

clothing - refusal under reg 27 & reg 30 - inadequate findings, or reasons. If claimant already in debt to catalogue is it right to incur more debt? Clothes stolen from line. NB para 6. - Commr wrong that woman can't get jacket. Jacket in Sch. Reg. refers to columns in Sch, not just subheadings.

COMMISSIONER'S DECISION
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Commissioner's File: CSB/133/85 & CSB/142/85

C A O File: AO 2184/85

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: Huddersfield

Case No: 14/10

1. My decision is that the decisions of the social security appeal tribunal dated 3 December 1984 are erroneous in point of law and are set aside. The matters must be referred to another tribunal.

2. The claimant made claims for single payments for a number of items of clothing as follows: jacket, skirt, pair of shoes, blouse, dress, 2 brassiers, 2 pairs of knickers and a cardigan. The adjudication officer refused single payments for all these items, though not all on the same ground. He refused the claim in respect of a jacket on the ground that it was not an item listed in the category of women's clothing in Schedule 2 to the Supplementary benefit (Single Payments) Regulations 1981 and also on the ground (common to all items) that it had not been shown that a single payment represented the only means of avoiding serious damage or serious risk to the life or health of herself the sole member of the assessment unit in terms of regulation 30 of the above regulations. He refused a single payment for the cardigan on the ground that the claimant had a suitable alternative item (a jumper), so that a single payment was precluded by regulation 3(2)(b) of the above regulations. He refused single payments for the other items on the ground that the need had arisen from normal wear and tear and that a single payment did not represent the only means of avoiding serious damage or serious risk to life or health in terms of regulation 30.

3. The claimant appealed generally against the refusals and the claim for the cardigan was dealt with separately from those for the other items. The claim for the other items (including it seems the jacket) were rejected on the ground that the need had arisen from fair wear and tear and in the normal course of events. The tribunal concluded that the

claimant had not put on weight rapidly (so as to bring herself within regulation 27(1)(a) of the above regulations). In considering the claims by reference to regulation 30 they found that the claimant had only one lung and suffered from chronic bronchitis but they found that she had obtained clothing for her son through a clothing catalogue for which she was still paying and they were not satisfied that she could not have done the same for herself so that regulation 30 was not satisfied. As for the cardigan they found that the claimant did not possess a suitable alternative item as the jumper in question was the property of her daughter, but they rejected the claim on the same grounds as those for the other items.

4. The claimant now appeals to the Commissioner. The adjudication officer now concerned supports the appeals on the ground that the findings of fact and reasons for the decision are inadequately stated to satisfy regulation 19(2) of the Social Security (Adjudication) Regulations 1984. I agree. The tribunal had evidence before them the claimant had two years previously lost clothing that was stolen from a line. They made no findings about this, although the loss of clothing from a line, if established, could mean first that the need for replacement of such clothing did not arise from normal wear and tear and secondly that if the items of clothing lost were items of which more than one was necessary the loss might subject other similar items to abnormal wear and tear.

5. Next the claimant put forward her state of health as a ground for her claim. The tribunal considered this only in relation to regulation 30 (which they held not to be applicable for reasons unconnected with the claimant's health). They overlooked the possibility of the claimant's health being relevant at least in relation to some of the items in respect of which a claim was made under regulation 27(1)(a)(iv) as being an instance of need arising otherwise than by normal wear and tear. The tribunal ought to have considered each item of the items in respect of which a claim was made other than the jacket to see if under regulation 27 (as opposed to regulation 30) a single payment could be made for it on what I may loosely call health grounds.

6. I have omitted the jacket from the above because there is an overriding ground on which no award could be made for it under regulation 27. The adjudication officer himself correctly rejected the claim for a jacket, so far as made under regulation 27, on the ground that there is no mention of it in the category of women's clothing listed in Schedule 2 to the regulations. I have considered whether on that account I should dismiss the appeal in relation to the jacket or at all events give a decision refusing a single payment for the jacket. But I have concluded that, as a payment for a jacket is potentially possible under regulation 30, and as I have concluded that the grounds for the rejection of the claim under that regulation are unsatisfactorily stated also, I should leave the claim in respect of a jacket, as well as the others, for consideration by the new tribunal, but only so far as it is a claim under regulation 30.

7. The tribunal rejected the claims so far as made under regulation 30 on the ground that a single payment was not the only means by which serious risk to life or health could be avoided. They so decided because the claimant was still paying for clothing for her child but had not said that she had been refused further items for herself. She had however said that just over a year ago she could not afford to make the repayments in respect of the clothing that she had bought for the son. It does appear to me that whether or not the claimant had actually been refused further clothing it was for consideration whether if she had already incurred indebtedness that she could not discharge it would be proper for her to incur further indebtedness that would increase her financial embarrassment. When a limited company so acts it is called fraudulent trading. I therefore consider that there was in this respect also an error in law.

8. The claimant's appeals are allowed.

(Signed) J G Monroe
Commissioner

Date: 10 July 1985