

J. Mitchell * Reg 8 Funeral expenses

C.S.B. 11/0/84

More than one claimant can claim a SP for the same funeral, where costs are shared

JM/FB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No: 6/891

ORAL HEARING

1. This is an adjudication officer's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 14 October 1983 which reversed a decision of the benefit officer (now the adjudication officer) issued on 6 June 1983. The point of law involved is of some difficulty - and has not, so far as I am aware, been the subject of any previous decision by the Commissioner. Accordingly, I directed and held an oral hearing of the appeal. The claimant did not attend. I was neither surprised thereat nor disadvantaged thereby. I have no doubt that he would be the first to agree that there was nothing useful which he could have contributed to what was exclusively a refined legal argument. The adjudication officer was represented by Mr E O F Stocker, to whom I am indebted for a characteristically objective and helpful address.
2. The appeal turns on regulation 8 of the Supplementary Benefit (Single Payments) Regulations 1981 S.I. 1981 No. 1528 - "Funeral expenses". The central issue is this: Does the regulation envisage the sharing of funeral expenses between two or more persons who are in receipt of supplementary benefit, with the consequence that each such person is entitled to a single payment to meet his or her contribution to those expenses? Or does the regulation contemplate that there shall be one claimant, and one claimant only, in respect of any given funeral? The regulation is not explicit on the point. It is, accordingly, necessary to look at it as a whole in order to find guidance to the solution. Since it is a long regulation, I have thought it convenient to set it out by way of an Appendix to this decision.
3. The facts of the case before me are not in dispute. The persons directly involved in the narrative are as follows:
 - (a) "The deceased": a man who appears to have died in late middle age and at a time when he was in receipt of supplementary benefit; he left no estate; at the time of his death he was living with his brother, "Mr D M" (for whom, see below).

- (b) "Mr D M": a brother of the deceased; at the time of the deceased's death he was in employment; his "take-home" wage was, however, only £78.00 a week; upon that, he supported a wife and two young children; amongst his weekly commitments were £20.00 by way of rent, £13.00 by way of gas, £7.00 by way of hire-purchase instalments and £2.00 by way of life insurance.
- (c) "Mr D L M": the claimant in this case; he is aged about 58; he is also a brother of the deceased; he is a married man, living with his wife; at the time of the deceased's death he was unemployed and in receipt of supplementary benefit; he had no capital and no other source of income.
- (d) "Mr R A M": another (and, I think, the eldest) brother of the deceased; at the time of the deceased's death he was in receipt of a retirement pension.
- (e) "Mrs A W N": the sister of the deceased; at the time of the deceased's death she was a widow, aged about 65; she was in receipt of a supplementary pension by way of supplement to her retirement pension; she is the claimant in case on Commissioner's File C.S.B. 111/1984; I heard her appeal to the Commissioner at the same time as I heard the appeal the subject of this decision; the decision in her appeal must be read in the light of this decision.

4. I do not think that the papers disclose the date of either the deceased's death or his funeral. They do, however, contain an account rendered by a firm of undertakers. It is dated 19 April 1983 and is for a total sum of £383.70 (which includes disbursements). (No point was or is taken by the benefit/adjudication officer as to either the items the subject of the account or the propriety of the charges therefor.) The account is addressed to Mr D M. However, typed at the foot thereof is the following:

	£
"Mr R A M	88.43
Mr D L M	88.43
Mrs A W N	88.43
Mr D M	118.41"

(I have, of course, confined myself to initials where the account shows the respective surnames.)

That confirms the evidence (impliedly accepted by the appeal tribunal) that the three brothers and the sister of the deceased severally (as opposed to jointly) "took responsibility" for such share of the total cost as appears against his or her name on the said account. (The share of Mr D M was £29.98 larger than the three other shares because he received the death grant of £30.00.)

5. Before I turn to the law, I observe that, from the human and common sense aspect, there was much to commend the arrangement reached by the deceased's surviving brothers and sister. There is, after all, an emotional element involved in the provision of the last obsequies for a brother. None of the four survivors was well off - or, even, comfortably off. Two of them were in a position in which he or she might have successfully made an individual claim for a single payment in respect of the full cost of the funeral. But no one was minded to try that course. The four of them (i.e. the two on supplementary benefit, the retirement pensioner and the family man on little more than a subsistence wage) agreed that each would bear his or her equal share. And I think that that was both responsible and honourable.

6. When, however, the claimant in this case and the claimant in C.S.B. 111/1984 made their respective claims for £88.43 the local benefit officer turned them down. He purported to apply regulation 8(1)(b):

"(b) there is no other person, being a close relative of the deceased, who could more reasonably, having regard to how closely they were related and the financial circumstances of that person, be expected to take responsibility;"

And he threw the whole cost of the funeral onto the shoulders of Mr D M.

7. I say "purported to apply" because there is nothing in the submission of the local benefit officer to the appeal tribunal, either in this case or in C.S.B. 111/1984, to indicate that he made any adequate enquiry into or gave any adequate consideration to "the financial circumstances" of Mr D M. In each submission the whole issue is dealt with in a single sentence:

"4. The supplementary benefit officer decided that Mr D M, the person to whom the funeral account was addressed and with whom the deceased lived prior to his death, being a close relative of the deceased (that is, a brother) could more reasonably be expected to take responsibility for the funeral expenses in view of the fact that he is employed."

So the enquiries into Mr D M's financial circumstances seem to have been carried no further than the ascertainment of the fact that he was employed. And a man supporting a wife and two children on a net wage of £78.00 a week was "more reasonably expected to take responsibility" for an undertaker's bill of £383.70.

8. The claimant appealed to the appeal tribunal. His appeal was heard on 14 October 1983. He was represented by a local councillor. Evidence was given of the precise financial circumstances of Mr D M. That evidence was accepted by the tribunal. It allowed the claimant's

appeal and awarded him a single payment of £88.43. Its reasons were set out thus:

"The tribunal held that the supplementary benefit officer was not correct in his opinion that Mr M's brother, Desmond could more reasonably be expected to pay the whole of the costs of the funeral. The tribunal were satisfied that it is reasonable in the circumstances to apportion the costs equally between the members of the family and that regulation 8(1)(b) of the Single Payments Regulations 1981 is not satisfied."

9. Mrs A W N also appealed to the appeal tribunal. Her appeal was heard on 20 October 1983, by a tribunal which, at least as to its chairman, was different from the tribunal which heard Mr D L M's appeal. The same local councillor represented Mrs A W N. He is recorded as having stressed that each of the four survivors wished to take a share in the responsibility for the costs of their brother's funeral. The deceased had lived at Mr D M's home because that had once been the home of the whole family (i.e. it had been their parents' home). From time to time, however, the others had had the deceased to stay with them. Details were again given of Mr D M's financial circumstances. The appeal tribunal reached a like conclusion, and for the like reasons, to that reached in Mr D L M's appeal.

10. On what grounds, therefore, am I invited to assail the eminently sensible and practical conclusions of those appeal tribunals? The adjudication officer now concerned founded his application for leave to appeal to the Commissioner upon one ground only:

"It is submitted that the tribunal have erred in apportioning responsibility for the total cost of the funeral between a number of equally 'responsible' persons as, in my submission, the regulation provides for a single payment to be made only to the one individual claimant who takes responsibility for the full cost, subject to the satisfaction of the further conditions of the regulation."

11. In his grounds of appeal the adjudication officer now concerned develops that submission. He concedes that the wording of regulation 8(1) is not inherently antipathetic to the concept of more than one person's taking responsibility for the cost of a given funeral. Regulation 8(3) is, however, (in his contention) a different matter. I summarise his detailed argument thus:

- (a) The opening words of regulation 8(3) require that the amount of the essential expenses which would otherwise be payable to a particular claimant has to be established before amounts are deducted pursuant to sub-paragraphs (a) to (f). "If it were accepted that two or more persons were equally responsible for the funeral costs and each claimed a single payment in respect of his share then subject to the other conditions being satisfied each would have his share of the cost subject to a full deduction in respect of any relevant item in sub-paragraphs (a) to (f) and I submit that this was not the intention of the draftsman."

- (b) Sub-paragraph (f) is the only sub-paragraph of regulation 8(3) which permits of any apportionment of funeral expenses. The wording of that sub-paragraph is inconsistent with there being more than one "responsible member" (i.e. "of the assessment unit"). "Further if more than one person were to be treated as the responsible member to whom a single payment was payable sub-paragraph (f) could not be sensibly applied in respect of each recipient of a single payment, and I submit that such was not intended is reinforced by the exclusion of any apportionment of the costs being deducted from the single payment otherwise due, where the other close relative is in receipt of benefit (qv head (i))."

12. Those are substantial submissions. Section 6(c) of the Interpretation Act 1978 provides, of course, that -

"In any Act, unless the contrary intention appears, - (c) words in the singular include the plural and words in the plural include the singular."

And the effect of section 23(1) of the Interpretation Act is to apply section 6 to the Single Payments Regulations 1981. It has to be conceded, however, that the overall tenor of regulation 8 suggests that the draftsman's mind was concentrated upon the situation where only one claimant is claiming under the regulation. But that, in turn, is not the same thing as saying that it was his intention (or, rather, the intention of the legislature) that there should never be more than one such claimant in respect of a given funeral.

13. Before me, Mr Stocker adopted a pragmatic approach. Very properly, he felt obliged to stress the apparent bias towards the concept of a single claimant which the overall wording of regulation 8 discloses. On the other hand, he accepted that the decisions of the two appeal tribunals had produced a reasonable and practical result. He drew my attention to a number of Court of Appeal, Divisional Court and single Judge of the High Court cases in which was emphasised the desirability of a non-technical approach to adjudication in matters of supplementary benefit. Each of those cases, however, turned upon the "old" discretionary system of supplementary benefit. I am not persuaded that the relaxed approach commended therein is fully applicable to the post - 24 November 1980 system - which is anything but non-technical. One of those cases does, however, bear upon the arguments of the adjudication officer now concerned which I have summarised in paragraph 11 above.

14. That case is Reg v Sheffield Supplementary Benefits Appeal Tribunal, Ex parte Shine /1975/ 1 W.L.R. 624; /1975/ S.B.5, at p 31. Mr Shine, a student at the end of his academic course, shared a flat with three colleagues, each contributing equally to all the expenses. Mr Shine

applied for a supplementary allowance and claimed at the rate applicable to a "householder". The relevant provision at the time was paragraph 9(b) of Schedule 2 to the Supplementary Benefit Act 1966:

"(b) person living alone or householder not falling within sub-paragraph (a) of this paragraph who is directly responsible for household necessities and rent (if any) - £5 4s 0d."

The Commission and the supplementary benefit appeal tribunal rejected Mr Shine's claim. He then sought to carry his case to the Divisional Court by way of certiorari - but the Divisional Court refused him leave to apply therefor. He went to the Court of Appeal. Once again he was unsuccessful. Lord Denning MR delivered himself of the well-known passage:

"It is plain that Parliament intended that the Supplementary Benefit Act 1966 should be administered with as little technicality as possible. It should not become the happy hunting ground for lawyers. The courts should hesitate long before interfering by certiorari with the decisions of the appeal tribunals." (At p 631G).

In an unreported decision I have myself observed that the supplementary benefit system has radically changed since Shine - and that, happy or otherwise, the lawyers are now in the hunting ground with a vengeance. But what is material to the point in hand is the manner in which Lord Denning dealt with the decision to which the appeal tribunal had come:

"Mr Shine applied to the High Court for an order of certiorari. He said that, being a joint tenant, he was directly responsible for household necessities and rent: and was therefore a 'householder'.

If this were to be regarded as a strict point of law, there is much to be said for Mr Shine's contention. Under the Interpretation Act 1889, singular includes plural. So 'householder who is' includes 'householders who are'. And these four students, being jointly /Lord Denning's emphasis/ responsible for household necessities and rent, are all four householders. It makes no difference in law that gas and electricity bills were sent in the name of one of them only. That was a mere matter of convenience which did not affect the responsibility of all four of them.

This seems to me a good instance where the High Court should not interfere with the tribunal's decision, even though it may be said to be erroneous in point of law. It cannot be supposed that each one of these four should each have the full allowance as if he was responsible for the whole. Nor even that any one of them - Mr Fairbairn - should have the full allowance Each should get an allowance in respect of his contribution to the rent" (At p 631C)

15. I have come to the conclusion that there is nothing in regulation 8 which compels me to restrict the operation of that regulation to one single claimant in respect of one given funeral. The difficulties of application to the case where there is more than one claimant seem to me to be more apparent than real. Neither of the appeal tribunals in the appeals before me had any difficulty in reaching a sensible and fair result. It is, of course, necessary to read "amounts" for "amount" where that word appears in the opening of paragraph (3), thus:

"(3) The following amounts or sums shall be deducted from any amounts which would, but for this paragraph, be payable under this regulation ... etc".

And, of course, they will be deducted pro rata. I do not think that the language in any way compels towards the absurdity of deducting the whole of each of the said "amounts or sums" from each amount payable under the regulation. (I am, of course, dealing with the situation where more than one such amount is payable.)

16. I do not think that my conclusion need cause any dismay to the adjudication officer now concerned. There are circumstances in which the type of outcome which I have described as sensible and fair may result in a saving of the supplementary benefit fund's resources. In the case before me, for example, the retirement pensioner and the family man on little more than a subsistence wage each felt able to shoulder a quarter of the total expenses. But if only one single payment claimant had been admitted to benefit, their respective shares would have risen to one-third - and the appeal tribunal might have considered that to be excessive, and awarded the whole sum to the single payment claimant. It is easy to think of more extreme examples.

17. What I have said in paragraph 16 above does, in fact, beg one issue which was canvassed (somewhat inconclusively) before me. Sub-paragraph (f) of regulation 8(3) opens:

"(f) an amount in respect of any surviving close relative of the deceased equal to a proportionate share of the amount which would, but for this sub-paragraph, be payable etc".

What is "a proportionate share"? How is the proportion to be expressed? Are we in the realm of moieties, terces and other such terms beloved of the old conveyancers when they wished to express the notion of equal division? Or is it left to the adjudication officer and the appeal tribunal to specify what is considered to be, in the circumstances of a particular case, a reasonable proportion? I must confess that I do not find this easy to answer. I have decided, however, that this is not the place to essay an answer. Both appeal tribunals applied the principle of equal proportions - and upon either construction that is unassailable. This decision is long enough already without my expanding it by speculations which would be in the nature of obiter dicta (surplusage).

18. One subsidiary point was made by the adjudication officer now concerned - but not taken by Mr Stocker. He submits that the appeal tribunals should have deducted the death grant before apportioning the undertakers' bill (c.f. regulation 8(3)(b)). That is technically correct. But it would have made no difference to the outcome. Each apportioned share would still have worked out at £88.43. The four survivors agreed between themselves that Mr D M, who received the death grant, should add the sum represented thereby to his share of the bill. It comes to the same in the end. (It would, of course, have been a very different matter had Mr D M been claiming a single payment in respect of his inflated share.)

19. My decision is that the decision of the appeal tribunal dated 14 October 1983 is not erroneous in point of law. Accordingly, the adjudication officer's appeal is disallowed.

(Signed) J Mitchell
Commissioner

Date: 16 November 1984

Commissioner's File: C.S.B. 110/1984
C SBO File: 136/84
Region: North Western

APPENDIX

Regulation 8 of the Single Payments Regulations 1981, as in force at the date of claim in this case (i.e. 3 May 1983):

"Funeral expenses

8. - (1) Where any member of the assessment unit takes responsibility for the cost of a funeral or cremation (in this regulation referred to as 'the responsible member') and -

(a) the deceased was -

(i) a close relative of the responsible member, or

(ii) a member of the same household as the responsible member;

(iii) related to the responsible member but, at the time of his death, had had no recent contact with any person more closely related to him than the responsible member;

(b) there is no other person, being a close relative of the deceased, who could more reasonably, having regard to how closely they were related and the financial circumstances of that person, be expected to take responsibility; and

(c) the accommodation where the deceased normally lived prior to his death ('the deceased's home') was in Great Britain and he died either -

(i) in Great Britain, or

(ii) during a temporary absence from Great Britain, and the funeral or cremation takes place in Great Britain,

the claimant shall be entitled to a single payment of an amount sufficient to meet any essential expenses of the funeral or cremation which are specified in paragraph (2) and which fall to be met by the responsible member.

(2) The essential expenses mentioned in paragraph (a) are as follows:-

(a) the cost of any necessary documentation;

(b) the cost of a plain coffin;

(c) the cost of transport for the coffin and bearers, and one additional car;

- (d) the reasonable cost of flowers from the responsible member;
 - (e) undertaker's fees and gratuities, chaplain's, organist's and cemetery or crematorium fees for a simple funeral or cremation;
 - (f) the cost of any additional expenses arising from a requirement of the religious faith of the deceased, not in excess of £75.00; and
 - (g) where the death occurred away from the deceased's home -
 - (i) if the death occurred in Great Britain, the cost of transporting the body to that home,
 - (ii) where the death occurred elsewhere, the cost only of transporting the body within Great Britain to that home.
- (3) The following amounts or sums shall be deducted from any amount which would, but for this paragraph, be payable under this regulation and, where more than one amount falls to be deducted, priority shall be given in the following order:-
- (a) the value of the deceased's estate at the date of his death less the value of the deceased's home if owned solely or jointly by him and not occupied solely by him;
 - (b) the amount of any death grant payable under the Social Security Act in respect of the deceased's death unless that grant has been spent on any item in respect of which a single payment would otherwise have been made under this regulation;
 - (c) any lump sum due to the responsible member or any other member of the assessment unit on the death of the deceased by virtue of any insurance policy, occupational pension scheme or analogous arrangement;
 - (d) the amount of any contribution which has been received by the responsible member or any other member of the assessment unit from a charity, but only to the extent that that amount or, if more than one contribution has been received from any charity, the aggregate of the amounts received exceeds the cost of any funeral expenses other than those to which paragraph (2) applies;

- (e) the amount of any contribution which has been received by the responsible member or any other member of the assessment unit from a relative of his or from a relative (but not a close relative) of the deceased, but only to the extent that that amount or, if more than one contribution has been received from any such relative, the aggregate of the amounts received exceeds the aggregate of the cost of any funeral expenses other than those to which paragraph (2) applies and the cost of flowers from the responsible member;
- (f) an amount in respect of any surviving close relative of the deceased equal to a proportionate share of the amount which would, but for this sub-paragraph, be payable after the application of the preceding sub-paragraphs, less the cost of flowers from the responsible member, except that no such share shall be assumed in respect of a relative -
 - (i) to whom a pension or allowance is payable, or
 - (ii) from whom, having regard to his financial circumstances, it would be unreasonable to expect such a contribution, or
 - (iii) who has had no contact with the deceased in recent years, but this sub-paragraph shall not apply where the responsible member is the surviving spouse of the deceased or where the deceased was a dependant of the claimant."

Note:

Since the date of the claim herein, regulation 8 has been amended twice. The amendments do not bear upon the substance of my decision.

- (a) With effect from 15 August 1983, there have been substituted for the words "Great Britain", where they occur in paragraph (1)(c), the words "the United Kingdom" (see the Supplementary Benefit (Miscellaneous Amendments) Regulations 1983 /S.I. 1983 No. 1000/, regulation 7(4)).
- (b) With effect from 6 August 1984, there has been substituted the following for paragraph (3)(a):
 - " (a) the value of the deceased's estate at the date of his death less -
 - (i) the value of the deceased's home if owned solely or jointly by him and not occupied solely by him; and

(ii) where the responsible member was the partner of the deceased, the value of personal possessions other than any to which heads (i) to (iii) of regulation 6(1)(c) of the Resources Regulations apply;"

(See the Supplementary Benefit (Miscellaneous Amendments) Regulations 1984 S.I. 1984 No. 938, regulation 6(3).)