

CSB 171/1981

JM/BW

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

Decision C.S.B. 26/81

1. This is an appeal, brought by my leave, by the supplementary benefit officer against a decision of the supplementary benefit appeal tribunal dated 9 February 1981 which varied a decision of the benefit officer issued on 1 December 1980.
2. The claimant is now aged about 66. He receives a supplementary pension in order to supplement his own and his wife's retirement pension and a small works pension. On 28 November 1980 he made a claim for single payments in respect of bed-sheets and clothing for himself and his wife. The benefit officer allowed the claim for bed-sheets but disallowed the claims in respect of clothing. The claimant appealed to the appeal tribunal. The items in issue were a coat for the claimant's wife and shoes and vests for the claimant and his wife. The appeal tribunal awarded a single payment of £40.00 for an overcoat for the claimant's wife. It made no award in respect of the other items, taking the view that they constituted "normal replacements, for which provision should be made from the weekly allowance". The benefit officer appeals to the Commissioner against the award for the overcoat - and it is with that alone that I am concerned.
3. The appeal tribunal's reasons for making that award are set out thus:
"The need for an overcoat for the claimant's wife is considered to be exceptional due to her size."
4. The chairman's Note of Evidence contains only the following passages relevant to the coat issue:
"The claimant's wife is about 17 stones in weight The claimant does the shopping because of his wife's condition."

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5. So far as the coat is concerned, the appeal tribunal's findings of fact material to the decision are recorded thus:

"The claimant's wife weighs 17 stone and does not go out. The claimant does the shopping."

(In the quotations in paragraphs 3 and 4 and in this paragraph I have substituted "the claimant" and "the claimant's wife" for their actual names.)

6. The "normal requirements" of the claimant and his wife are, of course, provided for by the "living expenses" element in the supplementary pension which he receives. Normal requirements amount to all items of normal expenditure on day-to-day living, other than housing requirements. They specifically include "the purchase, cleaning, repair and replacement of clothing and footwear". (Regulation 4(1) of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299]). This receives emphasis in regulation 27(1) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985] which, so far as material to this appeal, provides as follows:

"27(1) A payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing and -

- (a) that need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -
 - (i) pregnancy, the birth of a child, or rapid weight loss or gain,
 - (ii) heavy wear and tear on clothing or footwear resulting from any mental or physical illness, handicap or disability (except where an additional requirement is applicable),
 - (iii) the accidental loss of, damage to or destruction of an essential item of clothing or footwear,
 - (iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear,

but not where the need has arisen in the normal course of events (for example where an item of clothing or footwear is outgrown);
or

(b)

7. The record of the appeal tribunal proceedings as set out on form LT 235 contains no reference to any specific regulation. I consider it to be of the utmost importance (particularly in single payment cases) that the appeal tribunal should identify the regulation, or regulations, pursuant to which any award is made. (Identification should extend to the paragraphs and sub-paragraphs, as well as to the regulations, relied

upon.) I do not say this merely to facilitate the task of the Commissioners when entertaining applications for leave to appeal and deciding appeals themselves. The law with which appeal tribunals are now faced is both new and complex. It is only too easy to fall into error. The exercise of pinpointing the precise provision or provisions relied upon greatly concentrates the mind - and thereby reduces the possibility of error.

8. As appears from paragraph 3 above, the appeal tribunal purported to found upon a finding that the claimant's wife's need for an overcoat was "exceptional". This does not go far enough. Regulation 3(1) of the Single Payments Regulations provides as follows:

"In these regulations 'single payment' means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Parts II to VIII of these regulations apply."

The words which I have underlined are crucial and cannot legitimately be ignored. The general provisions contained in regulations 3 to 6 apply, of course, to all claims for single payments. But of themselves they confer no entitlement. A claim must also be brought within the particular provisions of one or more of regulations 7 to 30.

9. Regulation 30 (discretionary payments) also contains the phrase "exceptional need". If, however, the appeal tribunal intended to found upon regulation 30 the decision is clearly insupportable in law because there was no evidence whatever to suggest that the payment awarded was "the only means by which serious damage or serious risk to the health or safety of" the claimant's wife might be prevented.

10. Although I am in the realm of guesswork, I suspect that the appeal tribunal considered that the claim could be brought within the ambit of regulation 27(1) (see paragraph 6 above). Only two factors in any way special to the claimant's wife are recorded by the Chairman: her weight and her size. These could be relevant to the application of one or more of sub-paragraphs (i), (ii) and (iv) of paragraph (1) of regulation 27. Each of these sub-paragraphs, however, requires the substantiation of facts which go beyond mere weight and size. Thus:

- (a) sub-paragraph (i) requires that the relevant gain in weight should have been "rapid";
- (b) sub-paragraph (ii) requires that any physical handicap or disability (which phrase is apt to include excessive overweight) should cause heavy wear and tear on clothing or footwear; and
- (c) sub-paragraph (iv) requires that the physical disability should "necessitate" the purchase of the particular or additional item of clothing or footwear. (This clearly excludes any entitlement in respect of an item for which there have been a need even if the disability had not existed.)

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11. As plainly appears from paragraphs 4 and 5 above, there was not before the appeal tribunal any such evidence as would support the finding of any of the matters of fact set out under (a), (b) and (c) of paragraph 10 above. In short, there was no evidence to suggest that the need for an overcoat had arisen otherwise than "by normal wear and tear" and/or "in the normal course of events".

12. There is no regulation apart from regulations 27 and 30 under which this award could reasonably be considered to have been made. For the reasons set out in paragraphs 8 to 11 above, I do not consider that it was properly made under either regulation 27 or 30. There was neither finding nor evidence of facts crucial to an award. This constitutes error in law - and the decision of the appeal tribunal must be set aside.

13. The benefit officer in his submission to the Commissioner canvasses one further point. He stresses that the claimant told the appeal tribunal that his wife "does not go out" (cf paragraph 5 above). So, submits the benefit officer, she has no need for an overcoat; and he prays in aid regulation 3 and the opening words of regulation 27(1) of the Single Payments Regulations. This, I think, is pressing literalism too far. "I didn't eat a bite." "I didn't sleep a wink." "I never go out." These are all well known cliches, conventionally accepted as importing a substantial measure of exaggeration. I am not prepared to hold the claimant to the face value of his statement; although the probing of it by the tribunal to which I must refer this case would be a perfectly justifiable exercise.

14. There is no appeal by the claimant against the appeal tribunal's refusal to award single payments in respect of the shoes and vests - and, indeed, I should not have granted leave to bring such an appeal. That part of the decision now before me must, accordingly, be reiterated in the decision of the differently constituted tribunal to which I must refer this case. That tribunal will, however, approach the overcoat issue with a completely open mind. It must have regard to what I have said in paragraphs 6 to 13 above, where it will find guidance as to the matters which must be established by evidence if an award for an overcoat is to be made.

15. My decision, accordingly, is as follows:

- (1) The appeal of the benefit officer is allowed.
- (2) The appeal tribunal's decision dated 9 February 1981 is set aside.
- (3) The claimant's appeal lodged on 8 December 1980 is referred to a differently constituted appeal tribunal.

- (4) I direct that that appeal tribunal shall -
- (a) disallow the claimant's appeal in so far as it relates to shoes and vests for the claimant and his wife; and
 - (b) hear de novo and determine, in accordance with the principles of law set out above, so much of the claimant's appeal as relates to an overcoat for the claimant's wife.

(Signed) J Mitchell
Commissioner

Date: 30 October 1981

Commissioner's File: C.S.B. 171/1981
C S B O File: S.B.O. 206/81