deal with that subject matter. Those provisions are now contained in Regulation 18 of the Supplementary Benefit (Single Payments) Regulations 1981, which were not then in force - but the Single Payments Regulations 1980 as amended, which were those in force at all material times, were not in significantly different terms, and for convenience I am below citing regulation 18 as it appears in the 1981 regulations.

3. Regulation 18 is headed "Draught Proofing" and is in the following terms:-

"18. Where the home is draughty and the draughts would be reduced by simple measures (for example draught-stripping of windows and doors, but not double-glazing or loft or cavity wall insulation), a single payment shall be made of an amount equal to the cost of necessary materials".

4. (1) In response to the claimant's application for such payment a home visit was made, the result of which was that a supplementary benefit officer decided that draught-proofing by means of draught-stripping of the windows and skirting board was necessary in the front downstairs room, and by draught stripping the windows in the kitchen, and both front and rear bedrooms; but that no draught-proofing was necessary either in respect of a third and smaller bedroom which was not used as a bedroom, or in respect of the front door - since there was a storm porch fitted, which excluded draughts from that door.
- (2) An award was accordingly made of the cost of twelve packets of draught-strip tape at £1.25 per packet, containing 20 feet per pack - 240 feet in all - such material being available locally for purchase.
- (3) The claimant appealed against that decision to the tribunal on the ground that the amount awarded was insufficient to meet to the costs of the materials which he needed.
- (4) It has not been in dispute that the claimant was a person in receipt of supplementary allowance, or that subject to substantiation of need he was eligible to receive single payments in accordance with the Single Payments Regulations in general and regulation 18 in particular.

5. The claimant was represented at the hearing by Miss Janet Gurney, an officer of the "Self Help Project Organisation," who has also made written submissions on his behalf upon the present appeal, for which submissions I am much indebted. She indicated to the tribunal that the additional materials which the claimant sought to have the subject of award were the subject of an estimate obtained and submitted in the total sum of £71.00, representing the cost of the following materials:-

	£
Plastic sheet	44.00
Tapes (250 feet of double sided sticky tape, obtainable from 16 rolls each costing £1.20)	19.20
Four door strips at £1.95 each	7.80
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Total	£71.00
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6. (1) The tribunal were also given evidence of the claimant's heating costs, were told that the draught proofing strip already awarded was unsuitable for application at the foot of a door, as distinct from round its sides, and that the plastic sheeting sought was in the nature of "window film". They were further informed that the third bedroom was used for praying every day and that the storm porch fitted at the front door was only a flimsy structure which did not stop the draughts. The tribunal's decision was expressed to revise the decision of the benefit officer by awarding a single payment to cover the cost of four door strips (for the front, back, kitchen and hall doors).

(2) The tribunal expressed their reasons for decision in the following terms:-

"The tribunal considered that it is reasonable to allow the door strips to eliminate the draughts in accordance with regulation 18 of the Single Payments Regulations 1980. The tribunal could not consider the request for window film because this was a form of double-glazing which is excluded by regulation 18. The actual amount paid for draught proofing strip was adequate for the needs. No draught proofing is needed for the bedroom and storm porch."

7. (1) The benefit officer now concerned submits, and I accept the submission, that the tribunal's stated reasons for the decision did not sufficiently comply with the requirements of Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rule 1980, in that there is nothing in such reasons which enables the claimant to ascertain why the tribunal concluded that there was no valid requirement for draught proofing - at least by draught strip tape - in respect of the small third bedroom in fact used for daily prayer.

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- (2) That omission is in my judgment sufficient to require that I set aside the tribunal's decision as erroneous in law insofar as it upheld the benefit officer's refusals. But it is material to the directions I ought to give to the tribunal re-hearing the appeal to go on to deal with the tribunal's reasons relative to regulation 18.
- (3) Before so doing I should indicate that I do not read those as a refusal to consider the request for window film, although it is literally capable of being so read; I read it as intended to indicate that the tribunal could not for the reasons indicated properly make an award in respect of that material.

8. Accurately defined, as in the Shorter Oxford English Dictionary in the material usage, "glazing" means the action of furnishing a building with windows or filling windows with glass. By logical progression "double-glazing" represents the action of furnishing a building with windows embodying a double layer of glass or filling windows with a double layer of glass. A Commissioner is not so removed from the practicalities of ordinary contemporary life as to be unaware that the replacement of old-fashioned windows having a single thickness of glass pane by windows which embody two thicknesses of glass separated by an air space is, in common with cavity wall insulation and loft insulation, a popular contemporary home improvement directed to improving the insulation of the home and reducing the expense of heating it. It is also a matter of common knowledge that although the term "double glazing" is primarily used in reference to the operation last described, there are a variety of modern materials which can be employed to the same end and achieve in varying measure an enhancement of insulation consistently with an acceptable level of translucency - but that neither the expense nor the level of achievement in those respects is uniform over the range of alternatives .

9. It is a matter of common knowledge also that both the costs of heating the home and the health of its occupants are adversely affected if the openings in its structure which abut upon the open air outdoors are inadequately furnished with means of precluding the admission of air from the outside when unwanted i.e. - and less formally expressed - if they admit draughts.

10. The counter-measures embraced by the term "draught proofing" are also of differing varieties. A foam-backed adhesive strip, or metal strip, is often used to improve the exclusion of draughts which are penetrating by way of gaps round windows and doors, but it is not always practicable to use that method in particular situations; nor is it suitable if the draught is being admitted because a pane of window glass is cracked or broken. In the latter cases to replace the glass is one remedy - but others may be used instead. In particular a plastic material may be applied locally, or generally over the whole of the window, or the whole of the window aperture -

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and this may take the form of rigid or flexible plastic sheet inserted either in place of or in addition to the original glass. The latter method results in a double thickness of material where there was only a single before, and in such a case the operation will in addition to improving the draught exclusion effect some enhancement of the antecedent state of insulation also.

11. In popular English usage it is frequently found that - usually with the intent of associating some alternative or substitute substance with the known merits of another substance - the proper term denoting the latter is ascribed to the former; and I cannot exclude from my mind in reference to the present appeal an awareness that such is the case in regard to contemporary usage of the term "double glazing", which may frequently be found in advertisements for products other than glass. My attention has also been drawn on the claimant's behalf to a guidance instruction (number 7177) given to benefit officers on the interpretation of regulation 18 in the following terms:-

"If a member of the assessment unit, an organisation, friend, neighbour or relative is prepared to carry out the work involved, give an ENP "/i.e. an exceptional needs payment - a single payment/", "where necessary to provide materials for simple measures to draught proof the assessment unit's home. This should be taken to include such things as fitting draught excluders, plastic sheet double glazing" /emphasis supplied by me/, "filling in gaps and crevices between floors and skirting boards, and around windows etc."

12. However, whatever view may be taken by the DESS administratively, my duty is to construe and apply regulation 18 as the law requires. So proceeding I take the view that, construed in context, "double glazing" as used in regulation 18 refers to what is properly so called, and necessarily involves the use of glass. That which may be directed to draught proofing and incidentally achieve some measure of additional insulation is not in my judgment within the term. Where precisely the borderline falls to be drawn in relation to the regulation 18 reference to "simple measures" is in my judgment a matter to be left to the commonsense of benefit officers and, as need arises, tribunals. But in order to admit of award pursuant to regulation 18 the measures must in my judgment be predominantly directed to the reduction of draughts, whether or not they additionally confer improvement in insulation.

13. And, so proceeding, I would foresee no difficulty in applying the regulation to such cases as that of an application for a window unit embodying double thicknesses of material which in all but technical specification of the translucent materials embodied would answer the description "double glazing"; for such could not properly be considered within the ambit of "simple measures" for the reduction of draughts.

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14. However, further evidential materials as to what were the claimant's precise proposals than that which was before the tribunal were in my judgment necessary in order to arrive at a proper determination. Additional evidential material of such character is not admissible upon an appeal to the Commissioner in this branch of his jurisdiction, and so a re-hearing is necessary. But in order that, should a re-hearing be required, further delay in exploring that aspect of the case should not delay the new tribunal, I gave directions earlier in the course of the present appeal which have led to there being now available to the tribunal hearing the case (although not taken into consideration by me in arriving at my present decision) a written account of the claimant's detailed proposals in terms now agreed between the claimant and the benefit officer presently concerned; and that document will be available to the tribunal on the re-hearing.

15. For the reasons above indicated my decision is as expressed in paragraph 1(2) above.

(Signed) I Edwards-Jones
Commissioner

Date: 30 March 1983

Commissioner's File: C.S.B. 109/1982
C SBO File: 30/82

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APPENDIX

1. The tribunal shall concern themselves only with the items for which the claimant has claimed but which have not been the subject of an award of single payment either by the benefit officer originally concerned or by the previous tribunal.
2. In arriving at their decision the tribunal shall, unless displaced by authority in the interim, give effect to the construction of regulation 18 of the Single Payments Regulations indicated in paragraph 12 of the decision to which this Appendix is annexed, reading and applying that construction in the light of paragraphs 8 to 11 and 13 of such decision.

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Appellant's Name: Jayantilal Kanji Sachdev
Commissioner's File No: C.S.B. 109/1982

This decision is starred because it considers and expresses conclusions upon the construction of the term "double-glazing" as used in what is now regulation 18 of the Single Payments Regulations 1981.

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