

JM/JAW

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

ORAL HEARING

Decision C.S.B. 16/81

1. This is an appeal brought, by my leave, by the supplementary benefit officer against a decision of the supplementary benefit appeal tribunal ("the tribunal") dated 5 March 1981, which decision varied a decision of the supplementary benefit officer issued on 2 February 1981.

2. The facts can be briefly stated. The claimant is a married man who has been in receipt of a supplementary allowance since he became unemployed on 13 June 1980. He lives in a council house with his wife and three children. The eldest child, Mark, is 17 years old. He has left school and has at all material times been in full employment. The other two children, Terry and Sharon, are under 16 years of age and are still at school.

3. Prior to September 1980 Mark and Terry shared a three-quarter sized bed. In that month a single payment was awarded to the claimant so that he might purchase a bed for Terry. He so did - and Terry thereafter slept in that bed. In the early part of 1981 Mark's bed collapsed and was discarded. The claimant then gave Terry's bed to Mark, whereafter Terry slept in the same bed as his parents. The claimant then made another claim for a single payment in order that a further bed might be purchased for Terry. At the same time he claimed single payments in respect of -

- (a) a new bed for Sharon; and
- (b) various items in respect of the plumbing.

The benefit officer -

- (i) disallowed the claim in respect of a bed for Terry;

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- (ii) made an award in respect of the bed for Sharon; and
- (iii) disallowed the claim in respect of the plumbing items, at the same time informing the claimant that the claimant should pursue this aspect of the case with the local authority.

The appeal to the tribunal was confined to decision (i). I am, accordingly, concerned solely with Terry's bed.

4. The tribunal unanimously awarded a single payment to meet the cost of a new single bed. On form LT 235 its reasons are recorded thus:

"The tribunal is satisfied that regulation 9(3) applied and that there was a change of circumstances since the last bed was purchased - regulation 6". (The references are, of course, to the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985], as amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1980 [S.I. 1980 No. 1649].)

This is the decision in respect of which I granted the benefit officer leave to appeal. As is now well known, such an appeal can only succeed upon the basis that the tribunal's decision was erroneous in point of law. (Rule 8(1) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605].)

5. I held an oral hearing of the appeal on 14 September 1981. The claimant did not attend. The benefit officer was represented by Mr R A Birch, of the Solicitor's Office of the Department of Health and Social Security, to whom I am very much indebted for a lucid and concise presentation of the case.

6. The first step is to identify the relevant assessment unit. In regulation 2(1) of the Single Payments Regulations the following definitions appear:

"'assessment unit' means the claimant and any partner and dependant of the claimant;"

"'dependant' means a person whose requirements and resources, by virtue of paragraph 3(2) of Schedule 1 to the Act [i.e. the Supplementary Benefits Act 1976], are or would be aggregated with and treated as those of the claimant;"

"'partner' means one of a married or unmarried couple."

7. Paragraph 3(2) of Schedule 1 to the Act provides as follows:

"Where a person is responsible for, and is a member of the same household as, another person and they are not a married or unmarried couple, then -

- (a) if the other person is a child or is excluded from entitlement to supplementary benefit by section 6(2) of this Act; or
- (b) if the circumstances are such as are prescribed, their requirements and resources shall be aggregated and treated as those of the first-mentioned person".

8. Section 6(2) of the Act provides as follows:

"A person who has not attained the age of 19 and is receiving relevant education [for the meaning of which term see section 6(3)] shall not be entitled to supplementary benefit except in prescribed circumstances".

9. In section 34(1) of the Act "child" is defined as "a person under the age of 16". Section 34(3) provides that -

"Regulations may make provision as to the circumstances in which a person is to be treated for the purposes of any specified provision of this Act -

- (a)
- (b) as responsible for another person."

10. The last link in this intolerable chain of legislation by reference is constituted by paragraphs (1) and (2) of regulation 3 of the Supplementary Benefit (Aggregation) Regulations 1980 [S.I. 1980 No. 982]:

"(1) This regulation shall apply for the purposes of paragraph 3(2) of the Schedule (aggregation of requirements and resources of dependants).

(2) A claimant (in this regulation referred to as A) shall be treated as responsible for another person (in this regulation referred to as B) where -

- (a) B is a child
- (b) B is a member of the same household as A; and
- (c) A and B are not a married or unmarried couple".

11. By now it will be readily apparent to the meanest intelligence that -

- (a) the relevant assessment unit in this appeal consists of the claimant, the claimant's wife (his "partner") and Terry and Sharon (his "dependants"); and

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- (b) Mark, not being a "dependant" of the claimant, is not a member of that assessment unit.

12. In the context of this appeal it is not necessary to examine the somewhat complex provisions of regulation 9 of the Single Payments Regulations. Those provisions, taken in isolation, were manifestly satisfied by the claimant. Were it otherwise he would not, of course, have been awarded the sums in respect of the first bed for Terry and the bed for Sharon. It cannot be too strongly stressed, however, that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the regulations unless he can first bring himself within the general provisions of Part I (regulations 1 to 6).

13. The regulation upon which the tribunal founded provides as follows:

"6(1) Notwithstanding any provision in these regulations, in particular regulation 30 (discretionary payments),

- (a) no single payment shall be made if a single payment has already been made in respect of the circumstances in question and those circumstances have not changed;"

The tribunal declared itself satisfied that "there was a change of circumstances since the last bed was purchased" (see paragraph 4 above). It is highly desirable that where such a finding is made the tribunal should identify the change of circumstances relied upon. In the present case it must, I think, be assumed that the change was the giving of Terry's bed to Mark.

Mr Birch submitted that a claimant cannot rely upon a change of circumstances (within the meaning of regulation 6(1)(a)) where such change has been "self-induced". This is the only one of Mr Birch's submissions with which I find myself unable to agree. The wording of this regulation will not, in my view, permit of any such gloss. I consider that there was in this case a change of circumstances - and that the tribunal cannot be faulted for having so found.

14. The matter does not end there, however. The "self-induced" element in this case (to which Mr Birch justifiably took exception) is adequately provided for in regulation 3(2):

"A single payment shall be made only where -

- (a) there is a need for the item in question; and
- (b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

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The facts of this case clearly cried out for the consideration and application of regulation 3(2). The tribunal, however, appears neither to have considered nor to have applied it; and in this respect it erred in law. Accordingly, I set its decision aside.

15. The case must now be referred to a differently constituted tribunal to be reheard de novo. In the forefront of that tribunal's approach must be the question of whether the assessment unit acted unreasonably in disposing of, or in failing to avail itself of, the bed which was bought for Terry in September 1980. That is a question of fact - and, accordingly, a matter for the tribunal and not for me to decide. The tribunal, however, will no doubt bear in mind that the supplementary benefits scheme is directed towards those who are in genuine financial need. It seeks to meet the basic requirements of such people. It is not there so that such people can give expensive presents to their friends and relations. If Mark is entitled to a bed at the expense of the supplementary benefits fund then, surely, it is for him, as a separate assessment unit, to pursue such a claim in his own right.

16. Finally, I stress a point which is implicit in what I have said in paragraph 12 above. There can be no question of an award under regulation 30 (exceptional needs) unless the claimant can bring himself within regulation 3(2)(b).

17. My decision, accordingly, is as follows:

- (1) The appeal of the benefit officer is allowed.
- (2) The tribunal's decision of 5 March 1981 is set aside.
- (3) The case is referred to a differently constituted tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 7 October 1981

Commissioner's File: C.S.B. 200/1981
S B O Papers: S.B.O. 237/1981
Region: South Western