

MJG/BR

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision CSB 9/81

CSB 8/81

1. I allow the appeal of the supplementary benefit officer in this case and set aside the decision of the supplementary benefit appeal dated 2 March 1981. I refer the case to another supplementary benefit appeal tribunal to determine it in accordance with this decision: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, Rule 10(8).

2. This is an appeal by the supplementary benefit officer (for which I gave leave on 3 June 1981) against a decision of a supplementary benefits appeal tribunal made on 2 March 1981 and notified to the parties on 3 March 1981. In that decision the tribunal awarded a payment to the claimant of £20.00 as part of the cost (£41.97) of having a pump replaced in the central heating system in the claimant's house. The tribunal made the award under regulation 17(1) of the Supplementary Benefit (Single Payments) Regulations 1980. Regulation 17(1) provides,

"17(1) - A single payment shall be made in respect of the cost of repairs to, and any consequent redecoration of, the home where the claimant is otherwise entitled to supplementary benefit as an owner-occupier or lessee and

- (a) the repairs are essential to preserve the home in a habitable condition;
- (b) the total cost of the repairs and redecoration does not exceed £225;
- (c) the cost is such that it would be unreasonable in the circumstances in which the repairs have become necessary to expect the claimant to be able to pay for them out of the amount allowed towards repairs under the normal weekly amount paid for the claimant's repairs; and
- (d) the claimant is unable to finance the repairs in any other way".

3. Although the supplementary benefit officer had refused the payment on the ground that repair of the central heating pump was not essential to preserve the home in a habitable condition, no point is now taken as to that matter in the appeal to the Commissioner, and I therefore make no comment on it.

4. However, it appears that the claimant had paid the £41.97, the cost of replacement of the pump, by borrowing the money from a friend. The pump was replaced on 12 October 1980. It is not clear on what date the claimant borrowed the money from the friend, but it presumably was borrowed from the friend and used to pay the bill before the claimant on 2 December 1980 made a claim for a single payment to meet the cost of replacement of the pump. The local tribunal were aware of the loan and in their reasons for decision they stated "she has no source of funds other than child benefit and supplementary benefit and has to repay the money she borrowed".

5. The supplementary benefit officer now appeals to the Commissioner on a ground which does not appear to have been directly before the local tribunal, but nevertheless which can of course properly be raised before the Commissioner as a question of law implicit in the local tribunal's decision. That point is that regulation 3(2) of the Single Payments Regulations 1980 contains over-riding provisions applicable to all types of single payment, and provides,

"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 ..."

6. The supplementary benefit officer now submits to the Commissioner that there was no "need for the item in question" (regulation 3(2)), as it had already been purchased with the money borrowed. I hold that that submission is correct. The Single Payments Regulations are designed to meet actual needs not covered by weekly payments of supplementary benefit. That is reinforced by the provision of regulation 3(2)(b) that if the assessment unit does already possess the item in question, then no single payment can be made for it. In this case the claimant's household did possess a new pump for the hot water system by the time the claim was made, and therefore, under regulation 3(2)(a) and (b), the single payment could not be made.

7. The same point in a different way is put by the supplementary benefit officer when, in his submission to the Commissioner (paragraph 4b), he says "... the Tribunal in their decision referred to regulation 17(1) whereas they were in effect making an award to cover a debt which is not covered by regulation 17(1) at all". That, too, is a correct submission and again is reinforced by the provision of regulation 17(1)(d) that a claimant must not be able to finance the repairs in any other way if he or she is to qualify for a single payment under regulation 17. In this case the claimant had financed the repairs in another way, i.e. by borrowing the money and actually

spending it on having the repair done. The Supplementary Benefit (Deductions and Payments to Third Parties) Regulations 1980 provide in certain circumstances for a payment of a single payment direct to a person who has "supplied" the item in question. However, there is no provision in those regulations for payment to a lender of a loan used for the purchase of an item which might otherwise have qualified for a single payment under the Single Payments Regulations.

8. Consequently, I hold that the local tribunal erred in law in their decision, and I must therefore set aside that decision. In accordance with Rule 10(8)(a), of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, I refer the case to another tribunal. That tribunal may wish to take evidence to verify the facts as to the time-table of respectively, the installation of the pump in the central heating system, taking of the loan, payment for the pump and claim for supplementary benefit. But provided the facts are as I have (in paragraph 4 above) assumed them to be, the local tribunal must disallow the claimant's appeal from the decision of the supplementary benefit officer.

9. The local supplementary benefit officer also referred to regulation 30 of the Single Payments Regulations 1980, dealing with payments not covered by specific provisions of the regulations, where such payments are "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". That provision is also, however, subject to regulation 3(2) of the 1980 regulations (cited in paragraph 5 above) i.e. there must therefore be a need for the payment. Regulation 30 was not considered by the local tribunal, nor is any point made in relation to it on appeal to the Commissioner. Consequently I need deal no further with it.

(Signed) M J Goodman
Commissioner

Date: 5 August 1981

Commissioner's File: CSB/220/1981
CSBO File: SBO 270/81