

Claim for SP for redecoration - meaning of
Reg 19. Failure to give reasons for decision.

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RFMH/SH/11/MD

Commissioner's File: CSB/0292/1986

C A O File: AO 2484/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Reginald Theodore Arthur

Social Security Appeal Tribunal: Lincoln

Case No: 30/2

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of a social security appeal tribunal given on 9 December 1985 is erroneous in point of law, and accordingly, I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.
2. This is the claimant's appeal on a point of law against the decision of the social security appeal tribunal dated 9 December 1985 confirming the adjudication officer's decision issued on 24 October 1985, the necessary leave having been granted. I granted the claimant's request for an oral hearing. At the hearing held before me, the claimant attended and was represented by Mr J Luba, a legal officer from the Child Poverty Action Group. The adjudication officer was represented by Mr J Latter, of Counsel, instructed by the Solicitor's Office of the Department of Health and Social Security. I am grateful to them both for their detailed and helpful submissions.
3. At the material time the claimant lived with his wife in local authority accommodation. He was in receipt of supplementary benefit. He had submitted medical certificates since 28 May 1985. His wife was in receipt of retirement pension and attendance allowance. On 16 October 1985 the claimant claimed a single payment for the cost of redecorating the home. He stated that the need arose because it had been rewired by the local Council and the existing decor had been damaged. The claim was in due course rejected and the claimant appealed against the decision to the tribunal.
4. In his written observations on the claimant's appeal, the adjudication officer submitted that a single payment could not properly be made because the claimant did not satisfy the conditions of regulations 19 or 30 of the Supplementary Benefit (Single Payments) Regulations 1981, as amended.
5. The claimant did not attend the hearing before the tribunal on 19 December 1985, because he stated he did not possess the necessary footwear. In the event the tribunal dismissed the appeal. The chairman's note of evidence records that the adjudication officer

read out form AT2. The findings on question of fact material to the decision were:-

- "1. The claimant is a married man aged 61 living with his wife in a local authority home. He is in receipt of supplementary benefit and has no capital.
2. On 16.10.85 he claimed a single payment for the cost of redecorating the house as it had been rewired by [the local] council.
3. He had lived in his present address for 1 year and was responsible for internal redecoration."

The tribunal's reasons for the decision were:-

"The Appellant did not satisfy condition 3 of regulation 19 [regulation 19(1)(c)] of the Single Payments Regulations.

2. There was no evidence of serious risk to the health to satisfy regulation 30."
6. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present for the reasons stated below the tribunal chairman failed to comply with statutory requirements. Accordingly I have no alternative but to set aside the decision. I should put on record that Mr Latter supported the appeal on this ground.
7. A single payment for redecoration of the home may be awarded under regulation 19 or 30 of the Single Payments Regulations, subject however to the criterion of "need", which has to be determined by reference to the situation as at the date of the claim by applying the law then currently in force (R(SB)42/83).
8. Although the tribunal have not specifically stated that the claimant satisfied the criterion of "need" in terms of regulation 3(2) as at the date of claim, the mere fact that they went on to consider regulation 19, carries with it the implication that they had reached this conclusion. However the tribunal that rehears this case should record a finding on this point and this will of course depend on the evidence before them.
9. Regulation 19(1) of the Single Payments Regulations reads as follows:-
"Redecoration
19. - (1) A single payment shall be made in respect of expenses of essential internal redecoration to the home of a claimant or his partner where -
 - (a) the claimant or his partner has lived at his present home for at least a year;
 - (b) the claimant or his partner is responsible either as the owner of the freehold or leasehold or under the terms of his tenancy for periodical internal redecoration; and
 - (c) the need for redecoration is not connected with any major repair, renovation or alteration to the property."
10. It is a precondition of any award under regulation 19 that the single payment claimed is in respect of expenses of essential internal redecoration. The word "essential" is not defined in the relevant legislation so that it falls to be given its normal everyday meaning.

In Decision R(SB)10/81 (paragraph 9) the Commissioner defined the word to mean "necessary" in the sense in which luxuries are differentiated from "the necessities 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.. In the present case the tribunal failed to record any finding on this point and indeed it seems that no evidence was led as to this issue. The new tribunal should consider on the evidence before them whether the claimant satisfies this condition before proceeding to determine whether the claimant is able to satisfy the conditions contained in sub-paragraph (a), (b) and (c). It should be noted that these conditions are cumulative and not in the alternative so that the claimant will not succeed if he is able to satisfy one or two only of the conditions contained in the sub-paragraphs (R(SB)21/83 paragraph 6).

11. It is not in dispute that the claimant satisfied the conditions contained in sub-paragraphs (a) and (b). Accordingly the question in issue is whether the claimant is able to satisfy the conditions contained in sub-paragraph (c). The tribunal concluded that he did not. However they failed to record any findings of fact and reasons in support of this conclusion. The record of the proceedings indicates that the tribunal did not consider whether the work actually carried out amounted to a "major repair, renovation or alteration to the property". Whether rewiring a property constitutes repair, renovation or alteration is not crucial to the issue, provided the tribunal make it clear which one they consider it to be. Mr Latter submitted that it fell within the definition of renovation whose dictionary definition is "to make sound again, as though new; place worn parts in, repair, rebuild," I agree with this view but it will be for the new tribunal to determine the matter based on the evidence before them. It will depend on the extent of the rewiring, whether the work extended to the whole or only part of the original system. Further the question whether or not the repair, renovation or alteration" was "major", is one which is for the tribunal to determine. The new tribunal should record findings of fact on such matters as the precise nature of the work involved, its cost, the number of man hours that the work took or was estimated to take, or any other factor relevant to determining whether or not such "repair, renovation or alteration" was "major". (See Decision (R(SB)4/82 paragraph 8).

12. In his grounds of appeal to the Commissioner the claimant described the condition of the plaster work following the rewiring. He should be prepared to submit full particulars to the tribunal as to the extent of the work carried out and the damage to the existing decor as a result of this.

13. If the tribunal consider that the claimant is unable to satisfy the conditions of regulation 19, they should proceed to consider regulation 30, where a single payment can be made to meet an exceptional need in a case where "such a payment is the only means by which serious damage or risk to the health or safety of any member of the assessment unit may be prevented". It should be noted that any single payment under regulation 30 is discretionary and is subject to the criterion of "need" first being established.

14. The hearing of the appeal before the new tribunal will of course constitute a complete rehearing of the appeal. The claimant should make every effort to attend or be represented. He should be prepared to submit all relevant evidence as stated to enable the tribunal to determine whether he is able to satisfy the conditions of regulation 19(1) of the Single Payments Regulation and in addition the amount payable under regulation 19(2) if the tribunal finds in his favour.

15. The claimant's appeal is allowed. I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 27th April 1987