

VGHH/GJH

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 CSB 20/81

1. This appeal by the supplementary benefit officer succeeds. My decision is that the decision of the supplementary benefit appeal tribunal given on 10 February 1981 is erroneous in point of law and I set it aside.
2. On 20 May 1981 I gave leave to the supplementary benefit officer to appeal against the said decision. The supplementary benefit officer asked for an oral hearing of the actual appeal and I granted this request. At that hearing the benefit officer was represented by Miss L Shuker of the solicitor's office of the Department of Health and Social Security. The claimant did not appear.
3. This case is concerned with a claim for a single payment in respect of tools for a 26 week brick laying course with The Brick Development Association Training Services Limited.
4. On 14 January 1981 the supplementary benefit officer refused the claim on the ground that regulation 6(2) of the Supplementary Benefit (Single Payments) Regulations 1980 [SI 1980 No 985] (which I shall refer to as "the 1980 Single Payments Regulations") provides that single payments shall not be made for an educational or training need.
5. On appeal against this decision, the supplementary benefit appeal tribunal, before whom the claimant appeared, found that the said Association required the claimant to have the tools in question by the third week of the course. They held that the course was similar in purpose to an apprenticeship. The claimant was paid £39 a week gross. After instruction and practice for 3 months, the work was on building sites under supervision. The record of the tribunal decision states that the presenting officer submitted that the need for tools was an educational or training need and so excluded under regulation 6(2) and that the claimant had said that he could not afford the £2.92 a week charged by the Association for tools costing £55.18.

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6. The tribunal decided to make a single payment of £55.18 under regulation 23(1) and 23(2)(a) of the 1980 Single Payments Regulations. Their reasons were:

"The claimant's course includes both work and training. We find that it amounts to employment within Regulation 23(1) above and that it is not open to him without the tools.

We believe his account of his money position, we accept that he can only live at home if he pays £20 a week, and are satisfied that he cannot find the money for these tools elsewhere."

7. Regulation 6(2) of the 1980 Single Payments Regulations provides:

"(2) Notwithstanding any provision in these regulations, in particular regulation 30 (discretionary payments), no single payment shall be made in respect of any of the following:-

(a) an educational or training need;  
....."

Regulations 23(1) and 23(2)(a) of the 1980 Single Payments Regulations provide:

"(1) A single payment shall be made in respect of any item to which paragraph (2) applies where, without such item, the claimant would be unable to take up employment which has been offered to him.

(2) This regulation applies to -

- (a) basic tools;
- (b) .....
- (c) .....
- (d) .....
- (e) .....

where such an item, or the cost of such an item, is not provided or met in advance by the prospective employer."

Regulation 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 SI 1980 No 1605 (which I shall refer to as "the 1980 Appeals Rules") provides:

"(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) .....

8. (1) In order to comply with regulation 7(2) of the 1980 Appeals Rules, the tribunal were bound to give reasons for rejecting the submission that regulation 6(2)(a) of the 1980 Single

Payments Regulations operated to prohibit a single payment to the claimant. In so far as they gave a reason, it was that regulation 6(2)(a) did not prohibit the making of a single payment under regulation 23 of those regulations because the course involved work as well as training. That conclusion was clearly erroneous in point of law. The tribunal had found as a fact that on the course the claimant worked under supervision. The work was clearly part of the training course and the need for the tools was thus a training need, within the meaning of regulation 6(2)(a).

- (2) No reasons are given by the tribunal for their conclusion that the claimant was in "employment" in terms of regulation 23 of the 1980 Single Payments Regulations and anyone reading the decision is left guessing as to what those reasons were and as to whether the tribunal considered any of the relevant statutory provisions in this connection. "Employment" is defined in regulation 2 of the 1980 Single Payments Regulations, by reference to section 6 of the Supplementary Benefits Act 1976. Under the law in force when the claim was made and when the tribunal gave their decision, regulation 10 (see in particular paragraph (d)) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 [SI 1980 No 1586] and the definition of "training allowance" in regulation 2 thereof, the effect of which is to exclude a claimant from being treated as in "employment" in terms of regulation 23 if he is engaged on a scheme for which a training allowance is being paid, also required consideration in this connection (see now regulation 9(2)(d) of the Conditions of Entitlement Regulations as substituted by regulation 7(7) of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [1981 No 815] which came into force on 27 July 1981). The failure to give reasons for concluding that the claimant was in "employment" in terms of regulation 23 of the 1980 Single Payments Regulations was a clear breach of regulation 7(2) of the 1980 Appeals Rules and the decision of the tribunal was also erroneous in point of law on this ground.
- (3) In determining whether or not regulation 23 of the 1980 Single Payments Regulations applies to any particular case, it is essential to know whether the claim was made before or after taking up employment, for it is a pre-requisite of the application of that regulation that "without such item, the claimant would be unable to take up employment which has been offered to him": see paragraph (1) of the regulation. There is no finding by the tribunal on this material fact and anyone reading this decision is also left guessing on this point. In his written submission to the tribunal, the supplementary benefit officer stated that the claim was made on 12 January 1981 and that the claimant had attended the course ever since it started on 5 January 1981. But the notes of evidence before the tribunal show the claimant as stating that he claimed on 7 January 1981 and the presenting officer as stating that the course started on 12 January 1981. It is impossible

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to tell from the tribunal decision what they considered the dates, and order of events, to have been. The failure to make any findings on these material facts was also a breach of regulation 7(2) of the 1980 Appeals Rules and the decision of the tribunal was also erroneous in point of law on this ground.

9. I allow this appeal and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) V G H Hallett  
Commissioner

Date: 22 October 1981

Commissioner's File: CSB/185/1981  
CSBO File: SBO 236/81

CSB 279/1981

DGR/MP

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 C.S.B. 21/81

1. My decision is that the decision of the Luton Supplementary Benefit Appeal Tribunal dated 24 March 1981 is erroneous in point of law, and accordingly I set it aside.

2. On 3 June 1981 I gave leave to the Supplementary Benefit Officer to appeal against the decision of the Luton Supplementary Benefit Appeal Tribunal of 24 March 1981. I now have to consider the appeal itself.

3. The facts of the case are simple and straightforward. The claimant, who had been discharged from borstal in December 1980 after a 1 year sentence, on 3 February 1981 requested a single payment for a bed and bedding. A single payment for these items was refused on 26 February 1981, but, a visit having been made in connection with this claim on 10 March 1981, the original decision was revised to the extent that a single payment of £42.68 was made to the claimant in respect of bedding. However, no grant was made for a bed. The claimant continued to sleep on a settee.

4. The claimant appealed to the Appeal Tribunal, who in the event unanimously decided to award £35 towards the purchase of a single bed. Their findings of fact material to the decision read as follows:

"There was a serious risk to the appellant's health sleeping on a settee - they note that a grant has already been awarded for bedding by the Benefit Officer".

The reasons for the tribunal's decision were as follows:

"The tribunal were satisfied that the appellant qualified for a single payment for a bed under Section 30 of the Single Payment Regulations 1980 as in their view this is the only means at present of avoiding serious risk to the Appellant's health".

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The Benefit Officer now appeals against that decision to the Commissioner.

5. A single payment cannot be made under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980 unless "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". It is to be noted that the tribunal have made no finding of fact as to the nature of the alleged risk to health or as to the reason why such risk should be regarded as serious. Moreover, there is nothing contained in the tribunal's findings, or for that matter in their reasons for their decision, which in any way identifies any causal connection between the claimant's sleeping on the settee and the alleged serious risk to his health in consequence. Of course, sometimes the nature of the risk to health, its serious character and its connection with the facts upon which the claim is based, are self-evident. In those circumstances it is not necessary for the tribunal to explain these matters specifically. However, in the present case there is nothing obvious about the situation and the failure on the part of the tribunal to identify the risk and its seriousness and to show the causal connection constitutes an error of law.

6. Furthermore, even if the tribunal had made the appropriate findings of fact, I do not see what evidence there was in support of any such findings, and accordingly such findings would, in my judgment, have been perverse.

7. For the reasons given above I am satisfied that the tribunal's decision was erroneous in point of law, and it follows that I must set it aside.

8. I allow this appeal, and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice  
Commissioner

Date: 16 October 1981

Commissioner's File: C.S.B. 279/1981

CSBO File: SBO 327/81