

JGM/SH/3

Carpet - Reg 10A & Reg 30 - all items not falling with
Reg 9 come under Reg 10A & are excluded from Reg 30
- see also 194/1987.

Commissioner's File: CSB/193/1987

C A O File: AO 3146/86

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: Kevin Holmes

Social Security Appeal Tribunal: South Tyne

Case No: 9/4

1. My decision is that the decision of the social security appeal tribunal dated 8 October was erroneous in point of law and it is set aside. In exercise of the power conferred on me by section 101(5)(a)(i) of the Social Security Act 1975 as amended I give the decision that the tribunal should have given, that is to say a decision that no single payment is to be made to the claimant on his claim dated 14 August 1986 for a single payment for floor-covering.

2. The claimant on 14 August 1986 made a claim for a payment in respect of floor-covering. Under the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528] the (1981 Regulations) as they stood immediately before their amendment in August 1986 a single payment for floor-covering could potentially have been made under regulation 10 of those Regulations (read together with the definition of essential furniture and household equipment in regulation 9) if among other things the conditions in regulation 10 were satisfied or, if not, under regulation 30 if the exacting conditions of that regulation were satisfied. However on 11 August 1986 there came into force the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No 1259] (the 1986 Regulations). These Regulations amended the 1981 Regulations in a variety of ways in particular by introducing a new regulation 9 containing a modified list of items of essential furniture and household equipment not including floor-covering, by introducing a new regulation 10A providing for a single payment for "miscellaneous furniture and household equipment needs", and by excepting from regulation 30 claims for miscellaneous furniture and household equipment needs. As these changes had come into force before the present claim the adjudication officer disallowed the claim so far as based on regulation 10A on the ground that the conditions of that regulation were not all satisfied: and so far as based on regulation 30 on the ground that it was excepted by the new provision excepting claims for miscellaneous furniture and household equipment needs. The claimant appealed.

3. The appeal tribunal concluded that this was not a miscellaneous furniture and household equipment need and thus was neither within regulation 10A nor excluded from regulation 30. And finding that the exacting preconditions of the latter regulation were satisfied they awarded a payment under regulation 30. This made it unnecessary for them to consider the conditions in regulation 10A which the adjudication officer had considered not to be satisfied. The claimant had become tenant of the premises in which he lived in the 10 days preceding the claim but he had moved there from other unfurnished premises. In the result (his case not falling under regulation 10A(1)(e), which relates to domestic violence) he

regulation 10A. The adjudication officer held that the claim could not be allowed under regulation 10A on this account. He held that it was a claim for miscellaneous furniture and household equipment needs and for that reason could not be allowed under regulation 30.

4. The claimant appealed to the appeal tribunal who concluded that the claim could not succeed under regulation 10A because it was not a claim for a miscellaneous furniture and household equipment need. They held further that not being such a claim it was not excepted from regulation 30 by the new amendment. They found that the exacting conditions of regulation 30 were satisfied and they awarded a single payment for floor-covering.

5. The adjudication officer now appeals to the Commissioner. He does not suggest that there was not a need for the items; but he contends that the need is one for which now no provision is made by the Single Payments Regulations. He maintains, contrary to the view of the appeal tribunal that the need for floor-covering was a miscellaneous furniture and household equipment need. I have reached the conclusion that his contention is correct. I can understand the opinion of the tribunal that floor-covering is neither furniture nor equipment. It may well be that in some contexts floor-covering would be said to be furniture and in others not (see Wilkes v Goodwin [1923] 2 KB 86). In the present case there is in my judgment a clear indication that the draftsman intended a need for floor-covering to be included in the category of miscellaneous furniture and equipment needs. The original 1981 regulation 9(h) included polyvinyl chloride (or equivalent) floor-covering in the category of essential furniture and household equipment, for which a single payment could be awarded if the conditions in regulation 10 were satisfied. The 1986 Regulations took this out of regulation 9; but I consider that the draftsman intended that the need for among other items anything that had been but now ceased to be included in the category of essential furniture and household equipment should be a miscellaneous furniture and household equipment need which could be satisfied only if the conditions of the new regulation 10A were satisfied and which were wholly to be excepted from regulation 30. It follows in my judgment that the tribunal were wrong in awarding a payment under regulation 30. Moreover for the reasons given above no payment could be awarded under regulation 10A. I give the decision in paragraph 1 accordingly.

(Signed)

J G Monroe
Commissioner

Date: 3 August 1987