

CSB 245/1981

VGHH/MC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

[ORAL HEARING]

Decision C.S.B 22/81

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 4 March 1981 is erroneous in point of law and I set it aside.
2. I held an oral hearing of this appeal by the supplementary benefit officer against the above mentioned decision. He was represented by Mrs G M V Leslie of the Solicitor's Office, Department of Health and Social Security. The claimant did not appear and was not represented.
3. On 2 February 1981 the claimant applied for a single payment to meet the cost of decorating materials. The supplementary benefit officer refused this application on the ground that the conditions of neither regulation 19 nor regulation 30 of the Supplementary Benefits (Single Payments) Regulations 1980 [S.I 1980 No 985] (which I shall call "the Single Payments Regulations") were satisfied. The claimant appealed to the supplementary benefit appeal tribunal. At the hearing before that tribunal on 4 March 1981 he did not appear and was not represented. The chairman's note of evidence is as follows:

"Established that claimant had lived at current address for several years.

The work carried out by contractors was to provide damp proofing of property.

Contractors recommended that emulsion paint could be applied after 3 months from date of completion of work and wall-papering could be carried out after one year".

Although the note of evidence does not say so, this information must have come from the supplementary benefit officer, since he is the only person engaged in the case, other than the members of the tribunal, who attended the hearing. There were no other witnesses.

Decision C.S.B 22/81

4. The tribunal's findings of fact were:

"Claimant had lived at his present address for over a year. He was responsible for internal redecoration. The need for redecoration was not connected with any major repair or renovation, the provision of a damp proof course not being a major repair or renovation in the present part of the century."

Their decision, which was unanimous was:

"That a payment be made for emulsion paint 3 months from date of completion of the work at appellant's home. That an amount be allowed for wall-paper one year from date of completion of work, if required".

Their reasons were:

"The Tribunal took the view that the appellant satisfied the relevant conditions. The time elements (see above) involved were those given by the contractors as to the time painting and wall-papering could be carried out."

5. The decision of the tribunal was clearly based on regulation 19. That regulation is in Part V of the Single Payments Regulations, Regulation 3 is also in point. These two regulations (so far as relevant to this decision) are in the following terms:

"3. (1) .....

(2) A single payment shall be made only where -

(a) there is a need for the item in question; and

(b) .....

(3) .....

(4) .....

"19. (1) A single payment shall be made in respect of expenses of essential internal redecoration to a claimant's home where -

(a) the claimant has lived at his present home for at least one year;

(b) the claimant is responsible either as the owner of the freehold or leasehold or under the terms of his tenancy for periodic internal redecoration; and

(c) the need for redecoration is not connected with any major repair, renovation or alteration to the property.

(2) .....

6. The requirements as to the recording of the decisions of supplementary benefit appeal tribunals are contained in regulation 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I 1980 No 1605] (which I shall refer to as the Appeals Rules). Regulation 7(2) provides:

"(2) The tribunal shall -

- (a) record every determination in writing; and
- (b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and
- (c) .....

7. The award of "an amount ..... for wall-paper one year from the date of completion of work, if required" is one which the tribunal had no power to make, because a single payment can only be made where there is a need for the item in question (see regulation 3(2)(a) of the Single Payments Regulations) and the tribunal have expressly left open the question whether or not the wall-paper would be needed. The decision to make such an award was accordingly erroneous in point of law.

8. No single payment can be made under regulation 19 of the Single Payments Regulations in respect of the expenses of essential internal redecoration to a claimant's home except where "the need for redecoration is not connected with any major repair, renovation or alteration of the property": see paragraph (1)(c). In my judgment, "major" in the quoted context, governs not only "repair", but also "renovation" and "alteration", so that this restriction on payments in respect of redecoration excludes redecoration needed because it is connected with a major repair, or a major renovation, or a major alteration of the property. At first sight, the installation of a damp course would appear to be a clear "alteration" (a word which in my judgment is here used in the dictionary sense of "modification") of the property from one without a damp course to one with a damp course. The question whether or not such an alteration was a major alteration is one which was for the tribunal to determine on proper evidence. Whether any reasonable tribunal could come to the conclusion that the insertion of a damp course in property was not a major alteration is one that I am not in a position to decide, because the tribunal has made no findings as to the work involved, the nature of the damp course, its cost, the number of man-hours that the work took or was estimated to take or any other factor which led them to consider that the alteration was not a major alteration. I am left guessing as to what their reasons were. Were they aware that paragraph (1)(c) excluded major alterations? If so, and they considered that the installation of a damp course was not an alteration of the property, that was a misconstruction of the paragraph 1(c) of regulation 19 of the Single Payments Regulations. Alteration in this context clearly includes the insertion of a damp course. If they considered that it was not a major alteration, they should have made sufficient findings of fact to enable the reason for their finding that it was not to be clear. It is not enough to insert

Decision C.S.B 22/81

a reference to "the present part of the century". The tribunal were in breach of regulation 7(2) for failure to give reasons and also for failure to make adequate findings of fact.

9. The appeal should now be reheard by a differently constituted tribunal.

(Signed) V G H Hallett  
Commissioner

Date: 22 October 1981

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CSBO File: SBO 292/81