CSB 191/1983

JGM/II

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Repairs £225

Name: Charles Rose

Supplementary Benefit Appeal Tribunal: Canterbury

Case No: 08/144

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 22 December 1982 was erroneous in point of law and it is set aside. The matter must be referred back to a different tribunal.

2. I have set aside the above decision somewhat reluctantly as I doubt whether it will be possible for a fresh tribunal to reach a different conclusion. The claimant made a claim for a single payment for housing expenses. The claim was considered by the benefit officer by reference to regulation 17 of the Supplementary Benefit (Single Payments) Regulations 1981 relating (according to the cross heading) to essential repairs and maintenance of the home and under regulation 30 relating to so-called exceptional needs payments.

3. The claimant was the tenant of his home and it appears that by the terms of his lease the landlords had power if he failed to perform the convenants as to repairs and maintenance to do the work themselves and charge it to the claimant. They exercised this power and served the claimant with a bill for £9,668.93. The claimant claimed £225 towards this under regulation 17 and possibly the whole of it under regulation 30. Both claims were rejected. The claim under regulation 17 was rejected on the ground that the total cost of the repairs exceeded £225, as it undeniably did. The claim under regulation 30 failed on the ground that there was no evidence of any serious damage or serious risk to the health or safety of any member of the assessment unit. The claimant appealed to the appeal tribunal urging in particular that the requirement of regulation 17(1)(b) of the regulations that the total cost of the repairs should not exceed £225 could not mean that full payment should be made for repairs costing £224 and nothing should be paid for repairs costing £226. In the alternative he claimed for part of the work done costing £224. He also made points about the dangerous condition of the property by reference no doubt to regulation 30. The appeal tribunal confirmed the benefit officer's decision, giving no reasons other than that the decision of the benefit officer was in accordance with regulation 17. They made no reference to regulation 30. They also added that they felt that the £105 laid down in the lease as the cost of insurance of the property should be treated as rent.

4. This last matter was not before the tribunal on a claim for single payments as it related to the computation of the amount of the claimant's supplementary allowance; and if there is any dispute about this matter it should be dealt with separately. It would appear to me that the payments for insurance fell to be dealt with under regulation 17 of the Supplementary Benefit (Requirements) Regulations 1980 and that the question for determination is whether there were any circumstances, such as the size or state of the home or the terms of the lease, which justified a higher payment than the fixed minimum amount mentioned in that regulation.

5. In view of the failure to state the reasons adequately I have to set the decision aside, and I think that I must refer the matter to another tribunal rather than attempt to give the decision myself. I consider that the benefit officer and the tribunal were correct in so far as they considered that the effect of regulation 17(1)(b) is that, if the total cost of the essential repairs exceeds £225, then no payment can be made at all even of the amount up to £225. On the other hand it may be that in some cases what is put forward as essential repairs amounts in fact to two or more such repairs, each of which can by itself be described as an essential repair; so that, if a claim were made for the cost of, one such repair costing less than £225 a payment could be awarded for it. It may even be that separate claims could be made for two or more such severable essential repairs. The tribunal to whom this matter is referred back may consider this point if the claimant adduces evidence that could support it, but the facts of the case do not look promising from the claimant's point of view on this issue.

6. The benefit officer has put forward a further point based on regulation 17(1)(a) of the regulations, which makes it a condition of a payment that "the repairs are essential to preserve the home in a habitable condition". He points to the word "are" and to the fact that the repairs had been done when the claim was made, by which time he submits the repairs were no longer essential. It was decided in the cases to be reported as R(SB) 26/83 that the question whether there is a need for the item for which a single payment is claimed has to be determined as at the date of claim; and a Tribunal of Commissioners sat on 22 June last to determine among other things what can be said to be the item in question for which there has to be a need to claim. It may be that the Decision of the Tribunal will indicate that a single payment cannot on this ground be made in respect of the cost of repairs that have been done by the date of claim without reference to the provisions of regulation 17(1)(a). But in my judgment regulation 17(1)(a) does not have the effect for which the benefit officer submits or for which a further ground for rejecting a claim in respect of repairs already done. In my judgment the type of repairs to which the regulation applies is one that can be described as essential; no more can be read into the present tense in regulation 17(1)(a) than this.

7. I take now regulation 30. The claimant has suggested that the premises were dangerous before the repairs were done. It is to be noted however that before a payment can be made under regulation 30 it has to be established that the payment is the only means by which serious damage or risk to the health or safety of any member of the assessment unit can be avoided. The risks associated with any dangerous condition in the

premises had been avoided when the landlords effected the repairs themselves. A single payment can be made under the regulation only if the claimant can establish that without the single payment there will be serious damage or risk to health or safety. I suppose that it might be established in a case where the work has been done that serious damage to the claimant's mental health would ensue if the liability remained undischarged. But this is a somewhat far-fetched suggestion certainly not borne out in this case by any evidence so far adduced. The fact that the premises may have been dangerous before the repairs were effected would seem irrelevant.

8. The appeal however succeeds.

Signed: J G Monroe
Commissioner

Date: 23 June 1983

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