

2
C SB 307/1984
VGHH/SH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: - Arthur Gordon Jennings

Supplementary Benefit Appeal Tribunal: Cleveland

Case No: 25/494

1. My decision is that the decision of the supplementary benefit appeal tribunal ("SBAT") dated 30 November 1983 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

2. On 13 October 1983 the claimant claimed a single payment for a cooker (gas), bed, bedding, pots and pans, floor covering, settee etc (sic). At that date he was receiving a supplementary allowance. On 18 October 1983 the benefit officer decided that the claimant was not entitled to a single payment of benefit in respect of any of the above items.

3. The SBAT heard the claimant's appeal against the above decision on 30 November 1983. They found as a fact that he had obtained the tenancy of a Council flat in respect of which rent had been paid and they recorded as a fact that a letter had been produced from his mother saying that she would like the claimant to leave the home as soon as possible. The SBAT upheld the benefit officer's decision. With regard to bedding there was, they found, no need established under regulation 3(2) of the Single Payments Regulations because the claimant remained in his parents' home and had an adequate supply of bedding available to him. With regard to the other items, the claimant's case was considered under paragraph 10(1)(a)(iii) of the Single Payments Regulations and it was accepted by them that he fell within that paragraph. But it was considered that there was suitable alternative furnished accommodation available in the area namely his parents' home in which he currently resided.

4. The foundation of the SBAT's decision was accordingly their finding that suitable alternative furnished accommodation was available to the claimant. Accommodation is not available to a claimant if for any reason he is unacceptable as a tenant to a landlord: see Decision CSB 840/82 (to be reported as R(SB)8/84) at paragraph 20 under the heading "Available". This is a decision of a Tribunal of Commissioners. The claimant had produced evidence from his mother that she did not want him in the house and he gave evidence that his parents would like him to leave. The claimant is left entirely in the dark as to whether the evidence of himself and his mother was accepted or rejected and if it was rejected on what grounds. If it was accepted, the question then arose as to whether

the parents' home was available to the claimant or not and an explicit finding on these points, with reasons for the view taken, was essential. On these grounds, the decision of the SBAT is erroneous in point of law for failure to find the material facts and give reasons as required by rule 7(2)(b) of the Appeals Rules.

5. In addition, as regards the cooker, the SBAT were also in error in law in that they failed to appreciate that, as explained in Commissioner's decision CSB/508/82, (to be reported as R(SB)26/84) the opening condition of regulation 10(1)(b) was ultra vires with the effect that the condition that "the claimant has not recently become such a tenant or owner" are to be ignored. The effect of this is that the claimant can properly bring himself within the condition of regulation 10(1)(b)(iii) of the Single Payments Regulations as regards the cooker. It is not clear if the adjudication officer now concerned is submitting that the claimant can bring himself within 10(1)(b)(iii) as regards all the items claimed but if he is this is an error. Sub-paragraph (iii) is limited to cookers and heating appliances.

6. Since the material facts have not been found, it is not expedient for me to give the decision that the SBAT should have given. The case must be referred to a social security appeal tribunal which, in accordance with the usual practice, should be entirely differently constituted. That tribunal should re-hear the case and make findings of the material facts and give reasons in the light of the comments set out in this decision. Each item claimed should receive consideration and it should be ascertained what "etc" relates to (see paragraph 2 above) and findings should be made on this as the benefit officer's decision covered this.

7. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 23 July 1984

Commissioner's File: CSB/307/1984
C SBO File: 327/84
Region: North Eastern

7/10
37
SUPPLEMENTARY BENEFITS ACT 1976

SUBMISSION BY ADJUDICATION OFFICER ON CLAIMANT'S APPEAL TO THE COMMISSIONER

Name of claimant: Arthur Gordon Jennings Commissioner's File No: 307/1984

Supplementary Benefits Appeal Tribunal: Ref. No: SBO 327/84
Cleveland

Date of Tribunal Decision: 30 11 83 LO Ref: 601/161319

Tribunal Register No: 25/494

1. The claimant appeals with leave from the decision of the Cleveland Supplementary Benefits Appeal Tribunal ("the tribunal")(page 9). I make the following submissions on the appeal.
2. On 13 October 1983 he claimed a single payment (page 15) for a cooker (gas), bed, bedding, pots and pans, floor covering, settee etc (sic). At that date, the claimant was receiving a supplementary allowance (page 2 - Facts before the SBO, paragraph A1).
3. On 18 October 1983 the benefit officer decided that the claimant was not entitled to a single payment of benefit in respect of the claims detailed in paragraph 2 (see Form A6(SP) pages 16-18).
4. On 20 October 1983 the claimant lodged an appeal to the tribunal against the benefit officer's decision (page 1).
5. In his written observations on the claimant's appeal (pages 2 to 5) the benefit officer submitted that, in the circumstances of the case, a single payment could not properly be made because the claimant did not satisfy the conditions of regulations 3 and 10 of the Single Payments Regulations.
6. The decision of the tribunal at the hearing on 30 11 83 was to uphold the benefit officer's decision refusing a single payment. The chairman's note of evidence, the tribunal's findings of fact and their reasons for decision are on form LT 235 (pages 8 and 9).
7. It is submitted that the following statutory provisions are relevant to this case:-

Section 3 of the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980 ("the Act");

Regulations 3, 10 and 12 of the Supplementary Benefit (Single Payments) Regulations 1981 (SI 1981 No.1528) as amended by SI 1982 No.907, SI 1982 No.914 and SI 1983 No.1000 ("the Single Payments Regulations");

Rule 7 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (SI 1980 No.1605) as amended by SI 1982 No.40 ("the Appeals Rules")

and that the following authorities are also relevant:-

The unreported Commissioner's decision on file CSB 508/1982
R(SB) 5/81

8. In respect of items of furniture and household equipment, I submit that the Tribunal's decision is erroneous in point of law in that the tribunal misconstrued regulation 10 of the Single Payments Regulations.

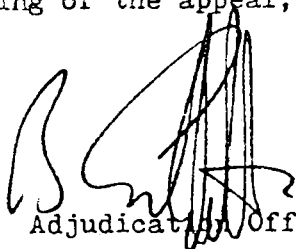
9. I submit, notwithstanding the grounds of appeal put forward by the claimant, that the principal error on the part of the tribunal lies in their misconstruction of regulation 10(1) of the Single Payments Regulations.

10. The recent decision given on Commissioner's file no. CSB/508/1982 (a copy of which is attached at pages 19 to 36) holds the opening condition of regulation 10(1)(b) to be ultra vires the effect of this ruling being that the words "the claimant has not recently become such a tenant or owner" are to be ignored (paragraph 33 of Appendix I). Thus in the present case it is my submission that in respect of his claim for the items of furniture and household goods listed in paragraph 2 the claimant can properly bring himself within the condition of regulation 10(1)(b)(iii) of the Single Payments Regulations and is so entitled to a single payment for that item.

11. I respectfully submit that the Commissioner should allow the appeal and that in the absence of the relevant findings of fact on which to determine the award, the case should be returned to be reheard by a fresh tribunal.

12. In respect of the claim for bedding, I submit that the tribunal's decision is not erroneous in point of law in that it was open to the tribunal to determine that at the date of claim a need for bedding had not yet arisen in the absence of the immediate need for it. The findings of fact and reasons for the decision given by the tribunal are adequate within the terms of R(SB)5/81.

13. Should the Commissionee require further submissions, I shall take legal advice, or should the Commissioner direct an oral hearing of the appeal, I will be legally represented.


Adjudicator Officer

8 May 1984