

DGR/BW

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. 31/81

1. For the reasons set out below the decision of the Supplementary Benefit Appeal Tribunal given on 23 March 1981 is erroneous in point of law, and accordingly I set it aside.

2. On 5 January 1981 the claimant asked for help towards the cost of a pair of shoes, as the particular pair she had were letting in water. The claim was rejected by the supplementary benefit officer, but on appeal to the appeal tribunal a single payment for a pair of shoes amounting to £11.50 was on 23 March 1981 awarded. Thereupon the benefit officer applied for leave to appeal against that decision as being erroneous in point of law, and the application was on 23 June 1981 granted. I now deal with the appeal.

3. The findings of the tribunal read as follows:

"The appellant suffers from rheumatoid arthritis for which she has received medical treatment for the past 8 years. She has had her present shoes for 3 years and they let in water at the seams. She has a pair of open sandals which she has been unable to wear due to her health problem, and she needs a second pair of shoes".

The reasons given by the tribunal for their decision were as follows:

"The tribunal were satisfied that the need for replacement shoes had arisen through the appellant's physical disability and that payment under Regulation 27(1)(a) is appropriate. S.B. (Single Payments) Regulations 1980".

4. Regulation 27(1) of the said Regulations reads as follows:

"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 -
 - (i) pregnancy, the birth of a child, or rapid weight loss or gain,
 - (ii) heavy wear and tear on clothing or footwear resulting from any mental or physical illness, handicap or disability (except where an additional requirement is applicable),
 - (iii) the accidental loss of, damage to or destruction of an essential item of clothing or footwear,
 - (iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear,

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

(b)"

5. The evidence clearly establishes that the shoes possessed by the claimant were 3 years old, and, in my judgment, this fact, at least in the absence of any other evidence, suggests that the need for their replacement has arisen by reason of normal wear and tear. Regulation 27(1)(a) clearly provides that, where a need has come about through normal wear and tear, no payment shall be made.

6. However, it may be that the claimant is not really complaining about the shoes, but is simply contending - it is impossible to say on the papers before me whether this is her case - that she has a perfectly good pair of sandals, but they can no longer be worn because her rheumatoid arthritis prevents it. Certainly the tribunal appear to have linked the need for replacement shoes with the claimant's physical disability. Presumably they had in mind paragraph (iv) of Regulation 27(1)(a). It may be, if the claimant's case is really as stated above,

that they considered that sandals were not suitable for someone suffering from rheumatoid arthritis and that a replacement item of footwear should be purchased. However, if this was the reasoning behind their decision, they should have said so. The benefit officer cannot be left guessing as to the basis upon which the tribunal have founded their decision.

7. Accordingly, in my judgment, the decision of the appeal tribunal is erroneous on a point of law and must be set aside, and I direct that the matter be re-heard by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 18 November 1981

Commissioner's File: C.S.B. 280/1981
CSBO File: S.B.O. 330/81