

CSB 270/1981

JM/BP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

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Add at end of decision i.e. after paragraph 10.

NOTE: The quotations in this decision reflect the Single Payments Regulations 1980 as they stood at the date of the appeal tribunal hearing (i.e. 10 March 1981). Regulation 9(2)(a) was amended with effect from 27 July 1981. Paragraph 7 of the decision has no application either to regulation 9(2)(a) as so amended or to its successor, regulation 10(1)(a)(i) of the Single Payments Regulations 1981.

P M HALL
Secretary

Date: 12.11.82

Commissioner's File: CSB/270/1981
CSBO File: SBO 336/81

JM/BP

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:

Decision CSB 27/81

1. This is a supplementary benefit officer's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal ("the tribunal") dated 10 March 1981 which reversed (or varied) a decision of the supplementary benefit officer issued on 15 January 1981.

2. The claimant is a single man who until January of 1981 lived with his parents. He moved from their home upon being granted, with effect from 19 January 1981, a tenancy of local authority property. He had been on the housing list since September 1979. At the material time his last employment had been for 5 years, terminating in August 1980. Since then he had been in receipt of unemployment benefit. With effect from 18 January 1981 his unemployment benefit was topped up by a small supplementary allowance.

3. On 15 January 1981 the claimant claimed single payments in respect of a cooker, a refrigerator, a bed, bedding, a table and chairs. Pursuant to regulation 9(3)(a)(i) and (b)(ii) of the Supplementary Benefit (Single Payments) Regulations 1980 /S.I. 1980 No. 985/, as amended, he was awarded a payment in respect of a cooker. The remainder of his claim was disallowed by the benefit officer.

4. The claimant then appealed to the tribunal. Although the matter is not entirely clear to me, the papers strongly suggest that his appeal was confined to the disallowance of his claim in respect of a bed, bedding, a table, a dining chair and an easy chair. The refrigerator appears to have dropped out of the picture. If this be so, I am in no way surprised. Regulation 9(4)(k) of the Single Payments Regulations restricts awards in respect of refrigerators to cases involving special medical reasons.

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5. The claimant attended before and gave evidence to the tribunal. He told the tribunal that his father had had a stroke; that he himself had bronchitis; and that the family relationship had broken down. The chairman recorded the following in the findings of material facts:

"It was necessary for him to leave his parent's house due to his own health (bronchitis) and the domestic situation."

A majority of the tribunal decided that the claimant should be awarded £150.00 so that he might purchase a new single bed and bedding, a second hand dining table, a dining chair and an easy chair. (It is not clear to me whether the chairs were to be new or second hand.)

6. The majority founded upon regulations 9(2)(a) and 13(1)(c) of the Single Payments Regulations. I set these out, after setting out regulation 9(1) so as to make regulation 9(2)(a) intelligible:

"9(1) Where a claimant has recently become the tenant or owner of an unfurnished or partly furnished home, a single payment shall be made for the purchase of any item of furniture and equipment to which paragraph (4) applies which either -

- (a) he does not possess; or
- (b) he does possess, but which is defective or unsafe and the cost of repair to which regulation 10 would otherwise apply would exceed the cost of the replacement,

and one or more of the conditions in paragraph (2) is satisfied.

(2) The conditions mentioned in paragraph (1) are:-

- (a) the claimant is entitled to a single payment under regulation 13 (removal expenses);
- (b) etc."

"13(1) A single payment shall be made, other than to a claimant to whom paragraph (2) applies it does not apply to this claimant, in respect of the cost of the removal within Great Britain of the assessment unit's household goods and personal effects where -

- (a)
- (b)
- (c) the change of home is in consequence of the death of, or divorce from, the claimant's partner or any other breakdown of the marriage or relationship;
- (d) etc."

7. In my view the majority of the tribunal fell into two errors of law in applying these provisions to the claimant. In the first place, "is entitled", where it appears in regulation 9(2)(a), has been interpreted as if that phrase read "would be entitled". That the draftsman draws a clear distinction between these two phrases is manifest from regulation 4, which reads as follows:

"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."

A claimant cannot be "entitled" to a single payment under regulation 13 (or under any other regulation for that matter) until such a payment has been claimed and awarded.

8. The second error of law into which the majority of the tribunal fell was their misconstruction of regulation 13(1)(c) itself. The sub-paragraph's effect is confined to the relationship between "partners". In regulation 2(1) "partner" is defined as "one of a married or unmarried couple". "Married couple" is defined, in section 34(1) of the Supplementary Benefits Act 1976, as "a man and a woman who are married to each other and are members of the same household". "Unmarried couple" is defined as "a man and a woman who are not married to each other but are living together as husband and wife otherwise than in prescribed circumstances". The claimant in this case was not a "partner" and had no "partner". The phrase (in regulation 13(1)(c)) "marriage or relationship" is quite clearly directed, and confined, to the marriage or relationship between "partners". "Relationship" cannot legitimately be expanded to include the relationship between a son and his parents.

9. The chairman dissented from the majority view. He is recorded as having felt that regulation 3(2)(b) applied "in that the appellant failed to avail himself of the items when in full time employment". I am not sure that I wholly understand this. Regulation 3(2) provides as follows:

- "3(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

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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 item."

To avail oneself of something means, in ordinary English, to make use or to take advantage of that thing. It presupposes that the thing is already in existence - and to hand. The chairman has, I suspect, treated "to avail itself of" as if it read "to furnish itself with". I think that his reasoning must have been that the claimant should have made better provision for himself whilst he was earning his wages as an employed earner. There is certainly a pragmatic attraction about this robust approach. I fear, however, that it cannot be supported by the legislation as enacted. Were it to prevail, improvidence would always operate as a bar to the subsequent receipt of supplementary benefit.

10. My decision, accordingly, is as follows:

- (1) The tribunal's decision dated 10 March 1981 is erroneous in law and is set aside.
- (2) The case is remitted to a differently constituted tribunal for rehearing and determination in the light of the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 2 November 1981

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