

DGR/BR

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

[ORAL HEARING]

Decision CSB 36/81

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 5 March 1981 is erroneous in point of law, and accordingly I set it aside.
2. On 17 June 1981 I gave leave to the Supplementary Benefit Officer to appeal against the decision of the Supplementary Benefit Appeal Tribunal of 5 March 1981. I now have to consider the appeal itself.
3. The claimant applied for a clothing grant for himself and his wife. The only matter now relevant is his claim for a pair of shoes to replace his existing pair which are split at the sides. The Benefit Officer took the view that the need for replacement had arisen as the result of normal wear and tear and accordingly that an award could not be made under regulation 27(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1980 (S.I. 1980 No 985)
4. The claimant appealed against that decision to the Supplementary Benefit Appeal Tribunal who decided to award £12 towards the cost of a pair of shoes for the claimant. They gave as their reasons for the decision the following:

"The tribunal have decided that appellant has an exceptional need, and that the lack of shoes constitutes a risk to his health. It appeared to the tribunal that a single payment is the only means of preventing the health risk. The tribunal wishes to make it clear to the appellant that needs of this nature must be met from the scale rates in the future".
5. Although the tribunal did not specifically state that the need for replacement shoes had arisen by way of normal wear and tear so as to preclude the application of regulation 27, their resort to regulation 30 shows that they accepted the inapplicability of regulation 27. However, it is not open to the tribunal to redress a claimant's failure under regulation 27 simply by purporting to make an award under regulation 30. That regulation has its own strict conditions, and they must be complied with.

Decision CSB 36/81

6. That regulation, in so far as is material to the present case, reads as follows:-

"Where a claimant is entitled to a pension or allowance and he -

(a) claims a single payment for an exceptional need under any of the regulations in parts II to VII, but fails to satisfy the conditions for that payment; or

(b) .....

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment is 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".

Now, it is quite clear from that regulation that a claimant who cannot satisfy regulation 27 shall not succeed under regulation 30 unless the payment is "the only means by which serious damage or serious risk to the health or safety" of the claimant or any of the members of the assessment unit may be prevented.

7. In the present case the tribunal have failed to reach any findings of fact indicating why the defective shoes constitute a serious health risk. Indeed, the tribunal have not even purported to suggest that the health risk was serious; they have contented themselves by merely asserting that the provision of a single payment was the only means of preventing "the health risk". The regulation specifically refers to serious risk to health, and it was incumbent on the tribunal to have regard to this word (see unreported Decision CSB 2/81 (to be reported as R(SB) 2/81) (paragraph 7))

*not an  
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8. Moreover, even if the tribunal had made a finding of fact that the defective shoes did constitute a serious risk to health calling for a single payment, such a conclusion would, in my judgment, have been perverse, in that there is no evidence to suggest that the claimant's health was seriously endangered by reason of his admittedly defective shoes.

9. For the above reasons I am satisfied that the decision of the tribunal was erroneous in point of law, and accordingly it must be set aside. I allow this appeal and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice  
Commissioner

Date: 14 December 1981

Commissioner's File: C.S.B. 260/1981  
C SBO File: SBO 299/81