

MJG/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:

Original Decision Case No:

Decision C.S.B. 29/81

1. I hold that the decision of the supplementary benefit appeal tribunal dated 19 March 1981 was not erroneous in point of law: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, S.I. 1980 No. 1605 rule 10. The appeal of the supplementary benefit officer is therefore dismissed.

2. In this case the supplementary benefit officer appeals from a decision of a supplementary benefit appeal tribunal dated 19 March 1981 which, by a majority, had held that a single payment of £51.50 was payable to the claimant for a raincoat, dress and shoes.

3. The claimant is a single woman living with her infant child, whom she has to look after. In her claim for a single payment, dated 12 December 1980, the claimant stated,

"I need a 'coat' for myself the one I've got all the liner is gone I took it to the cleaners to be relined and it cost £12.00 I also need some new clothes skirts, dresses, shoes. I do need some new clothes, I have been going for a lot of interviews for quite some time now and for the few clothes that I got is just not up to interview standard. And I have also got a few interviews in January and I would really like to start the new year looking decent at interviews. My first interview in January will be at Prison (prison officer)".

4. The claimant appealed to the supplementary benefit appeal tribunal against a decision by the supplementary benefit officer refusing a single payment and in her grounds for appeal she stated,

"I believe that I am entitled to a payment under regulation 27 because the need for new clothing and shoes has arisen other than by normal wear and tear".

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(For regulation 27 of the Single Payments Regulations see paragraph 17 below).

5. At the hearing before the supplementary benefit appeal tribunal on 19 March 1981, the claimant was present and was represented by a social worker. The Chairman's note of evidence reads "Her own need is due to going for job interviews and need to look smart". The tribunal made the following relevant finding of fact "The claimant is trying to find clerical work and has had about three interviews weekly and is borrowing clothes from her sister to wear for these".

6. The tribunal by a majority decided that a single payment of £51.50 should be made to the claimant for a raincoat, dress and shoes and gave as their reasons for decision,

"The tribunal considered that the appellant is entitled to a payment under regulation 27 of the Single Payments Regulations because her need has arisen through her trying to find clerical work where she needs to look presentable, and not from normal wear and tear

The minority view was that the payment is not covered by either regulation 27 or 30 as there was no written evidence that the appellant had been seeking clerical work and also because she said she had managed by borrowing from her sister".

7. The supplementary benefit officer now concerned, in support of his appeal to the Commissioner, has made the following written submission (paragraph 4),

"I submit that the Tribunal's decision was erroneous in point of law for the following reasons:-

- 4.1 The Tribunal erred in law in that they failed to establish from the facts that a need existed in accordance with Regulation 3;
- 4.2 If it is accepted that the Tribunal did establish that such a need existed then the Tribunal erred in that, on the facts as accepted by them, it was shown that at the hearing there was a suitable alternative item available to the claimant thereby taking her out of the realms of Regulation 3(2);
- 4.3 Alternatively, if it is accepted that the Tribunal were satisfied, on the facts, that Regulation 3's conditions had been complied with, then the tribunal erred in law in applying Regulation 27 because the need must have arisen through normal wear and tear".

Succeeding paragraphs of the officer's written submission amplify those arguments.

8. In dealing with an appeal of this type to the Commissioner, it should be borne in mind that the wording of the Regulations (referred to below) is sufficiently wide to confer a degree of discretion on supplementary benefit officers and on appeal tribunals. Consequently if the appeal tribunal reached a decision in a proper exercise of discretion, i.e. a conclusion which should be reasonably reached on the wording of the Regulations, then the Commissioner is not entitled to substitute his own discretion for that of the appeal tribunal. For the Commissioner to interfere with a decision of an appeal tribunal, he must be satisfied that that tribunal erred in law. There is no appeal to a Commissioner on a question of fact (1980 Appeals Rules, rule 8(1)).

9. In reported Commissioner's decision R(I)14/75 (dealing with appeals to the Commissioner on a question of law from a medical appeal tribunal) the learned Commissioner referred to the tests to decide whether there has been an error in point of law by the medical appeal tribunal, the tests (which are set out below) being based on the principles stated in Global Plant Limited v Secretary of State for Social Services [1972] 1QB 139. There will be an error of law by a tribunal if, in the present context,

"The decision contains a false proposition of law ex-facie;

or

it is supported by no evidence;

or

the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question".

[Headnote to R(I) 14/75].

10. In my judgment, those tests apply as much to the decision of a supplementary benefit appeal tribunal as they apply to the decision of a medical appeal tribunal, though it should of course be borne in mind that the medical appeal tribunal is dealing with medical matters which are, of course, within their sole jurisdiction and with which a Commissioner cannot concern himself. In contrast, a supplementary benefit appeal tribunal is dealing with matters which by their very nature are likely to involve questions of law and therefore the scope for the exercise of the Commissioners' jurisdiction is likely to be greater than it would be in the case of an appeal on a question of law from the medical appeal tribunal. Nevertheless, the same tests do apply and I must apply them here.

11. I now, therefore, proceed to consider the submissions made by the supplementary benefit officer on the appeal. I take first the submission that "The tribunal erred in law in that they failed to establish from the facts that a need existed in accordance with Regulation 3". That is a reference to regulation 3(1) of the Supplementary Benefit (Single Payments) Regulations, 1980 [S.I. 1980, No. 985] which provides as follows:-

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- "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".

12. Neither the Supplementary Benefits Act 1976 nor the Single Payments Regulations nor any other regulations contain a definition of what is meant by "exceptional need". However, in the case of Supplementary Benefit Commission v Clewer (High Court 17 May 1979, reported in "Decisions of the Courts relating to Supplementary Benefits" at page 153), the learned Judge said,

"There is no precise definition of the word 'need' but plainly 'exceptional need' must be a need which must be met to avoid hardship, which must involve consideration of the particular circumstances of the applicant. I take the view that the Tribunal were entitled to exercise their discretion in reaching their conclusion as to whether this was an essential need so as to avoid hardship, and in order to succeed the Commission would have to satisfy me that the Tribunal exercised its discretion on a wholly wrong basis"

13. I hold that that is still a correct statement of the law, even in the light of the fact that, since that decision was given, Regulations have been made which specify much more precisely in some contexts what needs can qualify under the head of single payments. I consider that the phrase "exceptional need" is one which confers a comparatively wide discretion on a tribunal. I must therefore be satisfied that the tribunal in this case "exercised its discretion on a wholly wrong basis" or to put the matter in the way that it was stated in the Global Plant case (see paragraph 9 above) that "the facts found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question".

14. I am not satisfied that in this case it is shown that the tribunal made any error of law in either of the above senses. It could very well be a hardship to a claimant if his or her job prospects, in the present difficult employment situation, were impaired by the fact that he or she could not appear in presentable clothing at interviews for such responsible jobs as those of clerk or prison officer. It is of course common knowledge that one's personal appearance at a job interview is all important. That is not to say that I in any sense hold as a matter of law that on every occasion when a claimant says that he or she needs

clothing to go for a job interview that would constitute an "exceptional need". Each case must be judged on its own facts and I merely hold that in this case the supplementary benefit tribunal who had the advantage of seeing the claimant, hearing her evidence and presumably of hearing representations on her behalf by a social worker, did not err in the exercise of their discretion in holding that there was proved an "exceptional need" within the meaning of regulation 3. I am also satisfied from perusal of the record of the proceedings before the local tribunal that they were aware of the need to find an "exceptional need" within regulation 3 despite the fact that they did not in terms refer in their decision to regulation 3, though they ought of course to have done so.

15. The second submission of the supplementary benefit officer (cited in paragraph 7 above) is that the evidence given at the hearing by the claimant that she had borrowed clothing from her sister to wear at job interviews showed within the meaning of regulation 3(2) of the Single Payments Regulations that there was available to the claimant "a suitable alternative item" (regulation 3(2)(b) - cited in paragraph 11 above). I note that the supplementary benefit officer does not allege, to quote another part of regulation 3(2)(b), that the claimant did "already possess that item". I consider that that is correct because I do not consider that if a person temporarily borrows clothes that he or she "possesses" those clothes. Though possession is not the same as ownership, nevertheless the word "possess" in regulation 3(2) does, in my view, mean something more than having a transitory right to wear clothes conferred by a temporary loan from some other person. Consequently, rightly in my view, the supplementary benefit officer has placed reliance only on the words "suitable alternative item".

16. So far as that is concerned I do not consider that it can normally be said that borrowed clothes are "a suitable alternative item" for a man or woman wanting to attend job interviews for responsible jobs. They can amount only to an unsatisfactory expedient and are not in my view "a suitable alternative item". The situation is not the same in my view as in Commissioner's unreported decision C.S.B. 9/81 (now to be reported as R(SB) 8/81) where it was held that there was no 'need' for an item when the claimant had at the time of claim already purchased the item (a new pump for a central heating system) by borrowing the money from another person to purchase it.

17. The point I have made above as to discretion occurs again under the third of the supplementary benefit officer's grounds of appeal. That refers to regulation 27 of the Single Payments Regulations which provides as follows:

"27 (1) A payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing and -

(a) that need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -

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(i) and (ii) √a number of instances are listed which do not cover the situation in this case and do not in my view cast any particular light on the construction of the expression "otherwise than by normal wear and tear" in relation to this case/

but not where the need has arisen in the normal course of events (for example where an item of clothing or footwear is outgrown); or

(b)

18. In support of this particular ground of appeal, the supplementary benefit officer, in paragraph 7 of the written submission dated 17 June 1981, states,

"7. Alternatively, if it is accepted that regulation 3 has been satisfied, then I submit that the Tribunal erred in law in applying Regulation 27 which specifically refers to the need having arisen otherwise than through normal wear and tear. The single payment was made in respect of a raincoat, shoes and a dress all of which the claimant must have possessed at some stage and due to the absence of evidence to show that the need had arisen other than in the course of normal wear and tear this regulation has been wrongly applied. Further, no evidence was submitted by the claimant to suggest that her existing clothing was not suitable. Finally, the need to look presentable for job interviews cannot in itself be considered to be a need which has arisen for any other reason than through normal wear and tear".

19. So far as the last sentence of that paragraph is concerned I do not consider that in law it is wrong to construe the expression "otherwise than through normal wear and tear" in the way that the tribunal construed it. This does not mean that I necessarily agree with the exercise of their discretion but I consider that a reasonable tribunal, properly instructed as to the law and facts, could have reached the conclusion that the need to look presentable for job interviews was a need that arose "otherwise than by normal wear and tear", particularly having regard to the type of job that the claimant was applying for. Moreover in my judgment, there was evidence before the local tribunal on which they could properly reach this conclusion. The claimant appeared before them. In her initial claim for a single payment she had made complaints about the existing state of her clothing. In my view, this was pre-eminently a matter for the good sense and judgment of the members of a tribunal, who are of course skilled and used to dealing with this type of problem. I cannot therefore hold in accordance with the principles which I have outlined above that the decision of the tribunal was either supported by no evidence or that the facts that they found were such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question (the test expounded in the Global Plant case - see above). Consequently, I do not consider that the tribunal erred in law in this respect either.

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20. In view of my above findings, there is no need for me to consider the further matter which does not really appear to have been in issue before the tribunal, namely whether the claimant, if she failed in a claim under regulation 27, could establish a claim to a single payment under regulation 30 of the Single Payments Regulations which refers to a payment being made where it 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". I express no opinion on that particular matter here. It was not the subject of evidence before the tribunal or of adjudication by the tribunal.

21. I note that the payment awarded to the claimant by the tribunal of £51.50 has been suspended pending my decision. As my decision is that the tribunal did not err in law, no doubt the Department will now ensure that the payment of £51.50 awarded under the tribunal's decision is made to the claimant.

(Signed) M J Goodman
Commissioner

Date: 17 November 1981

Commissioner's File: C.S.B. 278/1981
CSBO File: S.B.O. 329/81