

a)

23 MAR 1987

RFMH/SH/9/MD

Commissioner's File: CSB/0316/1986

C A O File: AO 2239/86

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:

Social Security Appeal Tribunal: Greater Birmingham

Case No: 149/14

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 20 December 1985 is erroneous in point of law and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is entitled to a single bed of reasonable quality by reference to her needs but excluding any reference to her medical needs.

2. This is a claimant's appeal, with my leave, against the unanimous decision of the social security appeal tribunal dated 20 December 1985. The claimant asked for an oral hearing of the appeal, a request to which I acceded. The claimant did not attend the oral hearing held before me but was represented by Mr A L Pickering, a welfare rights case worker from the Birmingham Tribunal Unit. The adjudication officer was represented by Mr E O F Stocker, Barrister. I am grateful to them both for their helpful submissions.

3. At the material time the claimant, a divorcee aged 40, lived alone in local authority accommodation. She was in receipt of supplementary benefit and had no capital. On 29 July 1985 she claimed a single payment for an orthopaedic bed. The claim was rejected in due course and the claimant appealed against the decision to the tribunal. She stated that the need arose because she was unable to sleep in her present bed because of agonising discomfort and was obliged to sleep on a settee.

4. In his written observations on the claimant's appeal the adjudication officer took the view that an orthopaedic bed constituted a medical need and that regulation 6(2)(n) of the Supplementary Benefit (Single Payments) Regulations 1981, as amended precluded a single payment for such a need. That regulation reads as follows:-

"(2) Notwithstanding any provisions in these regulations, in particular regulation 30, no single payment shall be made in respect of any of the following:-

.....

(n) a medical, surgical, optical, aural or dental need."

5. The claimant attended and was represented by Mr Pickering at the hearing of the appeal before the tribunal on 20 December 1985. The chairman's note of evidence records that Mr Pickering stated that the claimant needed a replacement for her existing double-bed which was very old; that she needed a double-bed for room of movement to ease pain; and that the claim was for a firm bed and not an orthopaedic one. The claimant gave particulars of the state of her existing bed and of her medical condition. In the event the tribunal awarded the claimant a single payment for the cost of a new single bed base and mattress. The findings on questions of fact material to the decision were:-

- "1. The appellant has a double bed which is defective both as regard to the base and to the mattress.
2. She suffers from a health condition the effects of which would probably be ameliorated by a firm mattress and base."

The reasons for the decision were:-

- "1. The appellant's need for a new bed has been established to the satisfaction of Single Payments Regulations (3)(2)(a) and 9(a), and without regard to any element of health. Regulation 6(2)(n) is therefore not relevant.
2. The tribunal cannot accept that on any of the grounds advanced a double bed is needed."

The claimant now appeals on a point of law to the Commissioner against that decision.

6. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal chairman shall record a statement of the reasons for its determination and of the findings on material questions of fact. Although the tribunal chairman completed form AT3 in detail and with care, he failed to record findings on some of the material facts and give adequate reasons for the decision. The tribunal failed to identify the quality of the bed awarded, having regard that they found as fact that the claimant's health condition would probably be ameliorated by a firm mattress and base. Further I agree with the claimant that the tribunal failed to give adequate reasons for their conclusion that she did not need a double-bed. As a result the decision is erroneous in law and I have no alternative but to set it aside. I should put on record that Mr Stocker supported the claimant's appeal on this ground.

7. Mr Stocker rightly analysed, in my view, that the first issue was to identify the item claimed. The initial claim was for an orthopaedic bed. Mr Pickering told the tribunal that the claimant needed a firm bed and not an orthopaedic bed as such. Mr Pickering submitted in evidence before me an explanatory statement from the National Bedding Federation which explained the term "orthopaedic" bed in the following terms:-

"It isn't exactly anything. In fact, strictly speaking there is no such thing. The medical connotation has a certain appeal but the definition is this: "the curing or correcting of deformities in children, or in persons generally". This is meaningless when applied to beds. Such beds have no special medical properties whatsoever and they will not cure a condition that requires medical attention. They may very well, however, give a great measure of relief.

Many beds are marketed with the description "orthopaedic" (or with a derivative brand name) and it is well to understand how they differ from other beds. Essentially, they are firmer beds than might be considered "normal"."

I accept Mr Pickering's submission that the word "orthopaedic" is synonymous with "firm" in the present context. It follows in my view that the claimant's claim was for a bed of a particular quality to meet her needs.

8. Regulation 3(2)(a) of the Single Payments Regulations provides that a single payment shall be made where there is a need for the item in question. Regulation 3(3)(b)(i) provides that where a single payment is awarded for the purchase of an item the amount shall be "such amount as is necessary to purchase an item of reasonable quality". The need in question has to be determined by reference to the situation as at the date of claim and by reference to the law currently in force (R(SB)42/83). Regulation 9 lists the item included in the term "essential furniture and household equipment". Regulation 9(a) specifies "sufficient beds and mattresses.. for all the members of the assessment unit..". A single payment for a bed may be awarded under regulation 10 or 30, subject to the criterion of "need" as defined in regulation 3(2) first being satisfied.

9. The tribunal accepted that the claimant had established need for the purposes of regulation 3(2)(a). Although the tribunal did not specifically state that the claimant satisfied regulation 10(1)(b) the mere fact that they went on to consider regulation 9(a) carries with it the implication that they had reached this conclusion. As the claimant lived alone they were, in my view, justified in awarding a single payment for a single bed (see Tribunal of Commissioners decision on Commissioner's file no. CSB/1440/1985, a copy of which is included in the documents before me).

10. I next have to consider the quality of the bed for which an award is made. Regulation 3(3)(b)(i) of the Single Payments Regulations requires the quality to be "reasonable". Reasonable quality must be considered by reference to the needs of the claimant and those needs must be determined by reference to the objective facts of the case. Personal idiosyncracies should not be taken into account. Accordingly the fact that the claimant preferred a double bed should be disregarded.

11. Finally I turn to the question whether the adjudication officer was right to reject the claim on the grounds that the claimant was caught by regulation 6(2)(n) of the Single Payments and if not, whether her medical needs should be reflected in determining whether the quality of the bed was reasonable in the circumstances. In the decision on Commissioner's file no. CSB/870/1984 the Commissioner adopted the root meaning of "medical" as related to healing. In paragraph 8 he stated "there may of course be borderline areas where equipment etc is alleged not in any sense to heal but merely to be designed to prevent the arising, resurgent, or worsening of a condition eg an orthopaedic mattress for a person suffering from a back condition or cotton sheets for someone having an allergy to synthetic sheets.. I express no opinion on them here but merely record that they were mentioned in the course of argument before me..". In decision on Commissioner's file CSB/1482/1985 the Commissioner considered whether the need for cotton sheets and a terylene filled duvet for someone having an allergy was a "medical.. need" for the purposes of regulation 6(2)(n) of the Single Payments Regulations. After considering the history of the regulation, and the various relevant Commissioners' decisions he concluded that the words "medical.. need" should be given a restricted meaning. At paragraph 12 he stated:-

"..the only way in which regulation 6(2)(n) can be defined so as to be consistent with those regulations is to define a "medical.. need" as being a need for a medical item - such as an insulin gun in the decision CSB/870/1984. But where there is a need, arising from a medical condition, for an item in ordinary, everyday use, such as a cotton sheet or a duvet, that need is not, in my judgment, excluded by regulation 6(2)(n).

Approved

in CSB 1360/1986

A need for cotton sheets and a terylene filled duvet, is not a "medical.. need" even though it is a need arising from a medical condition."

12. I accept the principle expressed above. I now have to consider its application to the facts of the present case. For reasons stated in paragraph 7 above, I accept that the claimant's claim was for a bed, albeit of a particular type. Such an item is in ordinary everyday use and is not a "medical.. need" in terms of regulation 6(2)(n). As a result the claimant is not caught by that regulation. However the issue is complicated because the claimant required a firm bed by reason of a medical condition. It is not in dispute that such a bed costs more than an ordinary bed because the extra firmness is achieved by the gauge, the quantity and the type of the spring coupled with the quantity and nature of the upholstery and filling material - or by the density of the foam and also by the nature of the base supporting the mattress. Accordingly the question at issue is whether in assessing the amount of the single payment payable under regulation 3(3)(b)(i), an additional amount should be awarded to enable a claimant to purchase a more expensive item to satisfy a particular need, when that need arises from or is in consequence of a medical condition. I think not. In my view such a need falls within the definition of a "medical.. need" for the purposes of regulation 6(2)(n) and should be disregarded. The claimant is entitled to a reasonable quality by reference to her needs. Those needs must be interpreted to mean ordinary everyday needs excluding needs over and above that norm arising from a medical condition. In my view the tribunal reached the right conclusion albeit that their decision was erroneous in law for the reasons stated above.

13. The chairman's note of evidence combined with the findings of the tribunal contain all necessary questions of fact and I consider it expedient in the circumstances to substitute my own decision for that which the tribunal should have given. I should add that Mr Stocker supported this conclusion and accordingly I give the decision as set out in paragraph 1. Although the claimant's appeal is allowed, I appreciate that she will gain no financial advantage from my decision.

(Signed) R.F.M. Heggs
Commissioner

Date: 13th March 1987