

CS B 257/1982

IEJ/OG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. (1) This is a claimant's appeal brought by my leave from the decision dated 16 October 1981 of a supplementary benefit appeal tribunal ("the tribunal") upholding a benefit officer's decision dated 26 August 1981 refusing the claimant's application for an award of supplementary benefit by way of single payment to meet the expense of return travel to and from India for the purpose of visiting his sick mother resident there.
 - (2) The appeal achieves a technical success but no practical advantage to the claimant.
 - (3) I set aside the tribunal's decision as erroneous in law in the respects later below indicated and in exercise of my jurisdiction to give the decision which the tribunal should have given I now decide that supplementary benefit is not payable to defray any of the expense of such travel as the claimant claimed for. The legal foundation and reasons for my decision are expressed later below.
2. The relevant facts are not in dispute. The claimant is of British nationality and resides in Great Britain. His mother resides in India. At all material times the claimant was unemployed and in receipt of supplementary allowance and his mother was seriously ill at her home in India. He wished as a matter of filial duty to visit his mother but was without means to finance the travel expense which would be incurred in implementing that wish, and applied for such expense to be met by an award of supplementary benefit in the amount of the return air fare.
3. (1) The benefit officer's decision was expressed as "refusal of a single payment" without specification as to whether founding under the Supplementary Benefit (Single Payments) Regulations or the Supplementary Benefit (Urgent Cases) Regulations, but whilst upon the claimant's appeal to the tribunal the benefit officer's case was put forward with reference only to the former, the claimant referred in his grounds of appeal to refusal of a "single urgent need payment"

and it is clear from the chairman's note of evidence that the claimant specifically requested the tribunal to consider also "the Urgent Cases Regulations" -, and the same note indicates also that they did so "but decided that they could have no bearing on" /the claimant's/ "situation".

- (2) However, the record of the tribunal's decision contains no identifiable findings of fact or reasons for decision referable to any provision of the Urgent Cases Regulations and the benefit officer now concerned very properly concedes that these omissions amount to a failure on the tribunal's part to comply sufficiently with the requirements in that behalf of Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980.
- (3) In the circumstances the claimant had no way of eliciting from the record of the tribunal's decision why his claim so far as advanced in reliance on the Urgent Cases Regulations had been rejected; and I have no alternative but to set aside the tribunal's decision on that ground.

4. I am, however, satisfied that I have sufficient materials before me to warrant exercising my own jurisdiction (under the above mentioned Appeals Rules as amended and now in force) to give the decision which the tribunal should have given. And I proceed in that behalf first to make the findings of fact embodied in para 2 above and next to consider the law in point and give reasons for my decision by reference thereto.

5. In his grounds of appeal as originally submitted the claimant sought the making of a discretionary award in his favour under what he termed the Commissioner's "overriding discretionary powers provided by section 3(1) and section 4 of Supplementary Benefits Act 1976". But whilst as originally enacted those provisions did confer certain general discretionary powers of awarding benefit they are not and were never exercisable by a Commissioner, since they were by the Social Security Act 1980 repealed and replaced by new provisions (with the same numbering) with effect from 24 November 1980 - a date well prior to the making of the claim now in issue and also the first date from which a Commissioner acquired any jurisdiction over supplementary benefits.

And the new provisions so operative confer no general powers of discretionary award of supplementary benefit; and so the claimant cannot succeed in reliance upon this line of approach.

6. The claimant has, however, intimated reliance also upon regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980 and upon regulation 24 of the Supplementary Benefit (Urgent Cases) Regulations, and in relation to the former contends also that the tribunal erred in law in applying regulation 6(1)(d) thereof - which was cited by the tribunal in their grounds of decision in regard to the Single Payments Regulations.

7. (1) Regulation 30 of the Single Payments Regulations materially provides as follows:-

"30. (1) 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) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

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."

- (2) Regulation 2 of the Single Payments Regulations defines "assessment unit" as meaning "the claimant and any partner and dependant of the claimant" and also:

(a) defines "partner" as "one of a married or unmarried couple";

(b) defines "dependant" as:

"a person whose requirements and resources, by virtue of paragraph 3(2) of Schedule 1 to the Act, are or would be aggregated with and treated as those of the claimant"

- (3) Assuming that the claimant can bring himself within sub para (b) of regulation 30(1), and proceeding (as I hold to be appropriate) on the footing that there is no evidence before me which could support a finding of serious risk to the health or safety of the claimant himself, it is readily apparent that - other considerations apart - the claim under regulation 30 can "get off the ground" by reference to the health or safety of the claimant's mother only if she qualifies as a member of the assessment unit by virtue of being a "dependant" of the claimant within the above definition.

But in my judgment she does not so qualify, and that alone is sufficient to defeat the claim under regulation 30.

- (4) The reason why she does not so qualify is that para 3(2) of Schedule 1 to the Act does not provide for aggregation of requirements or resources with those of a claimant of any person who is not a "member of the same household" as the claimant - and the claimant's mother, residing as she did in her own home in India, was clearly not a member of the same household as the claimant.

(5) There is in my judgment no other provision of the Single Payments Regulations of assistance to the claimant in the context of his claim.

8. (1) The Supplementary Benefit (Urgent Cases) Regulations 1980 were brought into effect on 24 November 1980 (in common with the Single Payments Regulations and a number of other **sets** of regulations, the totality comprising with substantial amendment also of the Supplementary Benefits Act 1976 a "new code" of supplementary benefits law). Those have now been amended and then consolidated into 1981 regulations, but regulation 6(1)(f) below referred to is unaltered in numbering or terms.
- (2) The Urgent Cases Regulations are made in reference to section 4 of such Act as amended ("provision for cases of urgent need") and in effect supplement the Single Payments Regulations by authorising in cases of urgent need the making of single payments (which may be repayable) for purposes additional to those provided for in the Single Payments Regulations.
- (3) I will assume, without deciding, that the claimant can satisfy in respect of his claim a general requirement of urgency. However, regulation 3 of the Urgent Cases Regulations restricts award thereunder (with an exception, here immaterial, by reference to the Supplementary Benefit (Trade Disputes and Recovery from Earnings) Regulations 1980) to such urgent cases only as are within the application of Part II, III and IV of the Urgent Cases Regulations, so that unless a case, even of urgency, can be brought within the scope of some provision so contained no award can be made.
- (4) I am satisfied that there is no provision of the Urgent Cases Regulations apart from regulation 24 (on which the claimant relies) **which could assist the claimant upon his claim**. But I am also satisfied that **he** cannot succeed in reliance on regulation 24.

9. (1) Regulation 24 provides as follows:-

"24. Where a claimant either -

- (a) claims an amount of supplementary benefit by way of a single payment or pension or allowance under any of the regulations in Part II or III of these regulations, but fails to satisfy the conditions for that amount; or
- (b) claims to have an urgent need for which no provision is made in Part II or III of these regulations,

there shall be payable to the claimant to meet that urgent need an amount of supplementary benefit by way of a single payment determined in accordance with regulation 4 or, as

the case may be, an amount of pension or allowance determined in accordance with regulation 5 if, in the opinion of a benefit officer, a payment of such amount 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."

- (2) Regulation 2 of the Urgent Cases Regulations defines "assessment unit" "partner" and "dependant", respectively, in identical terms to those under the Single Payments Regulations.
- (3) Accordingly for the same reasons as I have already indicated in para 7 above in regard to regulation 30 of the Single Payments Regulations the claimant's claim under regulation 24 of the Single Payments Regulations must also fail.

10. In deference both to the local tribunal who founded their decision under the Single Payments Regulations upon regulation 6(1) of those regulations, the claimant's contention that they were in error of law in so doing, and the closely reasoned submissions of the benefit officer now concerned in support of the tribunal's reliance on that regulation, I will now deal with an alternative foundation for my decisions above.

11. (1) Both regulation 6(1) of the Single Payments Regulations and regulation 6(1) of the Urgent Cases Regulations contain "exclusion provisions" under which, notwithstanding any (other) provision of such regulations, "no sum shall be paid". Regulation 6(1) of the Single Payments Regulations starts "Notwithstanding any provision in these regulations, in particular regulation 30 - ..." and regulation 6(1) of the Urgent Cases Regulations starts "Notwithstanding any provision in these regulations, in particular regulation 24 - ..."; so there can be no doubt that claims under those two regulations - which are the two on which respectively the claimant has relied - are subject to the operation of the exclusions which then **respectively follow**.
- (2) Both regulations contain an exclusion provision as to needs occurring outside Great Britain -
 - (A) Reg 6(1) of the Single Payments Regulations provides:

"except in so far as regulation 25 (voluntary repatriation expenses) provides otherwise, no single payment shall be made in respect of any need which occurs outside Great Britain"
 - (B) Reg 6(1)(f) of the Urgent Cases Regulations embodies no exception. It provides simply **for no payment "in respect of any need which occurs outside Great Britain"**.

- (3) Bearing in mind the complementary relation of the Urgent Cases Regulations to the Single Payments Regulations (including that of reg 24 of the first to reg 30 of the second) and that they are of the same dates of enactment and of taking effect, it would in my judgment require compelling grounds on which to conclude that "any need which occurs outside Great Britain" fell to be construed differently in the one case from the other.

And I have found no such compelling grounds.

- (4) That is not, however, to say that I have found it easy to elucidate what in the circumstances of such a claim as has been made by the present claimant is the proper construction and application of those words - for where did "the need occur"?

12. (1) It may fairly be said that the circumstances in which the single payment was sought obtained in part in India - the presence there of the claimant's sick mother- and for the rest in Great Britain - the presence here of the claimant, recognising a filial obligation to visit his mother in India, but unable to finance the requisite expenditure himself.

(2) It may fairly be said also that the required expenditure would be laid out upon a return air ticket to be purchased in Great Britain prior to departure.

(3) It may no less fairly be said that the service to be performed as the consideration for such expenditure - the transport of the claimant to India and back- would on both time and mileage basis be performed preponderantly outside Great Britain.

13. (1) The benefit officer's submissions to the local tribunal on this aspect of the case (which were made in reference to the Single Payments Regulations) focussed upon head (3) last above, and dealt both with the elements of travel outside Great Britain as falling within the thrust of regulation 6(1)(d) and with the elements of travel within Great Britain falling outwith regulation 22 as to single payments for travelling expenses to visit sick relatives.

(2) The benefit officer now concerned also relies first on (3) but submits additionally that regulation 25 (as to repatriation expenses) demonstrates that head (2) above must by implication be rejected, and secondly upon the more general argument, to the same conclusion, that if the need must be geographically identified with where the claimant happens to be "any claimant by virtue of his being in Great Britain could qualify for a single payment in respect of a need anywhere" - and argues that this would defeat the manifest intention of regulation 3 of the Conditions of Entitlement Regulations (which require that the claimant be in Great Britain) and render regulation 6(1)(d) "otiose".

14. I do not accept the reasoning advanced in the last mentioned argument - the conclusion does not appear to me to follow from the premise. But the first and second contentions require more detailed consideration - as also a third argument to which I refer in para 17 below. But it is convenient next to consider regulation 25 of the Single Payments Regulations, which is specially mentioned in reg 6(1)(d).

14. (1) It is apparent from the wording of regulation 6(1)(d) that it is contemplated that without the express exception therein provided some component or components of repatriation expenses otherwise provided for in regulation 25 would be excluded by the force of regulation 6(1)(d) because the need in respect of such component/s, properly considered, would occur outside Great Britain;
- (2) regulation 25 provides, under complex and stringent conditions, for a single payment to be made for the expense of repatriation to country of origin or long residence of persons who have come to Great Britain to settle here but have not been able to do so, and cannot defray such expense from any other source;
- (3) the cost of the fare between Great Britain and the country to which repatriation is to be effected is clearly the major component in such cases, but regulation 25(3)(b) also provides for payment (in restricted circumstances) of the expense of travel within Great Britain to the point of departure, "... and, where necessary, the cost of travel from the point of arrival in the new country to the place of residence there".
- (4) As regards that cost - effectively the cost of travelling from the point of arrival in the other country to the place of residence in the other country if other than the point of arrival - one might in the context of regulation 6(1)(d) at large take either one of two alternative views -
- (A) that the need for it arises as part of an entire "package" of travel costs the need for which "occurs" in Great Britain as part and parcel of an entirety comprising a "need for repatriation", or a "need for repatriation expenses" - which "occurs" in Great Britain; or
- (B) that taking the projected journeying stage by stage it will comprise the separate components of:
- (i) initial journey to point of embarkation in Great Britain;
- (ii) main journey to the other country;
- (iii) terminal journey within the other country from the point of arrival to the place of residence, if the latter be elsewhere than the point of arrival.

- (5) Conceptually (B)(i) and (ii) might also be re-structured to comprise:
- (i) journey to point of embarkation plus portion of main journey prior to leaving territorial limit of Great Britain;
 - (ii) balance of main journey.
- (6) If - in either form as between (B)(i) and (ii) - view (B) is taken, it is then a possible view that since in point of time and place (B)(iii) will be required and take place only after B(i) and (ii) have been completed, the "need" for (B)(iii) at least will "occur outside Great Britain".
- (7) By parity of reasoning and logical progression one may then also regard so much of the main journey as will be required for its completion only after the ship or aircraft which is providing the means of transport has left the territorial waters or airspace of Great Britain as a (future) need which will occur "outside Great Britain" and only after the earlier part of the journey has been made.
16. (1) Construction of regulation 6(1)(d) in accordance with view (B) is, I confess, not the construction which first occurred to me as correct - but I consider that when that regulation (including, as it does, specific reference to regulation 25) is read in conjunction with regulation 25 it is the construction I must clearly adopt.
- (2) It would then follow by parity of reasoning that if - as it does not - regulation 25 also provided for the cost of a return journey from the other country back to Great Britain the need for that would "occur outside Great Britain" save for the terminal elements following re-entry into the territorial waters or airspace of Great Britain.
17. Regulation 25 gives no assistance in regard to the final argument of the benefit officer, which is to the effect that because the claimant's sick mother is in India the relevant "need" occurs outside Great Britain. But I reject that argument on the grounds next indicated.
18. (1) To determine what regulation 6(1)(d) conceptually contemplates as a "need" involves, to my mind a close study of regulation 3 of the Single Payments Regulations - headed at the material time "Meaning of single payment, and amount payable" and at the material time materially providing as under, though upon consolidation in 1981 a number of textual changes and alterations of numbering have been made (which, however, do not affect the matters of construction later below dealt with):
- "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.

(3) Except in so far as regulation 5(1) provides that no amount or a reduced amount shall be payable, the amount of a single payment which falls to be made by virtue of any regulation in Parts II to VII of these regulations shall be -

- (a) subject to paragraph (3B), where the amount is specified in that regulation, that amount; or
- (b) where that regulation provides that the payment is to be made in respect of the purchase of an item, such amount as is necessary to purchase an item of reasonable quality; or
- (c) where that regulation provides that the payment is to be made in respect of costs of services provided, the amount of such costs to the extent that they are reasonable.

(3A) Except in so far as regulation 5(2) provides that a reduced amount shall be payable, the amount of a single payment which falls to be made by virtue of regulation 30 shall be -

- (a) where the payment is to be made in respect of the purchase of an item -
 - (i) subject to paragraph (3B), if that item, and an amount for that item, is specified in any regulation in Parts II to VII of these regulations (including the Schedules to these regulations), that amount,
 - (ii) in any other case, such amount as is necessary to purchase an item

of reasonable quality and if provision is made for the purchase of that item in the said Parts II to VII (for example that the amount shall be in respect of the purchase of a second-hand item) that provision shall apply;

- (b) where the payment is to be made in respect of costs of services provided the amount of such costs to the extent that they are reasonable.

(3B) Where pursuant to regulation 9 of the Supplementary Benefit (Deductions and Payments to Third Parties) Regulations 1980 (payment of single payments to third parties) a single payment is payable direct to the person who or the body who supplied the item in respect of which it is made, the amount of the single payment shall, notwithstanding any provision in these regulations, be the amount applicable under paragraph (3)(a) or (3A)(a)(i) or the actual cost of the item in respect of which it is made, whichever is less."

- (2) It is convenient to interpose here that reg 5 referred to in (3) above is not material to the present case or the argument with which I am concerned.
19. (1) As its terms indicate, regulation 3 provides that "single payment" is to mean supplementary benefit by way of a single payment, which will be made "to meet an exceptional need in circumstances to which Parts II to VIII of these regulations apply".
- (2) Parts II to VII then specify under successive needs specific circumstances in which a need for specific goods or services arises which can only be met by incurring expenditure upon their provision. Part VIII comprises only regulation 30, already above referred to.
- (3) Whilst regulations **3(3) and (4) recognise that "item" is a term inappropriate for "services"**, regulation 3(2) does not. However, to give the regulation as a whole its obviously intended effect regulation 3(2) must be construed in a sense which does not lead to the exclusion of any single payments in respect of services.
- (4) Thus in both categories a single payment must be "to meet an exceptional need". But whether "in circumstances to which ..." qualifies the arising of the need or the making of the payment is not specified, nor clearly identifiable by reference to the context of Parts II to VII " - " some of which parts identify specific "needs" and some of which identify specific "circumstances" in which payments will be made.

It appears to me, and I hold, that as a matter of construction by reference to the regulations as a whole the passage in question needs to be and should be read disjunctively so as to embrace single payments:

- (a) in respect of needs identified in Parts II to VII; and also
 - (b) in respect of expenditures so identified as requiring to be made in circumstances also so identified.
- (5) Need for the above clarifications may well appear superfluous at first sight, but becomes of importance in the context of regulation 6.
20. (1) Regulation 6 contains a considerable range of specified goods and services in respect of which a single payment is not to be made - and also specifies certain categories of need in respect of which no single payment is made, and further identifies certain circumstances in which no single payment is to be made. Thus, by way of example, reference is so made to sports clothes, travel expenses to and from school, educational needs, and a second payment in circumstances which have not changed.
- (2) But to my mind the formulation in regulation 3(1) - emphasis here supplied by me - of a single payment "to meet an exceptional need in circumstances to which" provides the key to the true meaning in reg 6(1)(d) of "a need occurring outside Great Britain", despite such lack of felicity in the drafting of reg 3 as I have above identified.
- For it makes it clear, to my mind, that the reg 6(1)(a) reference to a "need" occurring, is not to "circumstances" occurring.
- (3) Thus in correct analysis although the material circumstances **here** included the circumstance that the claimant's mother was in India and ill (as they included also the claimant being her son, his being in Great Britain, his recognizing a filial obligation to visit his mother, and his being without means to defray the expense of visiting her), that particular circumstance does not operate to fix the location of the need.
- (4) That such is the correct construction can be confirmed by reference to reg 8(1)(b) of the Single Payments Regulations, which in prescribed circumstances expressly authorises a single payment for the transport within Great Britain of **the body of a** claimant's close relative who has died abroad. For since reg 6(1) contains no relevant exception, such authority would be nugatory if the need was to be regarded as occurring outside Great Britain because the paramount "circumstance" - the death - had occurred outside Great Britain.

- (5) The same regulation is confirmatory also of the correctness of adopting the "stage by stage" approach to need in respect of travel expenses which in para 16 above I have held to be the correct construction in the context of reg 6(1)(d), by reason of the express exclusion to be found in reg 8(2)(g) of award for the cost of transporting the body from abroad to Great Britain.
- (6) And, for the reason I have indicated in para 11(3) above, I regard the proper construction of reg 6(1)(f) of the Urgent Cases Regulations as the same as that of reg 6(1)(d) of the Single Payments Regulations.

21. It remains for me to add, for completeness, that:

- (i) independently of the fatal obstacles to his claim under both reg 30 of the Single Payments Regulations and reg 24 of the Urgent Cases Regulations arising from the "member of the assessment unit" difficulty, my conclusions under the respective regulations 6(1) would rule out any award in respect of travel outside Great Britain;
- (ii) though there is separate provision under reg 22(1)(a) of the Single Payments Regulations for an award in some cases in respect of travel within Great Britain to visit a close relative who is ill, that provision also cannot at all avail the claimant on the present appeal because it bears only if such relative is a "patient" - which is so defined in reg 2 as to apply only to someone who is an in-patient at a hospital or similar institution - which his mother was not;
- (iii) though there is also provision under reg 9(a) of the Urgent Cases Regulations (in conjunction with para 1(a) of Schedule 2) for an award in respect of certain travelling expenses within Great Britain in the circumstances that:

"a member of the assessment unit is visiting a person who is critically ill and who is a close relative of the member visiting",

I do not consider that the claimant is availed by such provision either.

"Critically ill" in my judgment means "in danger of imminent death from illness"; and whilst I accept that the claimant's mother was "seriously ill", applying the above construction I am not satisfied on the evidence before me that she was "critically ill". All "critical" illness is also "serious illness" - but the reverse is not so.

22. My decision is as indicated in para 1(3) above.

(Signed) I Edwards-Jones

Date: 10 November 1982

Commissioner's File: C.S.B./257/1982
C SBO File 174/82