

DGR/MP

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 14/81

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal of 3 March 1981 was erroneous in point of law, and accordingly I set it aside.

2. On 29 December 1980 the claimant sought in writing help with the cost of the repair of her washing machine. The claim was rejected by the benefit officer, and the claimant thereupon appealed to the tribunal. She contended that she was a registered disabled person, that she suffered with arthritis in her hands, and that the launderette was too far away. She contended that the only way in which she could do her laundry was by means of her washing machine and that she required a single payment in order to cover the cost of necessary repairs.

3. The tribunal allowed the appeal and awarded a single payment of £46 under regulation 10 of the Supplementary Benefit (Single Payments) Regulations 1980 to defray the expense of repairs. They expressed their reasons for their decision in the following terms:

"As no decision has been made by the Supplementary Benefit Officer regarding an additional requirement under paragraph 17 of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 the Tribunal consider it is in the best interests of the assessment unit that a single payment be made to effect the repair of the washing machine".

4. The benefit officer now appeals to the Commissioner (leave having previously been given), contending that the tribunal's decision was erroneous in point of law.

5. Clearly the tribunal purported to award a single payment under regulation 10 of the Supplementary Benefit (Single Payments)

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Regulations 1980 (S.I. 1980/985). That regulation, as at the date of the decision, provided as follows:-

"(1) Where the conditions of paragraph (3) of regulation 9 are satisfied, a single payment shall be made to a claimant to meet the reasonable costs of essential repair to any item to which that paragraph applies, unless the cost of the repair would be more than the cost of replacing the item under regulation 9(1)(b) or (3)(a)(ii) or the repair would be uneconomic having regard to the future viability of the item"

And paragraph (3) of regulation 9 reads as follows:-

"A single payment shall be made for the purchase of any item of essential furniture and equipment to which paragraph (4) applies where -

- (a) the item is one which -
 - (i) the claimant does not possess, or
 - (ii) he does possess but which is defective or unsafe and the cost of repair to which regulation 10 would otherwise apply would exceed the cost of replacement; and
- (b) either
 - (i) one of the conditions in paragraph (2)(b) is satisfied, or
 - (ii) the item is a cooking or heating appliance, or
 - (iii) the claimant is a person who entered the home without the permission of the owner but to whom permission to occupy the home has been granted as a temporary expedient, and the item is a bed".

Now, there can be no question of the tribunal awarding a single payment under regulation 10 unless they were satisfied that the conditions set out in regulation 9(3) had been fulfilled. One of those conditions specifies that, where the item in question is possessed by the claimant, the cost of repair must exceed the cost of replacement. But regulation 10(1) concludes with the qualification that the cost of repair will not be allowed unless it is less than the cost of replacing the relevant item. In other words the combined effect of regulation 9(3) and regulation 10 is that an award of a single payment can never be made for repairs to any of the items listed in regulation 9(4).

7. I should, however, mention that regulation 10 has been amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981

(S.I. 1981/815) with effect from 27 July 1981, and my remarks relate to the position obtaining before that date. But, in case the claimant should be minded to make a new application based on the amended regulation 10, it may be helpful if I go on to consider the other objections made by the benefit officer to the decision of the tribunal. He submits that unless the item to be repaired falls within regulation 9(4)(i) no award can be made under regulation 10 and that to satisfy this condition there has to be compliance with paragraph 17 of Schedule 3 to the Requirements Regulations. The benefit officer contends that there was no evidence to suggest that in the present case the conditions of paragraph 17 of Schedule 3 had been satisfied.

8. Regulation 9(4)(i) reads as follows:-

"a washing machine, but only where an additional requirement under paragraph 17 of Schedule 3 to the Requirements Regulations (Laundry) is not appropriate because, -

- (i) there is no laundry or launderette which the assessment unit can reasonably be expected to use, or
- (ii) where there is such a facility, it cannot be used for the assessment unit's laundry because the claimant or his partner is mentally or physically ill or disabled or because there is no public transport to it".

It was unnecessary in the present case for the tribunal to concern themselves as to whether or not conditions (i) or (ii) had been satisfied because they first had to consider whether or not the conditions specified under paragraph 17 of Schedule 3 of the Supplementary Benefit (Requirements) Regulations 1980 had been complied with. Those two conditions read as follows:

"Where

- (a) the laundry of the assessment unit cannot be done at home because all adult members of the household are ill, disabled or infirm or because there are no suitable washing or drying facilities; or
- (b) the quantity is substantially greater, for example because of incontinence, than the amount which would normally be generated by an assessment unit of the same composition".

9. Now, in the present case the assessment unit included the claimant's teenage daughter, and there is no evidence to suggest that she was unable to do the washing or that the washing or drying facilities were not suitable.

10. The tribunal do not appear to have considered these issues, and in any event, whether or not they did, there was certainly no evidence to support the view that paragraph 17 of Schedule 3 had been satisfied, and if it was not, then likewise regulation 9(4)(i) had not been

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satisfied; and the effect of this is that there was no power under regulation 10 to make the award.

11. It is clear from the foregoing that the tribunal erred in law, and accordingly I must set aside their decision. I direct that the matter be reheard by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 28 September 1981

Commissioner's File: C.S.B. 233/1981

CSBO File: S B O 282/81