

C.S.B. 139/1983

UNREVIEWABLE DECISION
NOT TO BE SENT TO
THE DEPARTMENT

Chronic - defunct

Final

JBM/ST

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Tomislav Draskovic

Supplementary Benefit Appeal Tribunal: Euston

Case No. 13/755

ORAL HEARING

1. My decision is that the decision of the Euston Supplementary Benefit Appeal Tribunal dated 13 September 1982 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal; rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40.
2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner from the unanimous decision of the appeal tribunal confirming the decision of the benefit officer issued on 15 June 1982 "refusal of a single payment for furniture".
3. The facts and history of the matter are dealt with in paragraphs 1 to 6 inclusive of the submission dated 1 September 1983 of the benefit officer now concerned on which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here. I directed an oral hearing of this case. I held an oral hearing on 16 January 1984 of this case together with that on Commissioner's File No C.S.B 598/1983 with which case I deal in a separate decision. The claimant represented himself and Mrs G M V Leslie represented the benefit officer. It is no discredit to the claimant when I say that his command of English is poor. Any tribunal before whom the claimant appears, clearly must take this into account.
4. The relevant statutory provisions are referred to in paragraph 7 of the submission dated 1 September 1983 of the benefit officer now concerned and it would serve no useful purpose to set out these references afresh here save to set out regulation 10(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 as in force at the date of claim as follows:-

"Purchase, repair and installation of essential furniture and household equipment.

10.--(1) This paragraph shall apply where either -

- (a) the claimant or his partner has recently become the tenant or owner of an unfurnished or partly furnished home and one or more of the following applies:-
 - (i) one of sub-paragraphs (a) to (f) of regulation 13(1) applied to or in respect of his previous home, or
 - (ii) the assessment unit includes a dependant, or a member who is over pensionable age, pregnant, chronically sick or mentally or physically disabled;
 - (iii) the claimant has, in the opinion of the benefit officer, no immediate prospect of employment and either has been a person in receipt of an allowance for a continuous period of 6 months or has, within the preceding 6 months, been the partner of such a person;
 - (iv) immediately before he became such a tenant or owner, the claimant was a prisoner, or was living in a resettlement unit or accommodation provided for an analogous purpose by a voluntary organisation, or in accommodation provided by a statutory authority or voluntary organisation for the purpose of providing special care and attention for him, or had been a patient for a continuous period of more than 1 year;

and in cases to which head (iii) or (iv) applies there is no suitable alternative furnished accommodation available in the area....."

5. I turn now to the claimant's submissions before me. The claimant complained of the dismissive attitude of the DHSS staff and of that of the appeal tribunal before whom he appeared. The claimant explained that he was appealing against the refusal of a single payment. He obtained a council flat, in February 1982, that was in a terrible condition. The claimant stated he made the application for a single payment on medical grounds and that nobody took any notice. The single payment was for furniture. He borrowed some items of furniture from a friend who ran an hotel. The friend required the items back and he purchased the items from the friend. The claimant has been registered disabled from 1974. He explained that he has lost a number

of very good jobs because of his ill health. The claimant stated that he needed items of furniture in the flat. His last payment was for a cooker of £80, the claimant explained that "you can buy nothing good for that amount". He had been informed by the solicitor from the Law Centre that he was entitled. In opening the claimant stated that he had made many requests to the Department of Health and Social Security, they had been ignored. The Social Security Department does understand the law he said, and as to his own feelings in that respect "you boil from anger". Both in opening and in reply the claimant stated "I had nothing before I claimed it - nobody came to see my flat". The claimant also explained that he had been recently divorced and following the dissolution of his marriage he was accorded no interest in the matrimonial home worth he stated some £75,000.

6. I turn now to the submissions made by Mrs Leslie at the hearing. The first relevant factor is, so submitted Mrs Leslie, a need at the date of claim. The claimant was not in receipt of Supplementary Benefit until April 1982 and he did not claim a single payment until 3 June 1982. This was 3 months after he had acquired the local authority's flat and 3 months after he had moved. He was receiving Supplementary Benefit at the time he claimed. The items the claimant required were not listed until after he had been given leave to appeal to the appeal tribunal. As to the orthopaedic bed so submitted Mrs Leslie this was a medical requirement within Section 1(3) of the Supplementary Benefit Act 1976 as amended by the Social Security Act 1980. This excludes medical requirements save in prescribed circumstances and there are no prescribed circumstances here. I do not accept Mrs Leslie's submission as to the orthopaedic bed. It is not right as at the date of the claim. A Tribunal of Commissioners held in CSB 1104/82 and CSB 731/83 that Section 1(3) of the Act did not apply to single payments. Although the effect of the decision of the Tribunal of Commissioners has been nullified by regulations as from 5 November 1983, the tribunal to whom I remit this case must apply the law as at the date of claim in the instant case. A list of the items claimed was provided 14 months after the claim. In the first place the claimant claimed supplementary benefit for everything for his flat. The benefit officer turned down his claim with regard to furniture. The benefit officer does not appear, so stated Mrs Leslie, to have considered his claim for blankets and has not given a decision on this question. The tribunal had to look at the position as at the date of the claim. At that time the claimant had been a tenant for 3 months. The benefit officer supports the appeal as it is accepted that the tribunal failed to give adequate reasons. The tribunal failed to consider each individual item. The tribunal has not listed the items in the record and it is not apparent they considered the need for the individual items except possibly the cooker and bedding, but in respect of the bedding there had been no decision by the benefit officer to allow an appeal in that regard. Mrs Leslie referred me to the chairman's notes of evidence. It may be, so submitted Mrs Leslie, possible to deduce that the tribunal considered there was no need under regulation 3(2) of the Single Payment Regulations. However they did not decide the furniture issue on that point. At box 4 they refer to regulation 10 but they do not

say which conditions of regulation 10(1)(a) were relevant. It is necessary that the case be remitted to a differently constituted tribunal to make adequate findings. Such new tribunal should decide whether or not there was a need at the date of claim and then it will be a matter for them to consider whether the claimant satisfied regulation 10(1) of the Single Payments Regulations. The question under regulation 10(1)(a)(ii) is whether the claimant was "chronically sick". The claimant has produced medical evidence. Should, so submitted Mrs Leslie, I remit the case for hearing by another tribunal, I should give guidance as to the need at the date of claim and on the meaning of "chronically sick" within regulation 10(1)(a)(ii). A fact, so submitted Mrs Leslie, that the new tribunal should bear in mind was that the claimant did have in his possession a 3ft bed, secondhand wardrobe, a table and 4 chairs, 4 woollen blankets and 4 sheets, that the request for the return of the items was 12 months after the claim was made and 10 months after the tribunal hearing. The claimant was in possession of items he had to return so the tribunal should consider this in respect of each item claimed. The newly constituted tribunal should consider paragraph 9 of the decision of the Commissioner R(SB)24/83 for guidance as to this.

7. As to the need at the date of the claim the appeal tribunal to whom I remit this case should consider paragraph 9 of the decision of the Commissioner R(SB)24/83 and should make findings of fact as to each individual item claimed on which to base their decision.

I turn now to the question as to whether the claimant can satisfy the "chronically sick" criteria in regulation 10(1)(a)(ii). The new tribunal should make findings of fact as to the medical condition of the claimant on which to base their decision under regulation 10(1)(a)(ii) of the Single Payment Regulations and in so doing should consider the following.

The meaning of "chronic" as shown in the current edition of Chambers 20th Century Dictionary is of "A disease, deep seated or long continued, as opposed to "acute"". The definition of "chronic" in the current shorter Oxford Dictionary is given as "lasting a long time or lingering, invertebrate, opposite to acute/constant". The words "chronically sick" in regulation 10(1)(a)(ii) of the Single Payment Regulations are to be given their ordinary meaning. If the tribunal make findings of fact that the claimant comes within the definition of "chronically sick", regulation 10(1)(a)(ii) of the Single Payments Regulations must as a question of law apply and the appeal tribunal to whom I remit this case must as a question of law reach that decision. Mrs Leslie's submission is that regulation 10(1)(a)(ii) should be read subject to additions. The first addition is that the person must be such as to be not required to register for employment at the relevant time and the second addition is that the expression "chronically sick" has to be interpreted as meaning a person suffering from a chronic illness who cannot reasonably be expected to move again to a suitable alternative furnished accommodation because of his state of health.

Neither of these can be added in law and the regulation must be read as it stands. The main supplementary benefit case on statutory interpretation is R(SB)16/83 and in particular paragraph 13 of that decision. Unless the plain meaning of words used in the Act or Regulations produces an anomaly or a choice between interpretation then the words in statutory provisions must be given their ordinary meaning. I refer to the judgement of Chief Justice Jervis at page 312 of Abley v Dale (1851) 11 3.B.378. There is no ambiguity about the words "chronically sick" as defined by the dictionary definitions referred to above. The argument that such a construction produces anomalies - a person's sickness might have no effect on his working ability or choice of accommodation - is not a permissible approach. See Lord Scarman at page 238 of the House of Lords decision of Stock v Frank Jones (Tipton) Ltd (1978) 1W.L.R.231. I refer also to the judgement of Lord Simonds at page 841 of Magor and St Mellons Rural District Council v Newport Corporation /1951/ 2 A.E.R. 839 which is as follows:-

"What the legislature has not written, the court must write. This proposition cannot be supported. It appears to me to be a naked use of the legislative function under the thin disguise of interpretation, and it is the less justifiable when it is guesswork with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed the remedy lies in an amending Act."

No guidance as to the construction of the words "chronically sick" in the Single Payments Regulations is to be found in the Chronically Sick and Disabled Persons Act 1970, section 29 of the National Assistance Act 1948 or in the Department of Health and Social Security Circular for the Guidance of Local Authorities being LAC 17/74.

8. In accordance with my jurisdiction under rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40 my decision is as set out in paragraph 1 of this decision and I direct that the tribunal in re-hearing the matter should pay particular attention to all the matters to which I have referred above in particular at paragraph 7 of this decision and they shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

(Signed) J B Morcom
Commissioner

Date: 21 March 1984

Commissioner's File: C.S.B 139/1983
C S B O File: 109/83
Region: London North