

IEJ/LF

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S.B. 7/81 *reported C.S.B. 10/81*

1. I gave leave to appeal in this case on 1 July 1981 and as the appellant supplementary benefits officer has consented to my treating the application for leave as the substantive appeal also and does not seek an oral hearing I am electing to decide the substantive appeal concurrently. I am also proceeding without affording the claimant an opportunity to make submissions on the appeal, in the circumstance that I am satisfied upon the materials already before me that the appeal should be dismissed. And I dismiss the appeal accordingly.

2. The claimant, being a widow with restricted mobility due to her age and in receipt of supplementary pension, made application by letter of 28 January 1981 for a single payment of supplementary benefit in respect of wallpaper for redecoration of her kitchen "which hasn't been done for 5 years and needs it badly" - it had not been redecorated since before she became widowed - "if anyone wanted to see it they would understand". She was duly visited by an officer of the Department and on the occasion of that visit indicated that she would like her application to be treated as extended to redecoration of her living room, the intended medium in each case being by way of re-wallpapering.

3. The visiting officer appears to have reported that whilst the existing wallpaper was faded in places and rubbed around the doorways and light switches it was not dirty, torn or peeling. I say "appears to" because there is information to the above effect included as "Facts of the Case" on form LP205 in the case file but no verbatim report. I do not query the accuracy of that synopsis but distinguish it from having the quality which a fuller verbatim report might have borne, for a reason below appearing (see paragraph 10(B)).

4. A supplementary benefit officer's decision refusing a single payment was issued on 11 February 1981 and the claimant appealed from that refusal to the supplementary benefits tribunal, who decided the appeal on 18 March 1981. They awarded a single payment of £16 for the purchase of wallpaper for the kitchen but upheld the prior

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decision against payment in respect of redecoration of the living room. The claimant did not attend the hearing of the appeal, but in addition to her original claim letter and a synopsis of the visiting officer's report the Tribunal had in evidence before them a further letter from the claimant dated 13 February 1981 in which she indicated that she was appealing to the Tribunal and added, materially, "I have been unable to buy the extra wallpaper. The gentleman that called understood fully the need when he saw the condition of paper. I understood the Social Security help anyone in redecoration if it is needful".

5. The Tribunal recorded as a finding of fact:

"The kitchen not having been papered for five years it is considered it is essential it be redecorated now" and stated as their reasons for decision "The Tribunal considers that it is essential the kitchen be redecorated after five years but is not satisfied that the same applies to the living room".

6. (1) The supplementary benefit officer appeals on the following grounds:

"(a) there was no evidence before the Tribunal upon which they could properly find that the redecoration was essential;

(b) the Tribunal misconstrued regulation 19 of the Supplementary Benefit (Single Payments) Regulations 1980 in concluding that the requirement that the redecoration must be essential could be satisfied solely by the effluxion of time".

(2) The submission he makes in support is in the following terms:

"The only evidence before the Tribunal was the claimant's letter of appeal, form LT 205 and the submissions of the Presenting Officer. The claimant assessed her need by stating that the kitchen had not been decorated for 5 years and "needs it badly". There was, however, on form LT 205 evidence that an officer who visited the claimant's home had found the wallpaper "faded and rubbed" but not dirty, torn or peeling. In his note the Chairman stated that the facts as set out on form LT 205 were accepted as correct. The Tribunal's sole stated reason for making the award was that 5 years had elapsed since the kitchen was last decorated. In my submission this is insufficient to support a finding that the redecoration was essential".

I will here interpose that - treating "evidence" as used in a broad sense - the above submission omits reference to the letter of 13 February 1981 as additional evidence.

7. (1) Regulation 19 of the Single Payment Regulations is in the following terms:

"Redecoration

19.-(1) A single payment shall be made in respect of expenses of essential internal redecoration to a claimant's home where -

- (a) the claimant has lived at his present home for at least one year;
- (b) the claimant is responsible either as the owner of the freehold or leasehold or under the terms of his tenancy for periodic internal redecoration; and
- (c) the need for redecoration is not connected with any major repair, renovation or alteration to the property.

(2) The amount payable under paragraph (1) shall be the cost of materials, but where the area to be redecorated is used by any member of the household who is not a member of the assessment unit he shall be assumed to contribute a proportionate share of that cost unless he is a person -

- (a) to whom or in respect of whom a pension or allowance is payable; or
- (b) from whom having regard to his financial circumstances it would be unreasonable to expect such a contribution".

- (2) Nothing turns in the present appeal upon any of the so expressed qualifying requirements other than that the internal redecoration for which payment was sought must be "essential" interior redecoration.

The word "essential" is not specially defined in the Supplementary Benefits Act 1976 or the material Regulations and falls accordingly to be given its ordinary meaning in everyday usage unless the context otherwise requires.

8. The Shorter Oxford English Dictionary defines "essential" in two potentially relevant senses:

"material, important" ("you have done essential service to the cause");

"indispensably requisite" ("silica ... is an essential ingredient in mortar").

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It is clear that the appellant supplementary benefits officer regards "essential" as bearing the second of those two meanings where used in regulation 19. But I am as a matter of construction satisfied that this is too rigorous a meaning to accord it in the context of the Single Payments Regulations notwithstanding that to equate it simply with "material" or "important" without further qualification would be too liberal a construction.

9. There are a number of other uses of the word "essential" as a qualifying term elsewhere in the Single Payments Regulations which assist me in construing regulation 19, as I do, as using "essential" to mean "necessary" in the sense in which luxuries are differentiated from "the necessaries of life" and as importing a requirement of substantial need, judged by the modest general standard of living to the provision of which the award of supplementary benefit is directed; but falling short of a requirement of being "indispensable" if life is to be sustained or of so rigorous a test as is imposed by regulation 30 of the same regulations which enables discretionary payments to be made outside the range of specific needs catered for by the preceding regulations only if payment is "the only means by which serious damage or serious risk to ... health or safety ... may be prevented".

10. I rely particularly in this behalf upon -

(A) Regulation 8(1) - funeral expenses - wherein "any essential expenses of the funeral or cremation which are specified in paragraph (2) ..." take in such items not truly "indispensable" as:

"(d) the reasonable cost of flowers from the responsible member"

"(f) the cost of any additional expenses arising from a requirement of the religious faith of the deceased, not in excess of £75"

- and the cost of one additional car in addition to transport for the coffin and bearers.

(B) Regulation 9(4) - essential furniture and household equipment - the items specified wherein extend to items not truly indispensable for existence such as "easy chairs for all the members of the assessment unit", and "curtains".

And I note also that in regulation 17(1) - essential repairs and maintenance of the house - it has been considered necessary to further qualify "essential" - viz

"(a) the repairs are essential to preserve the house in a habitable condition."

11. I find nothing in the record of the Tribunal's decision or their conclusions to support the contention that they misconstrued Regulation 19.

12. As to the contention that there was no evidence upon which they could properly decide that redecoration was "essential":

(A) It is because the criterion of what is "essential" redecoration must be established before one can assess whether there was or was not evidence sufficient to support a finding that a requirement for "essential redecoration" subsisted that I have first addressed my decision to that point of interpretation.

(B) In my judgment there was evidence before the Tribunal upon which, correctly construing the Regulation, they could hold as they did. I do not say the evidence was by any means superabundant or overwhelming - but in simple cases of the present nature a Tribunal must in my judgment be entitled to bring its own knowledge of life and people to bear in such respects as recognising that an elderly widow of impaired mobility, living on her own in modest circumstances, is likely to spend a great deal of her time in her kitchen and to become seriously depressed by increasing shabbiness and drabness of the decoration short of a state of degeneration in it dangerous to hygiene or physical health - although clearly the need must be much more substantial than a mere whim for a fresh colour scheme, and my decision in the present case imports no general principle warranting replacement of items which though still serviceable have become shabby. To my mind the legislature which has seen fit to provide that a claimant should not be deprived of the solace of providing flowers at the burial of a close relative for whose funeral she is responsible has not imposed a standard of destitution upon claimants as to what is "essential" redecoration either.

(C) I do not myself interpret the Tribunal as having decided the case upon any hard and fast or universally applicable principle that after an interval of five years since last redecoration a claimant under regulation 19 is entitled to payment - indeed their own decision differentiating between the kitchen and the living room clearly demonstrates otherwise.

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- (D) To my mind the Tribunal have decided no more than that in all the circumstances of the particular case as known to them this claimant was entitled to payment in respect of this kitchen which had not been redecorated for five years, as being "essential" redecoration within the meaning of regulation 19.

And I hold that their decision is not erroneous in point of law.

(Signed) I Edwards-Jones
Commissioner

Date: 28 July 1981

Commissioner's File: C.S.B. 282/1981
CSBO File: S.B.O. 325/81