

GD/BC

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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: James Cutter

Social Security Appeal Tribunal: Wear

Case No: 23/14-10

Decision

1. My decision is that the decision of the Wear social security appeal tribunal ("the tribunal") dated 15 October 1985 is erroneous in law and is set aside. I remit the case for redetermination by a differently constituted tribunal in accordance with this decision.

The appeal to the Commissioner

2. This is an appeal brought by the claimant against the said decision of the tribunal which upheld the decision of the adjudication officer that:

a single payment under the Supplementary Benefits (Single Payments) Regulations for the cost of bed, table and chairs, wardrobe, chest of drawers, kitchen cabinet, easy chair, cooker, curtains and wire, washing machine, fridge, vacuum cleaner, towels, iron and minor household items was not payable because the claimant did not satisfy the condition prescribed by regulation 10(1)(a) of the Single Payment Regulations nor did he satisfy the condition that such a payment was the only means of preventing serious damage or serious risk to health or safety (Regulation 30 of the Single Payment Regulations).

Background facts

3. The claimant was 17 years of age and - at the time of his claim - was living in a Housing Association flat. He had been in receipt of supplementary allowance since 17 June 1985 following his discharge from Medomsley Detention Centre on 17 June 1985. He moved into the flat on 15 July 1985 having previously been living with his sister. He had no furniture in his flat and no bedding. On 22 July 1985 the adjudication officer awarded a single payment of £69.50 for bedding but refused payment for all other items.

The relevant regulations

4. Regulation 10(2) in Part IV of the Supplementary Benefit (Single Payments) Regulations 1981, provides that, where regulation 10(1) applies, single payments shall be made in the circumstances prescribed, for the purchase of items of essential furniture and household equipment as defined for the purposes of that Part of the regulations in regulation 9.

Regulation 10(1) - in so far as is relevant - is in the following terms:-

"10(1) This paragraph shall apply where either -

(a) the claimant ... has recently become the tenant ... of an unfurnished home and one or more of the following applies:-

(i) ...

(ii) ...

(iii) ...

(iv) immediately before he became such a tenant or owner, the claimant was a prisoner, or was living in a resettlement unit or accommodation provided for an analogous purpose by a voluntary organisation, or in accommodation provided by a statutory authority or voluntary organisation for the purpose of providing special care and attention for him, or had been a patient for a continuous period of more than one year,

and in a case to which head ... (iv) applies there is no suitable alternative furnished accommodation available in the area; at ..."

The decision of the tribunal

5. At the hearing before the tribunal the claimant's representative:-

- (i) contended that the words "immediately before" in regulation 10(1)(a)(iv) are difficult for prisoners immediately leaving jail to enter new accommodation
- (ii) relied on definition of "immediate" and "delay" in the Shorter Oxford Dictionary; and on the facts that
- (iii) the claimant stayed with his sister for 4 weeks after leaving prison and before obtaining his tenancy - he was unable to return to his mother's accommodation due to family differences.

6. The tribunal found the following facts:-

- (i) The claimant left prison on 17 June 1985.
- (ii) On discharge he stayed with his sister until he obtained the tenancy of his new flat on 15 July 1985.
- (iii) Before entering prison he had lived with his parents, but had quarrelled with them.

7. The tribunal upheld the decision of the adjudication officer by a majority who "(were) satisfied that the word 'immediately' in Regulation 10(1)(a)(iv) should be construed in its literal meaning...." not separated by any intervening medium ... direct without intervening medium. As the claimant immediately on discharge from prison had gone to live with his sister and stayed with her for 4 weeks, there was an "intervening medium". The minority member held "that it is unrealistic to obtain any rented accommodation immediately on discharge from prison". The word "immediately" should be interpreted more flexibly and he felt that a gap of 4 weeks is inevitable and not unreasonable.

8. The adjudication officer in his submission to the Commissioner draws attention to the unreported Commissioner's decision CSB/471/1984 in which consideration of regulation 10(1)(a)(iv) in relation to a lapse of 4½ weeks between the date of discharge and the start of a tenancy, led to the decision by a tribunal that the claimant had been a prisoner "immediately before" he became a tenant. The Commissioner cited the well known passage from the speech of Lord Reid in Cozens v Brutus [1973] AC 854, at page 861:

"It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances, the words of the statute do or do not, as a matter of ordinary usage of the English language, cover or apply to the facts which have been found."

He then rejected a submission by the adjudication officer that no reasonable tribunal could have reached the conclusion that they did in the light of all the relevant circumstances and held that the tribunal to whom he remitted the case should consider and record all the relevant circumstances including in particular - in that case - the length of time for which the claimant had been in prison.

9. In the present case the tribunal had considered some of the relevant circumstances eg that the claimant had lived with his parents before entering prison but had quarrelled with them on discharge and he went to his sister temporarily. However the reasoning adopted by the minority member was fundamentally correct: - the unpracticability for a discharged prisoner to obtain a tenancy on the day of discharge is obvious.

10. On the other hand the majority have misdirected themselves in law by adopting too literal a construction of the word "immediately" in the context of regulation 10(1)(a)(ii).

11. The "need" satisfying Regulation 3 of the Single Payments Regulations was not disputed but there is no alternative but to remit the case to be re-heard by a differently constituted tribunal who should consider all the relevant circumstances around the time of the claimant's release, make findings of fact and reach a reasoned conclusion as to whether the claimant was a prisoner immediately before he became a tenant. As the Commissioner put it in CSB/474/1984: "the appropriate time scale is determined by the context" and not by the literal meaning of the word "immediately" taken in isolation. Moreover (as the adjudication officer rightly points out) the concluding words of regulation 10(1)(a) relating to the availability of suitable alternative furnished accommodation must be considered, and if, in the event that regulation 10(1)(a) was not satisfied, to go on to decide whether the claimant could bring himself within the provisions of regulation 30 of the Single Payment Regulations (which was fully discussed in the adjudication officer's submission to the tribunal; paragraph 18).

12. As to furnished accommodation the claimant lists in the grounds of appeal to the tribunal 8 landlords whom he had contacted but the tribunal failed to make any findings of fact in this respect as it was required to do pursuant to regulation 10(1)(iv) and it follows that in respect the reasons are inadequate.

13. My conclusion is, firstly that the tribunal have misdirected themselves as to the construction of regulation 10(1); secondly have not made adequate findings of fact and the reasons given are inadequate. My decision is contained in paragraph 1 hereof.

(Signed) G Dobry
Commissioner

Date: 11 November 1986