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JBM/SH/13

Commissioner's File: CSB/309/1990

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Kettering social security appeal tribunal dated 29 March 1990 is erroneous in point of law. Accordingly I set it aside. I give the decision that the appeal tribunal themselves should have given namely that the claimant is not entitled to a single payment for a settee and an easy chair. The reason for this is that he did not become the tenant or owner of unfurnished, or partly furnished accommodation in the 28 days immediately preceding the date of claim.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the decision of the appeal tribunal varying the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in the written submission of the adjudication officer first involved in these appeals. In respect of those matters and of the submission dated 25 January 1991 the claimant has had the opportunity to comment and I have his observations contained in the case papers. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to in paragraph 2 of the submission dated 25 January 1991 of the adjudication officer now involved in these appeals. Nothing is to be gained by my setting out those references afresh here.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. This is yet another case in which regulation 10 and regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981 feature. I need only refer

to the decision of the Court of Appeal in Northern Ireland being Carleton v. Department of Health and Social Services. The claimant has appealed and accordingly all issues are at large before me both the settee and the easy chair. The appeal tribunal decision is clearly wrong on the face of it as the claim in the instant case falls for determination by reference to regulation 10A and it is not in dispute that the claimant is unable to satisfy regulation 10A as he has lived at his present address prior to the 28 days immediately preceding the claim and is therefore caught by regulation 10A.(I). Regulation 30 also does not assist him.

6. The Commissioner in granting leave to appeal made the observation set out in his ruling granting leave to appeal. The claimant was present at the hearing and signed a declaration consenting to the case being proceeded with in the absence of a member of the tribunal other than the chairman. There is accordingly nothing in the point raised by the Commissioner at the time of granting leave to appeal. Regulation 24(2) of the Social Security (Adjudication) Regulations 1986 is accordingly satisfied. The adjudication officer now concerned in these appeals at paragraph 9 of his written submission dated 25 January 1991 states:-

"However, as this issue [the easy chair] is not before the Commissioner I submit that the decision should not be disturbed."

I do not accept this submission - the claimant has appealed - I see no limitation on the claimant's grounds of appeal dated 25 May 1990 - the whole issue of the appeal tribunal's decision is before me and the appeal tribunal's decision is erroneous in point of law.

7. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. In accordance with my jurisdiction I give the decision that the appeal tribunal themselves should have given. Although the claimant succeeds - he succeeds only on a technicality and it is for him but a pyrrhic victory.

8. Accordingly the claimant's appeal succeeds on the technicality but fails on the issue of substance.

(Signed) J B Morcom
Commissioner

(Date) 8 May 1992