

T/RJK

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

26/82

CSB 250/1981

need to be...
arrange...

1. Our decision is that the decision of the supplementary benefit appeal tribunal dated 30 April 1981 is erroneous in point of law. We set it aside and refer the case to another tribunal for determination in accordance with our directions.

Representation: arrangement of decision

2. (1) The claimant in the present appeal was represented by Mrs F Robinson of the Coventry Legal and Income Rights Trust. The benefit officer was represented by Mr D James of the Solicitor's Office, Department of Health and Social Security.

(2) We have been informed that the benefit officer, having taken legal advice, has acquainted the Secretary of State of the approach he proposed to contend for in these appeals and that this approach recommended itself to the Secretary of State who, accordingly, elected not to be represented at the hearing before the Tribunal. The views put forward by Mr James on behalf of the benefit officer accordingly also represent those of the Secretary of State.

(3) The arrangement of paragraphs in this decision is as follows:

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Nature of the appeal

3. This is the first of three appeals each of which involves the same point of law of exceptional difficulty and importance. The reference on Commissioner's file to the other two appeals are CSB/533/1982 and CSB/559/1981. The Chief Commissioner directed that each of these appeals should be heard by the present Tribunal of Commissioners. At the oral hearing, the third appeal (CSB/559/1981) was, with our leave, withdrawn and we say no more about it.

4. It is a pre-requisite for obtaining a single payment of supplementary benefit for an item claimed that there shall be "a need for the item in question": see regulation 3(2)(a) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985], which we shall call the "Single Payments Regulations". (In the case in which the payment would be in respect of the purchase of a particular item, regulation 3(2)(b) imposes additional requirements which do not apply to the present appeal but which apply to the appeal in CSB/533/1982 and are accordingly dealt with in our decision relating to that appeal).

5. (1) Should the question whether there is a need for an item be decided as at the date when the decision is given or at the date when the claim is made?

The importance of the point is that it is not uncommon for a claimant to meet his need (eg by borrowing) after making his claim but before the benefit officer or, in the case of an appeal tribunal, the appeal tribunal, has given a decision on the claim. If the relevant date is that of the decision, no payment can be made, because of the prohibition in regulation 3(2)(a) of the Single Payments Regulations. This can operate harshly against those claimants most in need who may, while waiting for a decision or the outcome of appeal, be compelled to obtain the item in some other way.

(2) The normal well-settled rule is that claims are decided as at the date when the decision of the Court is given or, if there is an appeal, the final decision on appeal, is given: see Quilter v Mapleson [1882] 9 QB 672 (C.A.) and

Ponnamma v Arumogam [1905] A.C. 383. This principle has been applied in supplementary benefit cases, where the question of a single payment has not been in issue: see Commissioner's Decision R(SB) 1/82 which was approved by a Tribunal of Commissioners in R(FIS) 1/82. Should it be applied in cases where a single payment is claimed?

6. The present appeal is against the decision of a supplementary benefit appeal tribunal of 30 April 1981 confirming (by a majority) the decision of a supplementary benefit officer issued on 5 March 1981 refusing a single payment for a gas bill. For the reasons set out in paragraph 12 below, that decision was clearly erroneous in point of law. Since, however, the material facts were not found by the appeal tribunal, it is not possible for us to give the decision which they should have given. This appeal accordingly raises, in an acute form, the question of the date when need for a single payment is to be determined if, as we were informed at the oral hearing was in fact the case, the claimant has paid the gas bill in question. The case must go back to a fresh tribunal. If the relevant date for determining "need" is the date of their decision, we should have to direct them, on finding that the gas bill has already been paid, to dismiss the claimant's appeal. If, on the other hand, the relevant date is that of the claim, the facts, when found, may justify the making of a single payment.

Submissions to the supplementary benefit appeal tribunal

7. According to the written submission of the supplementary benefit officer to the appeal tribunal, the appellant is retired and has the custody of her granddaughter who is aged 15. On 4 March 1981 she claimed help to pay a gas bill of £79.91 that she had received. The reasons for the supplementary benefit officer's decision that a single payment could not be made were said to be that the conditions laid down in the regulations were not satisfied. He stated that following her move to her present accommodation the claimant was advised by her local office on 20 June 1980 that gas bills were likely to be very high. The claimant said she understood that this was the case and said she would buy savings stamps each week. The supplementary benefit officer considered that there were other means by which the fuel debt could be met. The claimant could enter into a voluntary agreement with the Fuel Board, have a prepayment meter fitted or direct payment could be made from her allowance and paid over to the Fuel Board on her behalf. He considered that no serious damage or serious risk to the health or safety of the claimant or her family would arise from the refusal of a single payment for her gas bill.

The supplementary benefit appeal tribunal decision

9. The facts found, decision and reasons for the decision of the tribunal, are set out on form LT 235.

The facts found were:

"The appellant's representative said the appellant had been unable to set aside sufficient money to meet the gas bill. She had approximately £35 set aside."

The majority decision of the tribunal was:

"The decision of the Supplementary Benefit Officer is confirmed."

The tribunal's reasons were:

"The conditions of Regulation 28 of the Supplementary Benefit (Single Payments) Regulations 1980 are not fully satisfied and the Tribunal could find no justification for a payment under Regulation 30.

One member felt that Regulation 28(1)(b) is satisfied in that the appellant was unfamiliar with the cost of running the heating system during the first six months of its use."

Grounds of appeal to the Commissioner

10. In her grounds of appeal against this decision the claimant submits that the decision is wrong in law because the tribunal has not given adequate reasons for its decision but simply stated that the conditions of regulation 28 of the Supplementary Benefit (Single Payments) Regulations 1980 were not fully satisfied and she was unable to see what the exact reason for the decision was. Also, the tribunal had not given any reason for its decision that there was no justification for a payment under regulation 30.

The relevant law

11. (1) Section 3(1) of the Supplementary Benefits Act 1976 (as amended) provides:

"There shall be payable in prescribed cases, to a person who is entitled or would if he satisfied prescribed conditions be entitled to a supplementary pension or allowance, supplementary benefit by way of a single payment of a prescribed amount to meet an exceptional need."

(2) The Single Payments Regulations provide:

"3.- (1) In these regulations 'single payment' means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Parts II to VIII of these regulations apply.

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

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

(b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item.

.....
4. In these regulations 'claimant' means a person who claims a single payment and in respect of the day on which that claim is made either-

(a) he is entitled to a pension or allowance; or

(b) he would be entitled to a pension or allowance if he-

(i) made a claim for it, and

(ii) satisfied the conditions for claiming and payment of that pension or allowance prescribed pursuant to section 14 of the Act ...

.....
28.--(1) A single payment shall be made in respect of a claimant's fuel costs where they are greater than the amount which he has put aside to pay for them because-

(a) ...

(b) he is unfamiliar with the cost of running the heating system in his home because he has recently moved to that home or the system has recently been installed.

(2) The amount payable in a case to which paragraph (1) applies shall be-

(a) in a case to which paragraph (1)(a) applies, ...;

(b) in a case to which paragraph (1)(b) applies, one half of the aggregate amount of the claimant's costs in respect of fuel during the first 6 months of his use of the heating system."

.....
30. [After stating the exceptional needs for which a claim may be made, the regulation provides:]

"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."

[Note: the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] replaced the quoted Single Payments Regulations from 23 November 1981. The quotations set out above are unaltered. Regulation 28 is renumbered 26].

(3) Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605] provides that a supplementary benefit appeal tribunal shall:

"(b) include in every such record [ie of their determination] a statement of the reasons for their determination and of their findings on material questions of fact."

was the decision erroneous in law?

12. The decision of the tribunal was clearly erroneous in law for failure to state adequate reasons for their determination and to find the material facts. Failure adequately to state reasons as required by rule 7(2)(b) of the 1980 Appeals Rules is itself an error of law: see Decision R(SB) 11/82 at paragraph 14. As explained in that Decision and also in Decision R(SB) 5/82 at paragraph 6, the

obligation to give reasons for a decision imports more than a requirement to state the conclusion or that the statutory conditions are not met. In the present case, the claimant had stated that she had moved in May 1980, that she had only used the heating during the past few months, that she was not used to the system and the bill was so high for this reason. According to the benefit officer her claim for help to pay her gas bill of £79.91 was made on 4 March 1981. The tribunal found as a fact that she had set aside £35. If the tribunal accepted that the claimant had indeed moved in May 1980, that she had only used the heating during the past few months, that she was not familiar with the system and that the bill was so high for this reason, and that it amounted to £79.91, why did they decide that the conditions of regulation 28 of the 1980 Single Payments Regulations were not satisfied? The claimant is left guessing as to the reason. If, on the other hand, they did not accept all or any of the above mentioned propositions they should have expressly so found, for these are material facts. Failure to find the material facts is also a breach of the requirements of rule 7(2)(b) and is in itself an error of law. The tribunal ought to have made it clear whether or not they accepted the claimant's written evidence (there was no oral evidence) and, if not, in what respects they rejected it and why.

Is it expedient to give the decision that the tribunal should have given?

13. No. We cannot give the decision that the supplementary benefit appeal tribunal should have given because the material facts have not been found and we have no jurisdiction to conduct a re-hearing and make additional findings as to the facts. Accordingly, the case must be referred to another tribunal, which should be differently constituted, to determine the appeal in accordance with our directions.

Submissions to date upon which "need" has to be shown

14. Mr James pointed out that the normal rule applicable in the High Court was that the relevant claim had, in the case of the court at first instance, to be substantiated as at the date of judgment, and where the matter went to the Court of Appeal, then as at the date when that body actually decided the appeal (Quilter v Mapleson supra, Ponnamma v Arumogam supra. Further, in the case of claims for contributory benefits under the Social Security Act 1975, the position was invariably viewed as at the date when the insurance officer, the local tribunal, or the Commissioner, as the case might be, made their determination. Moreover, this was the normal principle as far as supplementary benefit cases were concerned (R(SB) 1/82; R(FIS) 1/82). However, although, in Mr James's submission, all was clear in the aforementioned cases, the position was quite different where the question of a single payment arose. For, although in the case of claims to contributory benefits and of claims under other provisions of the supplementary benefit legislation, normally the claim was of a continuing nature, nevertheless, where a single payment was sought, the event, on which the claim was founded, was by its very nature finite in character.

15. In Mr James's submission, the relevant statutory provisions, namely section 3(1) of the Supplementary Benefits Act 1976 as amended, and regulations 3(1) and (2) and 4 of the Single Payments Regulations, although they did not specifically state any date as the relevant date for determining when the existence of a "need" was to be established, were not inconsistent with this approach, and regulation 4, which defines a claimant by reference to the day on which the claim is made, did (to some slight extent) support it.

16. Accordingly, on the whole, Mr James submitted that "need" should be determined as at the date of claim. This submission was supported by Mrs Robinson on behalf of the claimant.

Conclusions as to date upon which "need" has to be shown

17. The Act and regulations contain no specific provision that is of any assistance in determining the date when the need for a single payment must be established. Regulation 4 is of no real help. It is not dealing with "need" but with the definition of "claimant". "Need" is considered in regulation 3. Regulation 3(2) is equally consistent with the relevant date being the date of final adjudication. Moreover, if regulation 3(2) is considered in conjunction with section 15(3)(c) of the Supplementary Benefits Act 1976 (to which Mr James also referred us, emphasising the use of the indefinite rather than the definite article before the words "benefit officer"), it is arguable, as a matter of construction, that the better view is that the relevant day for satisfying the criterion of "need" is the date of final adjudication. However, in our view, the statutory provisions are equivocal. It seems probable that the draftsmen of the Single Payments Regulations, and of the Act, never addressed their minds at all to the date at which need is to be determined.

18. In our judgment, the intention of Parliament must be ascertained in this particular case from general considerations relating to the law as to supplementary benefit which, as amended by the Social Security Act 1980 and subsequent regulations, now forms a statutory code of rights, and entrusts the minimum of discretion to the adjudicating authorities. It would therefore be reasonable to suppose that, if a claimant shall have established at the time of claiming a need falling within the relevant regulations, then he shall be entitled to a single payment, and that entitlement shall never thereafter be lost. Thus, if a claimant was unable to establish a need at the date of his claim, and if the benefit officer, who normally deals with such claims within a matter of a few days, (albeit there have been some unfortunate instances brought to our attention where a considerably greater delay was involved) delays giving his decision until after the claimant has already satisfied his need, we consider that the claimant has (assuming that he complied with the other requirements relating to the single payment in question) established a right to the payment and that his subsequent satisfaction of the need does not lead to the loss of this right.

19. If need were to be determined at some later date than that of the claim, the only feasible alternative, in our judgment, would be the date of the final determination of the claim, in accordance with the normal rule referred to at paragraph 5(2) above. But, as already pointed out, the effect of adopting this alternative would be that where a benefit officer wrongly refuses an award, so that the claimant has to appeal to the supplementary benefit appeal tribunal, and is during the intervening period the relevant need is satisfied, then at the hearing before the tribunal the claimant must necessarily fail. The result is that he will have lost his entitlement through a wrong decision on the part of the benefit officer. Exactly the same principle applies, where the tribunal makes a wrong decision, where such decision is ultimately set aside by the Commissioner, and where by the time the matter is heard by a new tribunal (assuming that the Commissioner himself does not give the decision which the tribunal should have given) the claimant has satisfied the need. Once again the claimant will have suffered through an erroneous decision. It would be startling if he were to lose his right to payment through a wrong decision on the part of the benefit officer or the appeal tribunal.

20. Accordingly, on balance we consider (albeit with some hesitation) that Parliament intended that the relevant date for establishing the need was the date of claim. This is the view contended for by the claimant's representative in this case, and also by Mr James himself on behalf of the benefit officer. Such an approach also assists in the smooth administration of the award of single payments, in that the statutory authorities, whenever the matter is considered, are concerned with one moment in time, and one only. In the second appeal (CSB/533/1982), we have concluded that the same moment of time is appropriate when determining whether the requirements of regulation 3(2)(b) (set out in paragraph 11 above) have been satisfied.

21. In Decision R(SB) 23/82 the Commissioner said that where a removal had taken place and been paid for by the date of the benefit officer's decision, there could be no existing need for it in terms of regulation 3(2)(a) of the Single Payments Regulations. That decision should no longer be followed in this respect. This should not preclude the benefit officer, or appeal tribunal, in cases where the satisfaction of a "need" takes place in the normal, very short, interval between the date of claim and that of the benefit officer's decision, from concluding, in appropriate cases, that there never was a need in the first instance, because the claimant had adequate means of satisfying his requirements at the time of claim. That type of case must be distinguished from the case where a claimant is in real need and cannot afford to wait for a decision, even if it is only delayed for a day or two. In all other respects, Decision R(SB) 23/82 is considered to be correct and should continue to be followed.

22. In the present case, the amount of any payment in respect of fuel costs will be limited to one half of the aggregate amount specified in regulation 28(2)(b) of the Single Payments Regulations whether or not some greater or lesser proportion or method of calculation were to be specified in subsequent regulations. In cases where the amount of a single payment is regularly up-rated (as happens in the case of items of clothing) the amount payable will be the (lower) sum payable at the date of claim, not some (higher) sum payable under the law in force at the date of the relevant decision awarding a payment.

Directions to the fresh supplementary benefit appeal tribunal

23. (1) The tribunal should apply the law in force at the date of claim: see paragraph 20 above.

(2) Specific findings should be made, and in this connection it is not enough to record "the appellant's representative said". The tribunal must state what they accept the facts to be, as to the claimant's fuel costs and as to the amount she has put aside to pay for them in terms of regulation 28 of the Single Payments Regulations.

(3) We consider that in the present case the period over which the calculation in (2) is made should be the same 6 months as that in respect of which an award can be made under regulation 28(2)(b) of the Single Payments Regulations.

(4) If, and only if, the fuel costs are greater than the amount set aside to pay for them, then there is power to make a payment under regulation 28 of the Single Payments Regulations. If those costs are equal to, or less than the sum set aside, the claim must be dismissed. The calculation in the present case should be made by totalling the amounts demanded on bills rendered for the first six months of use of the central heating against the amount put aside to meet these amounts.

(5) If it is found that the fuel costs are greater than the amount set aside to pay for them, the tribunal must make findings, and record, the reasons for this. If they conclude that the reason that they are greater is that the claimant incurred them due to unfamiliarity with the cost of running the heating system in her home because she had recently moved, they should state the primary facts on which this conclusion is based. Has the claimant not used a gas central heating system of the kind in question in her previous accommodation? When did she move? When did she first start to use the system?

(6) If the tribunal are satisfied that the claimant has established title to a single payment in terms of regulations 3(2)(a) and 28(1)(b) of the Single Payments Regulations, they will have power to award to the claimant the amount specified in regulation 28(2)(b) namely "one half of the aggregate amount of the claimant's costs in respect of fuel during the first 6 months of [her] use of the heating system". They should take evidence as to when the claimant first started to use the heating system and calculate the first 6 months of its use. They should then work out the aggregate amount of the claimant's costs in respect of that 6 months, indicating in their findings the fuel bills on which this calculation is based and the method of computation. When that aggregate amount of costs has been worked out, the tribunal should deduct from it the amount set aside by the claimant in the same period of 6 months to meet that amount. Their award should be for one half of the aggregate amount of costs minus the amount set aside.

(7) If the tribunal do not make an award of a single payment under regulation 28, they should go on to consider whether an award can be made under regulation 30. In giving reasons for their decision under regulation 30, they could consider Decision R(SB) 9/82 as to the requirements which must be met before this regulation can be applied.

Observations on wording of regulation 28

24. Before parting with this case we call attention to the wording of regulation 28 of the Single Payments Regulations, which is reproduced in regulation 26 of the 1981 Regulations and as so reproduced is still in force.

(1) It is common knowledge that gas bills are normally rendered quarterly and not at 6 monthly intervals. As at present worded, a claimant is entitled under regulation 28 of the Single Payments Regulations (and the substituted regulation now in force) to have a single payment when he is unfamiliar with the cost of running the heating system in his home because he has recently moved to that home or the system has recently been installed. The consequence of that unfamiliarity may be an unexpectedly large first quarterly bill. The claimant will want help with that particular payment, in order to avoid being cut off or incurring other difficulty with the Gas Board. Although qualified under the opening words of regulation 28(1), because his heating costs are greater than the amount which he has put aside to pay for them, he is only entitled to "one half of the aggregate amount of [his] costs in respect of the first 6 months of [his] use of the fuel system". It seems absurd that he should have to wait a further 3 months before he can receive a contribution to the costs. But there seems to be no way out of the express reference to "the first 6 months" specified in regulation 28(2)(b).

(2) Suppose that a claimant can wait for 6 months. His two quarterly bills added together total £200. He has set aside, say, £110 to meet the bills and has not set aside enough because he was unfamiliar with the heating system. On its strict wording, the claimant is entitled to one half of the aggregate of his costs namely £200 divided by 2 = £100, so that he makes a profit of £10, ie he has £110 (set aside) + £100 (from Social Security) to meet his bill. We have taken the view that on its true construction, and read as a whole, the intention of the regulation is that the claimant should only receive one half of the excess of costs over saving, ie $\frac{£200-£110}{2} = £45$, construing "costs" as "net costs" which gives sense and consistency to the regulation. If money set aside were not deducted from the aggregate costs before the division was made a man who had saved, say £199 to meet a bill of £200 would receive a contribution of £100, not 50p. In our judgment, the first of these 2 points could lead to claimants being refused a contribution towards heating bills at the very point when it is most needed, namely when the first bill arrives. It may be considered that the regulation is in urgent need of amendment in this respect. The second point ought also, it may be considered, to be covered by express wording in any amended regulation.

25. Our decision is set out in paragraph 1.

Signed: I O Griffiths
Chief Commissioner

Signed: V G H Hallett
Commissioner

Signed: D G Rice
Commissioner

Date: 15 March 1983

Commissioner's file: CSB/256/1981
C SBO file: SBO 301/81