

37

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

SH

Commissioner's File No: CSB/240/1984

This decision is "starred" because it holds that a single payment of supplementary benefit cannot be made for the cost of external redecoration of an owner-occupied house.

M.J.G.

38

MJG/BOS

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. I allow the appeal of the adjudication officer against the decision of the supplementary benefit appeal tribunal dated 7 December 1983 and I set that decision aside as erroneous in law. I give the decision which the tribunal should have given, namely that a single payment cannot be made to the claimant for the cost of external redecoration of the house of which he is owner-occupier: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451], regulation 27.

2. This is an appeal by the adjudication officer to the Commissioner from the decision of the supplementary benefit appeal tribunal dated 7 December 1983, in which that tribunal unanimously awarded a single payment to the claimant for external redecoration of the first floor and guttering of the claimant's house. The claimant had himself already redecorated the ground floor but, having an artificial leg and not being able to climb a ladder, he was unable to decorate the first floor and the guttering of the house. The ground of the adjudication officer's appeal to the Commissioner is simply that there is no provision in the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No 1528 as amended] to allow a single payment for this purpose, it being agreed that on the facts of this case regulation 30 (payments to avert serious risk to health etc) did not apply.

3. The appeal was the subject of an oral hearing before me on 29 August 1984 at which the adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office of the Department of Health and Social Security. The claimant was not present but was represented by Miss S Robertson of the Disability Alliance. I am indebted to Mrs Stockton and to Miss Robertson for their assistance to me at the hearing.

4. Regulation 21 of the above cited Single Payments Regulations, under which the supplementary benefit appeal tribunal made the award of a single payment, is in Part V of the Single Payments Regulations (regulations 13-21A) headed "Housing Expenses". Regulation 21 itself reads as follows:

"Housing Costs Which Arise Irregularly

- 21 - (1) Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively) for an item solely because charges for that item occur only irregularly (for example charges under a lease for redecoration of common and external areas, or charges for the emptying of a cesspit or septic tank), a single payment shall be made of an amount equal to the amount of each charge.
- (2) For the purposes of this regulation, the provisions of regulation 5 (effect of disregarded capital on amounts payable) shall not apply."

It should therefore be noted that even if a claimant has capital in excess of £500 (regulation 5) that capital is not taken into account under regulation 21 unless of course it exceeds £3,000 when no payment of any kind of supplementary benefit can be made (Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527 as amended] regulation 7). Moreover under regulation 21 of the Single Payments Regulations there is no upper limit on the amount of a single payment whereas there is, for example, a limit of £325 on a single payment for repairs and consequential redecoration under regulation 17 of the Single Payments Regulations (see below). I mention those matters as practical consequences of the application of regulation 21 but neither of them particularly assist me in the construction of regulation 21 or other relevant regulations (see below). I should also note as a preliminary point that Mrs Stockton and Miss Robertson both agreed that the expression "charges" in regulation 21(1) has no particular significance and merely means the costs or expenses of the items which regulation 21 covers.

5. The question therefore is whether regulation 21 can apply to an irregularly arising "charge" for the cost of redecorating of the claimant's house where he is an owner-occupier. The opening words of regulation 21(1),

"Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively)"

govern the ambit of regulation 21 and the relevant Requirements Regulations must therefore be consulted. The Requirements Regulations have in fact been consolidated into the Supplementary Benefit (Requirements) Regulations 1983 [S.I. 1983 No 1399] and regulations 17 and 19

are now 16 and 18 respectively but the wording is unchanged. It is clear that the only items that will come within regulation 21 of the Single Payments Regulations are those which would otherwise be subsumed under regulations 16 or 18 of the 1983 Requirements Regulations but cannot come within them "solely because charges for that item occur only irregularly" (regulation 21(1)). Regulation 16(2) of the Requirements Regulations refers only to "essential routine minor maintenance ... of the home". It cannot therefore be contended that external redecoration of the part of or the whole of the house falls in this category because that is clearly not an item of "essential routine minor maintenance" and Miss Robertson did not contend otherwise.

6. Miss Robertson therefore had to place reliance on regulation 18 of the Requirements Regulations headed "Miscellaneous Outgoings". There is a list of outgoings in regulation 18(1). Regulation 18(1)(a)-(c) and (f) refers to payments of rent and rates or under a co-ownership scheme; regulation 18(1)(d) refers to "recurring charges for the emptying of cesspits and septic tanks and the cost of fluid and materials to service a chemical toilet". Regulation 18(1)(e) refers to service charges eg for maintenance of common areas. Regulation 18(1)(g), on which Miss Robertson relied, refers to "outgoings analogous to those mentioned in this Part [i.e. Part IV headed "Housing Requirements"]". The housing requirements in Part IV of the Requirements Regulations are summarised in regulation 14(1) of those Regulations and relate to mortgage payments, repairs and insurance, interest on loans for repairs and improvements, miscellaneous outgoings (regulation 18 - see above), non-householders' contribution and housing benefit supplement. It follows that any item analogous to those could be the subject of a weekly allowance under regulation 18 of the Requirements Regulations and could also be the subject of a single payment under regulation 21 of the Single Payments Regulations if the wording of that regulation otherwise applied. It appears to me that the common denominator of the housing requirements in Part IV of the Requirements Regulations is that they are items on which expenditure must inevitably be incurred in the sense that, if not, either they would be the subject of legal proceedings against the claimant or alternatively, if the expenditure is not incurred, the house will become unfit for human habitation. For example, if rent and rates are not paid, legal proceedings will follow and if cesspits and septic tanks are not emptied or fluid and materials to service a chemical toilet are not provided then the house will become unfit for habitation and indeed possibly an offence be committed under the public health legislation.

7. The question then is whether external redecoration of a house by an owner occupier is in either of those categories. Miss Robertson pointed out that, if a house is not externally redecorated, inevitably the woodwork etc will fall into disrepair and then repairs will need to be done for which a single payment could be claimed under regulation 17(1)(a) of the Single Payments Regulations where the "repairs are essential to preserve the home in a habitable condition". Provision is then made for redecoration but only consequent on the repairs. Miss Robertson submitted that the Single Payments and Requirements Regulations could hardly have been intended to cause such a result to occur, as this would scarcely be an economical way of dealing with the problem. However, I must consider the actual wording of the relevant regulations, their

interaction and context, and if, as I conclude, they do not authorise a single payment for external redecoration by an owner occupier, that is the end of the matter. I note for example that regulation 19 of the Single Payments Regulations does provide for redecoration but only for essential internal redecoration and not for exterior decoration. It seems to me unlikely that, as precise provision has been made for internal redecoration, provision for external redecoration has been left to the somewhat nebulous wording of regulation 21, particularly as that regulation does give as an example one form of redecoration namely "charges under a lease for redecoration of common and external areas", the inference being that redecoration in other circumstances was not contemplated (compare reported Commissioner's Decision R(SB) 4/84, paragraph 15). Moreover, there is in my view nothing in Part IV of the Requirements Regulations to show that external redecoration is analogous to the housing requirements in that Part. External redecoration is sui generis and does not in my judgment come within the wording of regulation 21. That is a question of law and not just a question of fact and I can therefore give a ruling upon it (compare R(SB) 46/83, paragraph 10). I therefore hold that a single payment cannot be made in any circumstances for the costs of external redecoration by or on behalf of an owner occupier whether of the part or whole of a house. If there is liability under e.g. a lease to carry out external redecoration, other considerations might apply but that question was not canvassed before me and I express no opinion on it.

8. I was given to understand by Mrs Stockton and Miss Robertson at the hearing that amending regulations being S.I. 1984 No 938 regulation 6(7) and S.I. 1984 No 1102, regulation 2(8) and 2(10) are due to come into operation on 26 November 1984 and will, I was informed, make it clear that the costs of external redecoration cannot be claimed as a single payment. However that has played no part in my construction of the existing regulations, nor do I express any opinion as to whether the amending regulations have the effect they are said to have.

(Signed) M J Goodman
Commissioner

Date: 28 September 1984

Commissioner's File: C.S.B. 240/1984
CSBO File: 339/84
Region: North Western

MJG/BOS

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. I allow the appeal of the adjudication officer against the decision of the supplementary benefit appeal tribunal dated 7 December 1983 and I set that decision aside as erroneous in law. I give the decision which the tribunal should have given, namely that a single payment cannot be made to the claimant for the cost of external redecoration of the house of which he is owner-occupier: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451], regulation 27.
2. This is an appeal by the adjudication officer to the Commissioner from the decision of the supplementary benefit appeal tribunal dated 7 December 1983, in which that tribunal unanimously awarded a single payment to the claimant for external redecoration of the first floor and guttering of the claimant's house. The claimant had himself already redecorated the ground floor but, having an artificial leg and not being able to climb a ladder, he was unable to decorate the first floor and the guttering of the house. The ground of the adjudication officer's appeal to the Commissioner is simply that there is no provision in the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No 1528 as amended] to allow a single payment for this purpose, it being agreed that on the facts of this case regulation 30 (payments to avert serious risk to health etc) did not apply.
3. The appeal was the subject of an oral hearing before me on 29 August 1984 at which the adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office of the Department of Health and Social Security. The claimant was not present but was represented by Miss S Robertson of the Disability Alliance. I am indebted to Mrs Stockton and to Miss Robertson for their assistance to me at the hearing.

4. Regulation 21 of the above cited Single Payments Regulations under which the supplementary benefit appeal tribunal made the award of a single payment, is in Part V of the Single Payments Regulations (regulations 13-21A) headed "Housing Expenses". Regulation 21 itself reads as follows:

"Housing Costs Which Arise Irregularly

21 - (1) Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively) for an item solely because charges for that item occur only irregularly (for example charges under a lease for redecoration of common and external areas, or charges for the emptying of a cesspit or septic tank), a single payment shall be made of an amount equal to the amount of each charge.

(2) For the purposes of this regulation, the provisions of regulation 5 (effect of disregarded capital on amounts payable) shall not apply."

It should therefore be noted that even if a claimant has capital in excess of £500, (regulation 5) that capital is not taken into account under regulation 21 unless of course it exceeds £3,000 when no payment of any kind of supplementary benefit can be made (Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527 as amended] regulation 7). Moreover under regulation 21 of the Single Payments Regulations there is no upper limit on the amount of a single payment whereas there is, for example, a limit of £325 on a single payment for repairs and consequential redecoration under regulation 17 of the Single Payments Regulations (see below). I mention those matters as practical consequences of the application of regulation 21 but neither of them particularly assist me in the construction of regulation 21 or other relevant regulations (see below). I should also note as a preliminary point that Mrs Stockton and Miss Robertson both agreed that the expression "charges" in regulation 21(1) has no particular significance and merely means the costs or expenses of the items which regulation 21 covers.

5. The question therefore is whether regulation 21 can apply to an irregularly arising "charge" for the cost of redecorating of the claimant's house where he is an owner-occupier. The opening words of regulation 21(1);

"Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively)"

govern the ambit of regulation 21 and the relevant Requirements Regulations must therefore be consulted. The Requirements Regulations have in fact been consolidated into the Supplementary Benefit (Requirements) Regulations 1983 [S.I. 1983 No 1399] and regulations 17 and 19

are now 16 and 18 respectively but the wording is unchanged. It is clear that the only items that will come within regulation 21 of the Single Payments Regulations are those which would otherwise be subsumed under regulations 16 or 18 of the 1983 Requirements Regulations but cannot come within them "solely because charges for that item occur only irregularly" (regulation 21(1)). Regulation 16(2) of the Requirements Regulations refers only to "essential routine minor maintenance ... of the home". It cannot therefore be contended that external redecoration of the part of or the whole of the house falls in this category because that is clearly not an item of "essential routine minor maintenance" and Miss Robertson did not contend otherwise.

6. Miss Robertson therefore had to place reliance on regulation 18 of the Requirements Regulations headed "Miscellaneous Outgoings". There is a list of outgoings in regulation 18(1). Regulation 18(1)(a)-(c) and (f) refers to payments of rent and rates or under a co-ownership scheme; regulation 18(1)(d) refers to "recurring charges for the emptying of cesspits and septic tanks and the cost of fluid and materials to service a chemical toilet". Regulation 18(1)(e) refers to service charges eg for maintenance of common areas. Regulation 18(1)(g), on which Miss Robertson relied, refers to "outgoings analogous to those mentioned in this Part [i.e. Part IV headed "Housing Requirements"]". The housing requirements in Part IV of the Requirements Regulations are summarised in regulation 14(1) of those Regulations and relate to mortgage payments, repairs and insurance, interest on loans for repairs and improvements, miscellaneous outgoings (regulation 18 - see above), non-householders' contribution and housing benefit supplement. It follows that any item analogous to those could be the subject of a weekly allowance under regulation 18 of the Requirements Regulations and could also be the subject of a single payment under regulation 21 of the Single Payments Regulations if the wording of that regulation otherwise applied. It appears to me that the common denominator of the housing requirements in Part IV of the Requirements Regulations is that they are items on which expenditure must inevitably be incurred in the sense that, if not, either they would be the subject of legal proceedings against the claimant or alternatively, if the expenditure is not incurred, the house will become unfit for human habitation. For example, if rent and rates are not paid, legal proceedings will follow and if cesspits and septic tanks are not emptied or fluid and materials to service a chemical toilet are not provided then the house will become unfit for habitation and indeed possibly an offence be committed under the public health legislation.

7. The question then is whether external redecoration of a house by an owner occupier is in either of those categories. Miss Robertson pointed out that, if a house is not externally redecorated, inevitably the woodwork etc will fall into disrepair and then repairs will need to be done for which a single payment could be claimed under regulation 17(1)(a) of the Single Payments Regulations where the "repairs are essential to preserve the home in a habitable condition". Provision is then made for redecoration but only consequent on the repairs. Miss Robertson submitted that the Single Payments and Requirements Regulations could hardly have been intended to cause such a result to occur, as this would scarcely be an economical way of dealing with the problem. However, I must consider the actual wording of the relevant regulations, their

interaction and context, and if, as I conclude, they do not authorise a single payment for external redecoration by an owner occupier, that is the end of the matter. I note for example that regulation 19 of the Single Payments Regulations does provide for redecoration but only for essential internal redecoration and not for exterior decoration. It seems to me unlikely that, as precise provision has been made for internal redecoration, provision for external redecoration has been left to the somewhat nebulous wording of regulation 21, particularly as that regulation does give as an example one form of redecoration namely "charges under a lease for redecoration of common and external areas", the inference being that redecoration in other circumstances was not contemplated (compare reported Commissioner's Decision R(SB) 4/84, paragraph 15). Moreover, there is in my view nothing in Part IV of the Requirements Regulations to show that external redecoration is analogous to the housing requirements in that Part. External redecoration is sui generis and does not in my judgment come within the wording of regulation 21. That is a question of law and not just a question of fact and I can therefore give a ruling upon it (compare R(SB) 46/83, paragraph 10). I therefore hold that a single payment cannot be made in any circumstances for the costs of external redecoration by or on behalf of an owner occupier whether of the part or whole of a house. If there is liability under e.g. a lease to carry out external redecoration, other considerations might apply but that question was not canvassed before me and I express no opinion on it.

8. I was given to understand by Mrs Stockton and Miss Robertson at the hearing that amending regulations being S.I. 1984 No 938 regulation 6(7) and S.I. 1984 No 1102, regulation 2(8) and 2(10) are due to come into operation on 26 November 1984 and will, I was informed, make it clear that the costs of external redecoration cannot be claimed as a single payment. However that has played no part in my construction of the existing regulations, nor do I express any opinion as to whether the amending regulations have the effect they are said to have.

(Signed) M J Goodman
Commissioner

Date: 28 September 1984

Commissioner's File: C.S.B. 240/1984
CSBO File: 339/84
Region: North Western