



CSB 202/1981

IEJ/MP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Boots
B/S

Reported

Decision C.S.B. 1/82

R(SB) 7/82

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 3 March 1981, which decision reversed a decision of the supplementary benefit officer issued on 3 February 1981. My decision follows an oral hearing of the appeal on 17 November 1981 held at the request of the supplementary benefit officer, at which he was represented by Miss L Shuker of the Solicitor's Office, DESS and the claimant was not represented and did not in the event attend although he had earlier indicated an intention to attend.

2. I held that the decision of the tribunal was erroneous in point of law, and accordingly I set it aside and direct that the claimant's appeal from the original decision of the supplementary benefit officer be referred to a fresh appeal tribunal. The directions set out in the appendix to my present decision are to be observed upon the re-hearing.

3. On 12 January 1981 the claimant made application for a single payment grant in respect of a pair of boots for himself. He claimed other items at the same time with which this appeal is not concerned. The assessment unit at that time comprised the claimant, his wife and four children whose approximate ages were then 4, 3, 1½ and 7 months. The claim was rejected and the claimant appealed to the tribunal. In respect to the boots he indicated in a statement in support of the appeal "my boots are falling to bits and are a definite danger to my feet". It appears that the grounds on which the claim was rejected were first that the need had not arisen from other than normal wear and tear (and so should have been met out of the normal weekly amount of supplementary benefit of which the claimant was in receipt), and secondly that in the opinion of the supplementary benefit officer the circumstances did not meet the requirements under regulation 30 of the

Supplementary Benefit (Single Payments) Regulations 1980 ("the Regulations").

4. It is not in dispute that although the total requirements of the assessment unit were calculated at £76 per week the amount available to the claimant for spending was only £25 a week because of deductions in respect of child benefit, rent and - by the claimant's agreement - electricity and arrears exceeding 25% of normal requirements.

5. (1) Before the local tribunal the benefit officer submitted that the claimant did not dispute that the boots he had were worn out by reason of normal wear and tear, that there was no authority for a single payment to be made under regulation 27 of the Regulations having regard to that, and that the case did not fall within regulation 30 either. The tribunal then went on to entertain the possibility that a single payment for the boots might be authorised under the combined effect of regulation 7 (Maternity Needs) and regulation 26(1)(b) of the Regulations - under which a grant can be made for an item falling within the scope of what the normal weekly allowance is intended to provide for (I will call such a "routine item"), in cases where it is established that a claimant has expended monies set aside out of that allowance to make provision for a routine item upon another item (not itself a routine item) for which a single payment would have been made had it been claimed. And the tribunal decided that the claimant satisfied the requirements under that head and awarded a single payment of £12.50 for the boots.

(2) Shortly stated it is contended on behalf of the benefit officer that in so doing the tribunal erred in law.

(3) The texts of the regulations above referred to are as follows:

Maternity needs

7. - (1) Where any member of the assessment unit -
(a) is pregnant and has reached a stage in her pregnancy which is not more than 6 weeks before the expected week of confinement; or
(b) has recently given birth to a child,
a single payment shall be made for the purchase of such items as are necessary to meet the immediate needs of the child, other than any item to which section 1(3) of the Act (exclusion of medical requirements) applies.

(2) The items to which paragraph (1) shall apply may include in particular the following items:-

- (a) clothing sufficient for a new-born baby;
- (b) a sufficient quantity of napkins;
- (c) a sufficient quantity of feeding bottles;
- (d) a cot;
- (e) a cot mattress;
- (f) a pram or carry-cot;
- (g) a sufficient quantity of cot blankets and sheets;
- (h) a baby bath.

(3) Subject to paragraph (4), any amount payable by virtue of the preceding paragraphs of this regulation shall be -

- (a) in the case of an item to which paragraph (2)(d), (f) or (h) applies, the cost of a second-hand item, if such item is available;
- (b) in the case of an item specified in column 1 of Schedule 1 (bedclothes) or Part VI of Schedule 2 (baby clothing), the amount specified for that item in column 2 of Schedule 1 or of Part VI of Schedule 2; and
- (c) in the case of any other item, such amount as is necessary to purchase a new item.

(4) The amount of a single payment, or where more than one payment falls to be made the aggregate amount of such payments, which would, but of this paragraph, be payable under this regulation shall be reduced by the amount of any maternity grant paid under the Social Security Act in respect of the relevant birth unless that grant has been spent on any item in respect of which a single payment would otherwise have been made.

Costs where supplementary benefit not paid or not claimed

26. - (1) A single payment shall be made where a claimant -

- (a) in respect of a past period has not received an amount of pension or allowance -
 - (i) to which he was entitled, or
 - (ii) to which he would have been entitled had he made a claim for it and satisfied the conditions for claiming and payment of it prescribed pursuant to section 14 of the Act;
- (b) has spent, on any item for which had he claimed it a single payment would have been made under these regulations, money set aside to provide for any item to which the category of normal, additional or housing requirements relates,

and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he should meet.

(2) The amount payable in a case to which paragraph (1) applies shall be the amount of the cost, or where more than one item is concerned the aggregate amount of the costs, which he is unable to meet, subject to a maximum of -

- (a) in a case to which paragraph (1)(a) applies, the total amount of pension or allowance not received;
- (b) in a case to which paragraph (1)(b) applies, the amount of the single payment which would otherwise have been made.

(3) Where subsequent to the award of a single payment under paragraph (1)(a) it is determined that arrears of pension or allowance are payable to the claimant in respect of the whole or any part of the past period there mentioned, that single payment shall be treated as paid on account of those arrears.

Discretionary payments:

30. Where a claimant is entitled to a pension or allowance and he -

(a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or

(b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented.

6. The Chairman's note of evidence indicates that the claimant "said he had recently bought clothes for the kiddies because they were 'just growing out of them' " "Not bought any other clothing or household items two children born within the last two years". A statement from the presenting officer now before me indicates that the claimant was asked if he had spent any money set aside for clothing and footwear on anything else, and had replied that he could not afford to put aside any money, and that the claimant also indicated that he had recently "bought coats for the children", a single payment for that purpose having been refused by the Department; but could think of nothing else he had spent on clothing or household equipment. That statement goes on to indicate that the claimant made reference to various amounts that he had received, or had claimed but not received, in respect of the two youngest children in the light of which the presenting officer had asked the chairman if he would receive evidence of the grants of supplementary benefit which had in fact been made since the birth of the last two children because there was some discrepancy in what the claimant had said; but that the chairman declined the offer.

7. (1) In my judgment there was no evidence upon which a tribunal properly instructed in the law could have reached the conclusion represented by the tribunal's decision. In particular:-

(i) ~~there was no evidence that the claimant had ever "set aside" any money out of the weekly supplementary allowance for any character of item;~~

Section 4(1) of the Regulations

(ii) the needs for which the normal allowance is intended to provide include the replacement of clothing outgrown by normal growth (see as to this regulation 4(1) of the Supplementary Benefit (Requirements) Regulations 1980 in conjunction with regulation 27(1) of the Regulations);

(iii) the tenor of regulation 7 of the Regulations makes it quite clear that payment is to be made thereunder only for the purpose of "the purchase of such items as are necessary to meet the immediate needs of" a child whose birth is imminent or who has "recently" been given birth to by a member of the assessment unit.

(2) The only affirmative evidence of expenditure being, at highest, that the claimant had purchased coats for all four children in replacement of predecessors outgrown, there was in my judgment no conceivable scope for bringing coats purchased for any of the older three children within the scope of regulation 7 as the proper subject of a single payment thereunder, nor in my judgment could any replacement coat for the youngest child be so regarded. For, without attempting any exhaustive definition of "immediate needs" in respect of a newborn baby, it is a phrase which clearly falls to be construed with due regard to the circumstances that the birth of a child to a member of an assessment unit in respect of which supplementary allowance is in payment will constitute a numerical addition to the membership of the assessment unit which will be reflected in an increased assessment of requirements, so providing for the "normal requirements" of the added member once born - leaving the tenor of "immediate needs" that of providing such equipment and outfitting for the newborn child as is needed for the inaugural phase only of the new member's membership. That this is so is well illustrated by the range of items specifically mentioned in regulation 7(2) as included "in particular" in its scope.

8. Under the law in force immediately prior to 24 November 1980 the grant or withholding of a single payment in the circumstances of this case would have lain within the discretion of the benefit officer, or on appeal the tribunal, untrammelled by any such detailed code as is now constituted by the Regulations. I am in little doubt that the tribunal went to considerable pains to endeavour to find an appropriate provision within the new code constituted by the Regulations on which to base an award in what they regarded as a case deserving of an award on its general merits. But I am equally satisfied that their selection cannot be sustained as sound in law. I have in the circumstances no alternative but to decide this appeal as I have already above indicated.

APPENDIX

(1) The tribunal shall receive and consider any evidence the benefit officer may wish to tender as to grants by way of single payment of supplementary benefit made to the claimant in respect of his children George and Sean since the birth of the former.

(2) The tribunal shall if and so far as it is contended by the claimant that he has expended monies set aside for footwear or clothing worn out by normal wear and tear or outgrown upon any item for which a single payment would have been made express findings of fact with reasonable particularity as to the amounts so expended and the items in question.

(3) Should the tribunal conclude that the claim by the claimant for a single payment in respect of boots is not otherwise admissible the tribunal shall go on to consider and express appropriate findings and reasons for decision in regard to such claim as one also founding in reliance upon regulation 30 of the Regulations. And the tribunal shall in that connection pay due regard to:

- (i) such primary evidence as may be tendered as to the condition of the claimant's boots - and if and so far as, by the passage of time or otherwise, this does not sufficiently establish the position, then to the finding of fact on 3 3 81 "There is need for a pair of boots: the uppers are leaving the soles"; and
- (ii) the claimant's specific ground of appeal "my boots are falling to bits and are a definite danger to my feet".

(Signed) I Edwards-Jones
Commissioner

Date: 21 December 1981

Commissioner's File: C.S.B. 202/1981

C.S.B.O. File: SBO 257/81