

MJG/EFM

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. 32/81

1. I allow the appeal of the Supplementary Benefit Officer in this case and set aside the decision of the supplementary benefit appeal tribunal dated 10 March 1981. I refer the case to a differently constituted supplementary benefit appeal tribunal to determine in accordance with this decision: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, [S.I. 1980 No.1605] Rule 10(8).

2. This appeal by the supplementary benefit officer was the subject of an oral hearing before me on 20 October 1981, the oral hearing being at the supplementary benefit officer's request. The officer was represented by Miss Shuker of the Solicitor's Office of the Department of Health and Social Security and Mr Griffiths of the Office of the Chief Supplementary Benefit Officer. I am indebted to Miss Shuker and Mr Griffiths for their assistance to me in the determination of the issues in this appeal. The claimant, although he had stated that he intended to attend the oral hearing, did not in fact attend it.

3. The claimant is a man aged 31, who lives with his wife and 2 children. Unfortunately he suffers ill health and as a result does not work but is in receipt of invalidity benefit of £56.40 per week. That sum, together with child benefit of £8 a week, makes up his weekly income of £64.40 per week which exceeds an assessment of his requirements for supplementary benefit purposes, with the result that he does not qualify for any supplementary allowance. However, on an appeal in late 1980, a supplementary benefit appeal tribunal awarded to the claimant a single payment of £80.05 in order to obtain a single bed and specified bedding and chairs. That decision of the supplementary benefit appeal tribunal has not been the subject of an appeal to the Commissioner.

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4. The claimant received a giro cheque for the said sum of £80.05 on Thursday 22 January 1981 and cashed it on that day at a post office. He intended going shopping on Saturday 24 January 1981 to purchase the items in question, but on the evening of Friday 23 January 1981 his home was broken into by a person who has subsequently, it is understood, been apprehended by the police. Among the items taken was a briefcase containing the said £80.05, part of a larger sum of £250 in the case.

5. By a letter dated 23 January 1981 (sic) the claimant reported the facts to the Department, and in effect claimed a second payment of £80.05. The supplementary benefit officer gave a written decision on 29 January 1981 refusing a single payment of £80.05 to replace the stolen sum. The claimant appealed to the supplementary benefit appeal tribunal who heard the appeal on Tuesday 10 March 1981. The claimant was present and the supplementary benefit officer was represented.

6. The tribunal made the following findings of fact,

"[The claimant] is sick and in receipt of invalidity benefit of £56.40 weekly. A giro for £80.05 was cashed by [the claimant] on 22 January to purchase a single bed and bedding and 2 chairs. The cash was stolen and the person responsible is in police custody at the moment".

No further findings of fact were made by the tribunal, nor have any notes of evidence by the Chairman been supplied. The tribunal gave as their decision (it is not stated whether it was unanimous or by a majority, but I assume it was unanimous)

"A single bed and bedding and 2 dining chairs to be supplied. Payment should be made direct to the suppliers",

giving as their reasons for decision,

"the need for these items still exists, and there is no readily available capital from which the need can be met. It would be appreciated if [the claimant] would advise the local office of the outcome of the police investigations regarding the robbery".

7. Those reasons for decision are inadequate, in that they do not deal with the written submissions made to the tribunal by the supplementary benefit officer. Rule 7(2) of the above cited Appeals Rules states as follows,

"7(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) if a determination is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting".

8. In Commissioner's decision C SB 6/81 (to be reported as R(SB) 5/81) (paragraph 7) the learned Commissioner stated,

"In my judgment, it is not necessary for a tribunal to record laboriously all the statutory provisions which they considered in eliminating them from affecting their determination of the appeal. A form is provided, LT235, on which to record their proceedings which gives a ready indication of what is required. They are not expected or required to record their reasons and findings in the detail or style of a reasoned judgment such as might be expected of a court. The statement of facts, relevant provisions of Acts and Regulations and reasons for the benefit officer's decision, draws their attention to relevant material for consideration It is to be assumed that a tribunal are familiar with the statutory provisions with which they have to deal unless the record of their proceedings indicates that they misunderstood or misapplied them".

9. The learned Commissioner added, (paragraph 10), speaking of the tribunal's decision in that case,

"It is clear what they found, what they meant and what they intended. Their findings and reasons are concise and clear even although they did not record fully chapter and verse for their conclusions, which I do not regard as necessary in order to comply with the regulation [ie Rule 7(2) cited above]. It is not possible to lay down a general rule for recording findings and reasons since that depends on the nature of the evidence and of the case before them. I have already stated that a tribunal are not expected to record a reasoned judgment such as might be expected of a court. So long as their findings of fact relevant to their decision are clear as also their reasons for leading them to their conclusion, that is compliance with the regulation. Findings and reasons need not be lengthy: indeed brevity clearly indicating them is often to be preferred to a lengthy and possibly ambiguous record".

10. I accept as a correct statement of the law on the subject the above quotations from the decision of the learned Commissioner in CSB 6/81 (to be reported as R(SB) 5/81), but in my view the essence of the matter lies in the statement "It is not possible to lay down a general rule for recording findings and reasons since that depends on the nature of the evidence and of the case before them". The learned Commissioner was dealing with an appeal which arose solely under the Supplementary Benefit (Single Payments) Regulations 1980 and the findings of fact and reasons given by the tribunal in that case clearly pointed to the fact that the tribunal had in mind the relevant provisions of those regulations, and had made adequate findings of fact to justify their application or non-application. Consequently the mere fact that each regulation was not cited individually by the tribunal in its decision did not matter.

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11. In this case, however, there is a more complicated problem involving not merely factual issues but also legal technicalities. There is the inter-relationship of two different sets of regulations, namely the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No.985], and the Supplementary Benefit (Urgent Cases) Regulations 1980 [S.I. 1980 No.1642]. I deal with the detailed provisions of those regulations below, but it is clear to me that the reasons for decision of the tribunal in this case were inadequate because they do not indicate under which set of regulations, let alone which particular regulation, the payment was ordered to be made. In Crake and Butterworth, v Supplementary Benefits Commission (High Court, 22 July 1980 - unreported), Woolf J said, speaking of supplementary benefit appeal tribunals,

"In some cases the absence of any reasons would indicate that the tribunal had never properly considered the matter, and it must be part of the obligation in law to consider the matter properly that the proper thought processes have been gone through".

12. With respect to the tribunal in this case, I consider that that statement applies here because it appears to me that the reasoning of the tribunal was simply that as the claimant had received a single payment under an earlier tribunal's decision for bed and bedding etc, he should be entitled to another single payment as the money had been stolen. However, the issue is not as simple as that, as the submission of the supplementary benefit officer to the tribunal showed and as I indicate in this decision. A failure to give adequate reasons, certainly in the sort of situation which has occurred here, constitutes an error of law and consequently I would have allowed the appeal on that ground alone. There are, however, in my view, other errors of law apparent in the tribunal's decision. I have already indicated that the tribunal's decision does not show whether the payment was ordered under the Supplementary Benefit (Single Payments) Regulations 1980 or under the Supplementary Benefit (Urgent Cases) Regulations 1980. I will therefore, deal separately with the possibilities under each set of regulations.

13. Single payments can be made under the Single Payments Regulations 1980 for certain specified purposes eg (under regulation 9) for essential furniture and household equipment. However, under the Single Payments Regulations, payment can be made only, under the terms of those regulations, to a "claimant". Regulation 4 states,

"Meaning of claimant"

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".

14. In turn, the words "pension or allowance" used in regulation 4 are defined by regulation 2(1) as follows,

"'Allowance' means a supplementary allowance under Section 1(1)(b) of the Act [i.e. Supplementary Benefits Act 1976]

'Pension' means a supplementary pension under Section 1(1)(a) of the Act".

As a result of those provisions, the Single Payments Regulations apply only to a claimant who is or would be entitled to a supplementary pension or allowance on a weekly basis, after his resources and requirements have been assessed in the manner provided by Sections 1 and 2 and Schedule 1 of the Supplementary Benefits Act 1976. The point is also made by Section 3(1) of the 1976 Act which provides,

"3(1) 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".

15. The claimant in this case was not, at the time the supplementary benefit appeal tribunal gave its decision on 10 March 1981, a "claimant" within the meaning of regulation 4 of the Single Payments Regulations, because his weekly income of £64.40 per week, exceeded his supplementary benefit assessment of requirements of £44.68. As a result he was not entitled to supplementary allowance. He would not of course be entitled to supplementary pension as he was not of pensionable age. He could not, therefore, be a "claimant" within the meaning of regulation 4 of the Single Payments Regulations. As a result, none of the Single Payments Regulations applied to him. This is another example of a matter noted in Commissioner's decision C SB 16/81, namely that supplementary benefit appeal tribunals should not overlook, when dealing with applications for single payments, the fact that the application must not only come within the specific categories set out in Parts II to VIII of the Single Payments Regulations, but also the circumstances must come within the general conditions set out in Part I of those Regulations.

16. As a result of my decision that the Single Payments Regulations did not apply to this claimant at all, I do not have to give a ruling on the alternative submission made to me by the supplementary benefit officer now concerned, namely that if the Single Payments Regulations did apply, then the claimant in this case would be precluded from obtaining a single payment to replace the £80.05 awarded to him by the earlier tribunal because of the provision of regulation 6(1)(a) of the Single Payments Regulations that "No single payment shall be made if a single payment has already been made in respect of the

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circumstances in question and those circumstances have not changed". I therefore express no opinion on whether that would preclude a second single payment where the first single payment had been lost or stolen. I would regard that as an open question which must await decision in a future case.

17. An alternative possibility in this case is that the tribunal in its decision of 10 March 1981, instead of applying the Single Payments Regulations, purported to apply the Supplementary Benefit (Urgent Cases) Regulations 1980. Those regulations are made under Section 4 of the Supplementary Benefits Act 1976. Section 4(1) provides as follows,

"4(1) In urgent cases supplementary benefit shall be payable in accordance with this Act as modified by virtue of this section; and regulations may -

(a) prescribe the cases which are urgent cases for the purposes of this section;

(b) provide that in relation to such cases any of the provisions of Sections 3, 5 to 8 and 10 of this Act and Schedule 1 to this Act shall have effect with prescribed modifications".

18. The consequent modifications to the system of financial assessment of a claimant, made by regulations 3 and 4 of the Urgent Cases Regulations in effect mean that in this case the claimant would potentially be able to make a claim for a payment under the Urgent Cases Regulations if his financial position at the date of the claim was such that he had insufficient money to purchase an item covered by those Regulations. That would involve a finding (under Regulation 3(1)) that "the item in question, or funds for that item or funds to meet the expenses in question, are not readily available to the assessment unit from any other source (for example, friends, relatives, credit facilities, a voluntary organisation) and in particular from any available income and available capital ...". Moreover, to the extent that the claimant has any available capital or any available income, a single payment under Regulation 4 can be made only "to the extent that its amount, or where more than one payment falls to be made on one day their aggregate amount, exceeds the amount of that available capital or income" (Regulation 4(1)(c)). The new supplementary benefit appeal tribunal to which I have remitted this case will of course have to consider those financial matters if it concludes that the claimant can be regarded as having made a claim under the Urgent Cases Regulations though whether he is entitled to succeed is very doubtful (see below).

19. At first sight it might appear that regulation 10 of the Urgent Cases Regulations could cover the claim in this case. Regulation 10 provides as follows,

"Loss of money

10(1) Where a sum of money other than a sum to which paragraph (2) applies is lost, including any sum stolen or destroyed, but

excluding any sum the loss of which is foreseeable, there shall be payable to the claimant an amount of pension or allowance determined in accordance with regulation 5, except that in aggregate the amount paid under this regulation shall not exceed the amount of that sum.

(2) This regulation shall not apply to any instrument of payment on account of benefit under the Act ...".

20. However, there would be no power to make a single payment to the claimant under regulation 10 for 2 reasons. The first is that regulation 10(1) refers to "an amount of pension or allowance" and does not contemplate the making of a single payment. Secondly, regulation 10 occurs in part III of the Regulations headed "Other urgent cases". All cases in Part III are governed by regulation 9. Regulation 9(b) is relevant and provides as follows,

"9 Where -

(a)

(b) a claimant to whom any other regulation in this Part of these regulations applies is in need of living expenses in circumstances to which that regulation applies, there shall be payable to him in respect of those living expenses an amount of pension or allowance as specified in that regulation:

provided that, if that claimant has had the same or a similar need in similar circumstances, it is reasonable for that need to be met".

However, in this case, the claimant appears to have had sufficient income to meet his "living expenses" (see paragraph 24 below) and as a result of the application of regulation 9 to regulation 10, no payment could be made under regulation 10.

21. The only other Urgent Cases regulation which might be applicable is regulation 24 relating to "Discretionary Amounts". That reads,

"24 Where a claimant to whom Regulation 8(1) or 9 applies -

(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

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with Regulation 5 if, in the opinion of a benefit officer, a payment of such an 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."

22. A problem occurs in connection with the introductory words of regulation 24, "Where a claimant to whom regulation 8(1) or 9 applies ...". That problem will not arise with regard to claims made on or after 27 July 1981 because the words "to whom regulation 8(1) or 9 applies ..." have been deleted by regulation 9(17) of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981. However, the unamended regulation 24 applies to this case because the claim was made before 27 July 1981. Consequently, in my judgment, the words, "Where a claimant to whom regulation 8(1) or 9 applies ..." debar the claimant in this case from a claim under regulation 24. That is because those words appear to mean that discretionary payments under regulation 24 can be made only to those claimants who can show either (i) that they are a member of an assessment unit affected by a disaster (regulation 8(1)) or (ii) are in need of an item in the varying circumstances to which Schedule 2 of the regulations applies eg certain kinds of urgent travel (regulation 9(a) and Schedule 2) or (iii) are in need of living expenses (regulation 9(b)). The effect of the opening words in the unamended regulation 24 would appear to be that only if a claimant can show that he is within one of those 3 categories can an Urgent Need payment be made to him. The present claimant cannot show that he was within any of those categories. The most likely one would be regulation 9(b), i.e. being in need of "living expenses" but I have already indicated that that presumably would not have been so.

23. When I raised this point at the hearing Miss Shuker argued that, because of the wording of regulation 24(b), "... claims to have an urgent need for which no provision is made in Part II or III of these regulations", a claimant could claim an Urgent Need payment under that regulation, even though he could not bring himself within the terms of regulation 8(1) or 9. That cannot, however, be so because that would contradict the express opening words of the unamended regulation 24. Nor, on reconsideration, can I accept Miss Shuker's argument that the opening words of regulation 24 contain an obvious error in that they should refer only to regulation 9(a) and not to regulation 9 as a whole, because of the reference in regulation 24(a) to a single payment. It does not seem to me to be legitimate to construe regulation 24 in that way. It might be permissible for me to construe the regulation in that way if there were an obvious absurdity if it were read literally but that does not seem to me to be the case here.

24. The result of my interpretation of the law applicable to this case is that unless the claimant can show that, within the meaning of regulation 9(b) of the Urgent Cases Regulations, he was at the time of the claim in need of "living expenses", he cannot bring himself within the Urgent Cases regulations. Some light on what are "living expenses" is cast by regulation 4(1) of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No.1299]. Regulation 4(1) provides,

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"The category of normal requirements shall relate to all items of normal expenditure on day-to-day living, other than items within Part IV of these regulations, including in particular food, household fuel, the purchase, cleaning, repair and replacement of clothing and footwear, normal travel costs, weekly laundry costs, miscellaneous household expenses such as toilet articles, cleaning materials, window-cleaning and the replacement of small household goods (for example crockery, cutlery, cooking utensils, light bulbs) and leisure and amenity items such as television licence and rental, newspapers, confectionery and tobacco". [Part IV of the regulations refers to housing requirements].

I have already indicated (in paragraph 20 above) that the claimant did not at the time he made his claim for a second £80.05 appear to have had need of such "living expenses" but the new tribunal that rehears this appeal may wish to consider this further.

(Signed) M J Goodman
Commissioner

Date: 23 November 1981

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