

① Urgent cases - loss of purse. Similar loss of purse less than 3 months previously. If payment under reg 10 UC Regs precluded by reg 6(3), reg 24 UC Regs would still apply. Loss of purse not a "disaster" within meaning of reg 8. ② Should be a woman member of SSAT if claimant is a woman if possible.

MJG/SH/24/MD

Commissioner's File: CSB/298/1987

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:

Social Security Appeal Tribunal: Cleveland

Case No: 049/02

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 17 November 1976, as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This is an appeal to the Commissioner by the claimant a divorced woman, aged 48 at the material time, against the unanimous decision of the social security appeal tribunal dated 17 November 1986, in which that tribunal affirmed the decision of the local adjudication officer issued on 4 September 1986, refusing an urgent needs payment to the claimant to reimburse her for a loss of some £84 in her purse, which she said that she had lost while shopping on 4 September 1986. She claimed an urgent needs payment on the same day. Less than three months before, on 26 June 1986, she had received an urgent needs payment of £24.30 to reimburse her for loss of money in her purse (in a telephone box). The two losses may of course have been coincidental but clearly the local tribunal was right to take a fairly critical view of the second claim within a short period, though I note that the claimant's representative in written submissions to the Commissioner points out that on the second occasion the claimant had to sell a number of household items in order to raise money to support herself. That as an issue of fact is for the new tribunal that rehears this case.

3. Both the claimant's representative and the adjudication officer now concerned in written submissions (dated 22 January 1987 and 5 June 1987 respectively) submit that the original tribunal erred in law, basically because they failed to make adequate findings of fact and give adequate reasons for decision in accordance with regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 (now regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986). I accept those submissions as this is a clear case where the tribunal did not completely comply with its duty under the above cited regulation. The only finding of fact given on form AT3 (record of decision) is, "The tribunal accepted the facts set out in AT2 under heading facts before adjudication officer and took into account statements by appellant and her representative". That does not wholly suffice and

the tribunal must make its own independent findings of fact and set them out in their record of decision, particularly in a case of this kind. The only reasons for decision given by the tribunal were, "In all the circumstances it is not reasonable for the need to be met (regulation 6(3) Urgent Need Regulations)". That is basically a bare restatement of the wording of the regulation and the tribunal should have added some indication of why it did not consider it was reasonable for the need to be met. If the tribunal did not believe the claimant's story they should have said so. If they did believe it, then they should have given some reasoning as to why they considered it was not reasonable for the second claim to be met. I appreciate the difficulty in cases of this kind but something more than was given in this case was necessary for proper completion of the tribunal's record of decision.

4. The new tribunal will need to consider whether the claimant's claim potentially came under regulation 10(1) of the Supplementary Benefit (Urgent Cases) Regulations 1981 relating to "loss of money". If it does, then the tribunal will need to ask itself whether or not a payment is nevertheless precluded by regulation 6(3) of the Urgent Cases Regulations which provides that "no sum shall be paid ... where the claimant has had the same or a similar need in similar circumstances unless it is reasonable for that need to be met". If the tribunal should conclude that regulation 6(3) does preclude a payment under regulation 10(1) they will still need to go on to consider whether the claimant can bring herself in the circumstances within regulation 24 of the Urgent Cases Regulations (payment the only means by which serious risk to the health or safety of the claimant may be prevented) since regulation 24 is not subject to the prohibition in regulation 6(3). But of course such a matter would have to be proved to the satisfaction of the tribunal.

5. Regulation 6(3) also does not apply to regulation 8 relating to claimants who are "affected by a disaster (for example a fire or a flood)". I mention this because apparently for the first time (and not before the original tribunal) the claimant's representative in written submissions for the Commissioner (dated 22 January 1987) canvasses the possibility that the claimant's loss of her purse was a "disaster", as she was in a very distressed state after losing it. The representative cites R(SB)1/83, defining a "disaster" as "anything that befalls of ruinous or a distressing nature; a sudden or great misfortune, mishap or misadventure; a calamity" (paragraphs 13 and 14). In that case the learned Commissioner emphasised that it was essentially a question of fact for a tribunal to decide as to whether or not a given event or events constituted "disaster". However, I can hardly think that, even within the liberal meaning of the word "disaster" accepted by the Commissioner in R(SB)1/83, loss of a purse comes under that head, even if the claimant was distressed about it. But ultimately I leave that for the new tribunal to decide, should it become material.

6. Lastly I should mention that in a direction by me dated 20 March 1987 I drew attention to the fact that, although the claimant in this case was a woman, the social security appeal tribunal that heard her appeal was comprised of three men and did not have a woman member as is required "if practicable" by paragraph 1(8) of Schedule 10 to the Social Security Act 1975 (as substituted by paragraph 7 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983). I drew attention to my decisions on this point on Commissioner's file CSB/0623/86 and CSB/0508/86 (the former to be reported as R(SB)2/88). In the present case the tribunal's record of decision did not contain any endorsement to show whether or not it was "practicable" to have a woman member on the

tribunal that day (compare R(G)6/62). As I have had to set the tribunal's decision aside on other grounds, I will not go further into this matter but would stress what was said in the above-cited decisions. It is important, particularly in a case of this kind, for the clerk to the tribunal to try to arrange for a woman member to be present when there is a woman claimant.

(Signed) M.J. Goodman
Commissioner

Date: 29 February 1988