

VGHH/JCB

SUPPLEMENTARY BENEFITS ACT 1976

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

CS B

28/5/1981

Findings of fact

Removal of gas

- one or two estimates

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 1 April 1981 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination in accordance with this decision (regulation 10(8)(a)(ii) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] as amended by the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I. 1982 No 40]).
2. This is an appeal by a supplementary benefit officer on a point of law against the decision of a Supplementary Benefit Appeal Tribunal on 1 April 1981 that the claimant was entitled to a single payment of £69.75 to meet the cost of removal (£59.75) including a payment of £10.00 to meet the cost of disconnection and reconnection of her cooker. The payment of £10 is not in dispute in this appeal.
3. I granted leave to appeal against the decision of 1 April 1981 and held an oral hearing of the appeal. The supplementary benefit officer was represented by Mr R A Birch of the Solicitor's Office, Department of Health and Social Security. The claimant (who appeared) was represented by Mr Mark Rowland, of Counsel.
4. The tribunal's findings of fact, decision and reasons for decision were as follows:

"Findings of Tribunal on questions of fact material to decision. Appellant is a single parent with 2 dep. children. On 13.1.81 she requested help with removal costs. She was temporarily rehoused to 7C [...] Road whilst her home at B[...] Road was being improved. The Housing Association who own this property paid the removal expenses to C[...] Road but have refused to pay the removal back to B[...] Road as they now consider it is not their responsibility.

Tribunal's unanimous Decision.

That the appellant is entitled to a single payment of £69.75 to meet the cost of removal (£59.75) including a payment of £10.00 to meet the cost of disconnection and reconnection of her cooker.

Reasons for Decision.

We are satisfied that regulation 6(2) does not preclude payment. The situation was not one involving permanent re-housing following a compulsory exchange [sic] of tenancy. We are satisfied that the appellant's case falls within regulation 13(1)(a) of the Single Payments Regulations 1980. [The appellant's] existing home, 51, B[...] Rd was structurally deficient and insanitary we hold that the cost of removal covers both the cost of moving out and return where the removal is necessary to bring the home up to proper standards. Part of this cost was not [sic] met by the Housing Association but a need to cover the remaining part still exists."

5. The documents before the Supplementary Benefit Appeal Tribunal included a bill (or estimate) for removal from 7 C[...] Road to 51 B[...] Road. It is dated 11 1 81 and provides:

From 7 C ... Rd		
15 per hour		
3 hours removal	-	£45.00
Vat	-	£6.75
To 51 B ... Rd		
Tea Chests		£5.00
insurance		£3.00
		<hr/>
Total		£59.75
		<hr/>

It is not receipted.

Also before the tribunal, was a letter dated 21 March 1981 and addressed to the claimant by a Mr T which states "As you will remember I lent you £60 in January for the express purpose of paying for your removal expenses". It requests repayment of the sum loaned.

6. The relevant provisions of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No 985] which I shall refer to as "the Single Payments Regulations") are as follows:

" PART I
GENERAL
.....

Interpretation

2.-(1) In these regulations, unless the context otherwise

requires -

.....
"assessment unit" means the claimant and any
partner and dependant of the claimant
.....

(2)

Meaning of single payment and amount payable

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

(3)

(4)

.....

PART V
HOUSING EXPENSES

Removal expenses

13.-(1) A single payment shall be made, other than to a claimant to whom paragraph (2) applies, in respect of the cost of the removal within Great Britain of the assessment unit's household goods and personal effects where -

- (a) the existing home of the assessment unit is structurally deficient or insanitary;
- (b)
- (c)
- (d)
- (e)



- (2)
- (3) In pursuance of a claim for single payment under this regulation, a claimant shall furnish 2 competitive estimates of the cost of the removal, unless in any case the Secretary of State directs that, having regard to urgency or the claimant's age or state of health it would not be reasonable for him to obtain more than one estimate.
- (4) The amount payable in a case to which paragraph (1) applies shall be that of the estimate which is the cheaper or, where the Secretary of State has directed that only one estimate be furnished, that estimate.
- (5) "

7. Regulation 9 of the Supplementary Benefit (Deductions and Payments to Third Parties) Regulations 1980 [S.I. 1980 No 983] provides as follows:

"Payment of single payments to third parties

- 9. Where a claimant is entitled to -
 - (a) any amount of supplementary benefit by way of a single payment under section 3 of the Act (supplementary benefit to meet exceptional need); or
 - (b) any sum payable by virtue of section 4 of the Act (provision for cases of urgent need),

for the provision of a specific item, the Secretary of State may direct that that amount or sums shall be paid to the person who or the body which supplied that item, on behalf of the claimant in discharge of an obligation of his."

Those regulations were revoked by the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No 1525] which came into operation on 23 November 1981, which contain the following provision:

"Payment of single payments to third parties

25. Where a beneficiary is entitled to any amount of supplementary benefit by way of a single payment under the Single Payments Regulations or the Urgent Cases Regulations for the provision of a specific item, the Secretary of State may direct that that amount shall be paid to the person who or the body which supplied that item, on behalf of the beneficiary in discharge of an obligation of his."

8. The Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605], which I shall call "the Appeals Rules" provide:

"Determinations of the tribunal

- 7. (1)
- (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)
- (3)

..... "

Rule 10(8) of the Appeals Rules, which conferred, in their original form, jurisdiction on the Commissioner in relation to appeals from the decision of a tribunal either (a) to refer the case to another tribunal with directions for its determination or (b) to hold that the decision is not erroneous in point of law has been amended by the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I. 1982 No 40] which came into operation on 15 February 1982, and which substituted the following sub paragraph (a) in Rule 10(8):

- "(a) hold that decision is erroneous in point of law and -
 - (i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given; or
 - (ii) refer the case to another tribunal with directions for its determination;
- or "

9. The substantial points raised by this appeal, in which it is said that the decision of the Supplementary Benefit Appeal Tribunal is erroneous in point of law, are as follows. First, where an item has been bought and paid for, at any rate before the date of the supplementary benefit officer's decision (which was issued in this case on 19 January 1981) there is no need for the item in terms of regulation 3 of the Single Payments Regulations: see Commissioner's Decision No R(SB) 8/81. Secondly, two estimates must be obtained for the cost of a removal for which payment is asked and the sum stated in the lower of those estimates is that which is payable, unless the Secretary of State has directed that only one estimate shall be furnished: see regulation 13(3) and (4) of the Single

Payments Regulations. Thirdly, the material facts must be found by the tribunal, and recorded, as required by Rule 7(2) of the Appeals Rules. This requirement is not satisfied by simply stating a conclusion which follows the wording of the relevant regulation, without any findings as to the facts on which that conclusion is based. Thus it is not sufficient simply to state that the existing home of a claimant is structurally deficient or insanitary (see regulation 13(1) of the Single Payments Regulations) without finding the facts on which such a conclusion is based. Nor is it sufficient to find a "need" for a payment for removal expenses when the documents before the tribunal raise a prima facie likelihood that the removal has already taken place and been paid for before the supplementary benefit officer has dealt with the claim (or, indeed, at some later date but before the tribunal give their decision: see Commissioner's Decision No C.S.B. 12/81 (to be reported as R(SB) 1/82) which has been held by a Tribunal of Commissioners to be clearly correct: see Decision No C.F.I.S. 1/82).

10. I was told at the hearing before me that the removal did in fact take place and was actually paid for before the supplementary benefit officer gave his decision and that in fact no estimates at all were obtained for the removal. But I have no jurisdiction to conduct a complete re-hearing of the case and to give a decision based on what I have been told. My jurisdiction, when satisfied that the decision of the Supplementary Benefit Appeal Tribunal is erroneous in point of law, is either (i) if satisfied that it is expedient in the circumstances, to give the decision that the tribunal should have given or (ii) to refer the case back to another tribunal with directions for its determination. It is not expedient, or indeed permissible, to give the decision that the tribunal should have given, on the basis of statements made to me at an oral hearing of facts which have not been found by the Supplementary Benefit Appeal Tribunal and which do not appear from any of the documents before them, or from the chairman's note of evidence or from any other materials at which I can properly look as to what was before the tribunal (see Decision No C.S.B. 3/82 as to these).

11. Mr Mark Rowland submitted that Decision R(SB) 8/81 was wrongly decided and that I should not follow it, that the provision that two estimates must be obtained was directory and not mandatory and that the finding of the tribunal that the claimant's home at B ... Road was being improved, when taken with the chairman's note that the house "was to be modernised" and correspondence before the tribunal that "all the building works are complete" and the fact that a housing association was involved, was sufficient foundation for the conclusion that the home of the claimant was structurally deficient or insanitary. I cannot agree with this submission, notwithstanding the ability and persuasiveness with which it was made. R(SB) 8/81 was, in my judgment, clearly correct. It is an essential condition for the obtaining of supplementary benefit by way of a single payment, that there should be a present need for the item in question: see regulation 3(2)(a). Where a needed item has been already obtained and paid for, the need has already been satisfied. I agree with Decision R(SB) 8/81. The fact that there is power under regulation 25 of the Supplementary Benefit (Claims and Payments) Regulations 1981, previously regulation 9

of the Supplementary Benefit (Deductions and Payments to Third Parties) Regulations 1980, for the Secretary of State to direct that payments be made to a person who or body which has supplied an item does not affect this principle. The requirement to provide two competitive estimates, unless the Secretary of State has directed that only one estimate be furnished, is in my judgment a pre-condition to the payment of removal expenses under regulation 13. For the authority to make the payment limits the amount payable to that of the estimate which is the cheaper or, where the Secretary of State has directed that only one estimate be furnished, that estimate. Where no estimates have been obtained, there is no authority to make any payment. A finding that the claimant's home was "being improved" is not a finding that that home was structurally deficient or that it was insanitary. A decision that such home was structurally deficient or insanitary must be supported by findings of the primary facts on which such conclusion is based, in order to comply with Rule 7(2) of the Appeals Rules, which require findings of the material facts to be recorded.

12. The decision of the tribunal was therefore erroneous in point of law for failure to make any findings on the material facts as to whether the removal had taken place and if so when and whether it had been paid for and if so when, whether there were two competitive estimates and what their amounts were, or if there were not two such estimates whether the Secretary of State had directed that there should be only one estimate, and in what respects the claimant's existing home was structurally deficient or insanitary. The tribunal was clearly in breach of Rule 7(2) of the Appeals Rules.

I have already decided (paragraph 10 above) that it is not expedient to give the decision which the tribunal should have given. The case must accordingly be re-heard by a differently constituted tribunal who should find the necessary material facts in accordance with this decision. If the tribunal finds as a fact that at the date of the issue of the supplementary benefit officer's decision (19 January 1981) the removal had already taken place and been paid for (as I was told by Mr Rowland, on instructions, that it had) they must dismiss the appeal from the supplementary benefit officer's decision on the ground that an existing need, in terms of regulation 3(2)(a) of the Single Payments Regulations, had not been shown. If the tribunal finds as a fact that no estimates for the cost of the removal were ever obtained (as I was also told is the position), they must dismiss the appeal on the ground that competitive estimates (two unless the Secretary of State direct that one will do) were not obtained and this is a pre-condition to any payment under regulation 13(1)(a) of the Single Payments Regulations. If the appeal is not dismissed, findings of the material facts on which any conclusion that the existing home of the claimant was structurally deficient or insanitary must be made.

Nothing in this decision is intended to preclude the claimant, whom I understand has already been paid the sum claimed and from whom recovery will not be sought, from withdrawing (in accordance with proper procedure) or not proceeding with, her appeal to the Supplementary Benefit Appeal Tribunal, if so advised. My decision is set out in paragraph 1.

Signed V G H Hallett
Commissioner

Date: 20 April 1982

Commissioner's File: C.S.B. 288/1981
C SBO File: 428/81