

JGM/BP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

SSB 240/1987

renewed earlier submission to bring same under Reg 27
SP 1981

1. My decision is that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 10 December 1981 was erroneous in point of law and is set aside. In exercise of the power conferred by rule 10(8)(a)(i) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605] as amended by rule 6 of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I. 1982 No. 40] I decide for a different reason from that given by the benefit officer that the claimant is not on his claim made on 28 August 1981 entitled to a single payment for clothing.
2. The claimant is a large man 6' 2" tall weighing 19 stone and having a chest measurement of 50" and a waist measurement of 46". He claims, no doubt correctly, that his clothing costs more than the clothing of an average sized man. He was in receipt of a supplementary allowance and made a claim for a single payment for clothing on 28 August 1981. This was rejected by the benefit officer on the ground no need for the clothing was established. He was, according to the benefit officer, seen to be adequately dressed at the time of his claim.
3. The claimant appealed to the appeal tribunal who allowed his appeal to the extent of awarding payments for trousers, a blazer, 2 shirts, a pullover and underpants. The benefit officer now appeals to the Commissioner. The appeal tribunal took the view the need arose because the claimant is outsize and cannot afford the prices required for outsize wear and were of opinion that the provisions of regulation 27(1)(a)(iv) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985] were satisfied. Those regulations had (without material effect on the present case) been amended since the original enactment, and by the time of the hearing by the appeal tribunal been consolidated in the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528]. I shall refer to the two sets of regulations as "the 1980 SP regulations" and "the 1981 SP regulations".

4. Regulation 27(1) of both the 1980 SP regulations and the 1981 SP regulations provided and provides so far as material as follows:-

"A single payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing or footwear and -

(a) that need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -

(i)

(ii)

(iii)

(iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear, but not where the need has arisen in the normal course of events (for example where an item of clothing or footwear is outgrown), or

(b) "

5. It is an underlying principle of supplementary benefit that a person's income resources (if any) coupled with his supplementary allowance shall be applied in meeting his normal requirements which include the repair and replacement of clothing and footwear (see regulation 4(1) of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299]). It is for this reason that need for new clothing or footwear resulting from normal wear and tear is not covered by regulation 27. The appeal tribunal concluded however that the claimant's need for the clothing in question fell within regulation 27(1)(a)(iv) on the ground that the claimant's stature was a physical disability. This was in my judgment a misinterpretation of the regulation. Deformity may be a physical disability, but size by itself (at all events in the absence of medical evidence that it is due to illness) is not. It will be noted that regulation 27(2) of both the 1980 SP regulations and the 1981 SP regulations contains provision for payment of more than the amount specified in the schedule for items of clothing and footwear where the person concerned is "outsize or disabled", a clear indication that being outsize is not regarded as a disability. That provision applies only where the person concerned establishes a title to payment for clothing or footwear. It has no operation in the case of a person who because his need arises from normal wear and tear cannot establish title to any payment at all. It would perhaps be logical if a person whose need for money to buy clothing or footwear is greater because he is outsize than it would otherwise be should be entitled to a single payment of the difference (not of the whole cost) but the regulation does not make provision for it.

6. It would perhaps make sense if the category of additional requirements included something for being outside. I note that paragraph 18 of Schedule 3 to the Social Security (Requirements) Regulations 1980 above referred to makes provision for an additional requirement of persons who suffer from a physical or mental condition (a phrase which unlike physical disability might be taken to include being outside) but only where it leads to abnormal wear and tear of clothing or footwear, and not merely to additional expense in purchasing it. It would appear that a person whose size makes it abnormally expensive to satisfy his normal requirements in the matter of the replacement of clothing and footwear has to suffer for it in the same way as a person with a large appetite who finds it more expensive to satisfy his normal requirements of food.

7. The decision was for the reason stated erroneous in point of law. There has been no suggestion that payment for the clothing can be supported under any other regulation. In particular it has not been suggested that in terms of regulation 30 of the 1980 SP regulations or the 1981 SP regulations such a payment would be the only means by which serious damage or serious risk to the health or safety of any member of the claimant's assessment unit could be avoided. I therefore set aside the decision and decide that no payment for clothing is to be made to the claimant on the claim in question because the case does not fall within either regulation 27 or regulation 30 of the 1980 SP regulations or the 1981 SP regulations.

(Signed) J G Monroe
Commissioner

Date: 3 August 1982

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