

IEJ/MC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

332/1981

*Single payment
- capital element
& weekly/regular bills
amount.*

1. This appeal achieves a technical success, but no practical advantage to the claimant. I set aside the decision dated 21 May 1981 of the Supplementary Benefit Appeal Tribunal, which I hold to be erroneous in point of law. And in exercise of my extended jurisdiction under rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (C.S.I 1980 No 1605) as amended by the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 (S.I. 1982 No 40) ("the Appeals Rules") and being satisfied that it is expedient in the circumstances so to do give the decision the tribunal should have given: That decision is that (for reasons I will later below indicate) the claimant's appeal from the decisions dated 23 April 1981 of a benefit officer fails.

2. The claimant, who was then in her early 50's and living alone and had for some years past been in receipt of supplementary allowance, was the subject of a benefit officer's decisions on 23 April 1981:-

- (a) awarding her supplementary allowance of £35.22 from 30 March 1981 (an increase of £0.19p only from her antecedently current rate); and
- (b) refusing a single payment claimed by her on 12 February 1981 in respect of repairs to a water heater.

On 27 April 1981 the claimant appealed against both those decisions to a Supplementary Benefit Appeals Tribunal, who heard and determined the appeal on 21 May 1981, upholding both decisions.

3. The claimant did not attend the tribunal's hearing, but her written grounds of appeal when read in conjunction with the record of earlier payments made to her indicate that as to decision (a) she considered the increase to be less than she should have been awarded; and that as to decision (b) she had been informed that the refusal was founded upon the ground that her available capital, duly computed, exceeded by more than the amount sought as the cost of repairs to the water heater the £300 referred to in Regulation 5 of the Supplementary Benefit (Single Payments) Regulations 1980 (S.I. 1980 No 985) ("the Single Payments Regulations"), and considered that in so far as she had

a National Savings account credit balance of some £400 (but that this represented as to some £200 moneys set aside by her to provide for her burial and as to the remainder monies she had set aside to pay the next instalments of rent and rates for which she was liable) that regulation should not properly have operated to defeat her claim for the single payment.

4. (1) The claimant advanced no reasoned contentions as to her challenge to decision (a); and I am in no doubt that the Tribunal acted correctly in deciding against her appeal on that decision. However, as has been stressed in Decision C.S.B 15/81 (to be reported as R(S.B) 5/82), it is incumbent upon a tribunal to express adequate findings of fact and reasons for their decision; and in my judgment I must treat their decision as erroneous in point of law by reason of failure on their part to express adequate findings of fact or reasons to support such a decision.
- (2) the tribunal's only "findings" make no reference to anything of relevance to decision (a), whilst their only reasons expressed are in the omnibus form:

"The decisions were made in accordance with the appropriate legislation."

- (3) That absence of findings of fact and generality of expression of reasons is in my judgment wholly inadequate to satisfy the statutory requirements of Rule 7(2)(b) of the Appeals Rules, for the reasons next indicated.
5. (1) As has been pointed out in Decision C.S.B 15/81 (to be reported as R(S.B) 5/82) and Decision C.S.B 26/81 (unreported), a Tribunal should, in order to comply with Rule 7(2)(b) of the Appeals Rules, make and express findings on all material facts and state the grounds for their decision in terms whereby a claimant can see how it is that their decision is founded. The particularity with which this needs to be done may of course vary according to the circumstances of the particular case.
- (2) as regards decision (a) in the present case the claimant advanced no specific contention in support of her claim that the increase awarded to her was less than she should have received, and I consider it sufficient for the decision which I now give as that which the tribunal should have given to hold and state as follows:-
- (i) I find as the material facts that the claimant's requirements and resources were as set out in the particulars of assessment put in evidence before the tribunal;
- (ii) I hold that the claimant's appeal in regard to decision (a) fails;

- (iii) the reasons for my so deciding are that the claimant's income and requirements so indicated have in my view respectively been taken into correct computation under the Supplementary Benefit (Resources) Regulations 1980 (S.I. 1980 No 1300) and the Supplementary Benefit (Requirements) Regulations 1980 (S.I. 1980 No 1299) and that the amount of supplementary allowance awarded was correct.

6. As has been pointed out in Decision C.S.B 26/81, a decision in respect of a claim for a single payment must in order to comply adequately with Rule 7(2)(b) of the Appeals Rules indicate clearly what provisions have been taken into account and all (if any) findings of fact relevant thereto. As that decision makes clear:

"The law with which Appeal Tribunals are now faced is both new and complex. It is only too easy to fall into error. The exercise of pinpointing the precise provision or provisions relied upon greatly concentrates the mind".

Moreover, it is in such a case no less important than in any other that a claimant can see from the tribunal's findings of fact and expressed reasons for their decision how it is that the decision is founded.

7. As regards decision (b) the position is in fact of considerably greater legal complexity than that obtaining as regards decision (a). And although I have come to a clear conclusion in regard to it, it is a conclusion I have reached with considerable reluctance, because it appears to me to demonstrate a manifest injustice which I will later identify. But, judged by the criteria I have already indicated, the tribunal, whilst reaching the conclusion, have woefully failed to express either findings of fact or reasons which comply with Rule 7(2)(b) of the Appeals Rules. Indeed it is open to serious question whether (as was put in decision C.S.B 26/81) they have ever concentrated their minds upon the issues truly arising in regard to decision (b).

8. (1) As to that, the first question to which the tribunal should have addressed themselves was in my judgment whether there was or was not any provision in the Single Payments Regulations under which a single payment could be made in respect of the cost of repairs claimed for.
- (2) Had they done so they would have found that there is no provision for such a payment in respect of repairs to a wash boiler (the apparatus in respect of which the repair cost was claimed) under Regulation 9 of the Single Payments Regulations, but that in appropriate circumstances such a payment might (as the benefit officer recognised) be authorised under Regulation 30 of the Single Payments Regulations. And they should accordingly have directed their attention to the qualifying conditions under the latter regulation. They should also have ascertained, as is the fact, that there is no other regulation in the Single Payments Regulations which could bear in the circumstances.

- (3) Only had the tribunal considered the conditions under Regulation 30 to be satisfied would it have become material for them to have considered the ground of decision (b) on which the benefit officer appears in fact to have relied, namely the contention that the claimant was debarred by the operation of Regulation 5 of the Single Payments Regulations from receiving a payment by reason of the amount of her savings.

9. Regulation 30 of the Single Payments Regulations provides that where a claimant is entitled to a pension or allowance (and this claimant was entitled to an allowance) and:-

..."(b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in "[Parts II to VII of the Single Payments Regulations]" a single payment to meet that exceptional need shall be made in his case if, in the opinion of the benefit officer, such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the Assessment Unit may be prevented".

10. There was in my judgment no evidence before the tribunal upon which the tribunal could have held that a payment in respect of an asserted exceptional need for the cost of repairs to the wash boiler could constitute "the only means by which serious damage or serious risk to health or safety of" the claimant might be prevented; and I find as a fact that such a payment did not satisfy that statutory prescription. I also hold that there is in such circumstance no other available provision of the Single Payments Regulations under which the claimant might be awarded the single payment she has claimed; and accordingly I uphold, though on different grounds from his, the decision in the sense of decision (b) given by the benefit officer originally concerned.

11. The absence from Regulation 9 of the Single Payments Regulations of provision for a single payment in respect of repairs to a wash boiler does, however, appear to me to be anomalous, not least because in the present case the wash boiler requiring repair was, it appears from the case file, itself purchased substantially out of a single payment earlier made specifically for its purchase. But there is in my judgment nothing in Regulation 9 which can be regarded as admitting the cost of repairs to such an item, although other items which might at large be thought as of less importance to the ordinary running of a household are expressly provided for. The practical effect of such omission is that unless a claimant is in a position to resort (without the assistance of an additional benefit payment to meet the cost) to some launderette facility, the laundry facilities available will be restricted to what can be done at home without boiling or can be boiled in saucepans on the top of some cooking stove.

12. For the reasons I have already indicated it is not necessary as a foundation for my decision either to accept or to reject the contention adopted both by the benefit officer originally concerned and by the presenting officer before the tribunal in respect of Regulation 5 of the Single Payments Regulations. However, I think it right to canvass what appear to me to be certain implications of that regulation in order that they may, if accepted as well founded, receive consideration by the Department.

13. (1) As in force at the material time (the wording has since been changed, but not so as to alter the continuing force of the observations I am about to express) Regulation 5 of the Single Payments Regulations operated to preclude from receipt of any single payment which would but for that regulation be payable a claimant whose "available capital" would exceed £300 after the amount of the payment had been deducted from the claimant's subsisting "available capital". Indeed the affect of subsequent amendment has been to make Regulation 5 even more stringent in the context of Regulation 30; but I need not go into that.

(2) Under Regulation 2 of the same regulations "available capital" was then defined to mean in relation to a claimant:-

".... capital which falls to be disregarded under Regulation 6(2) of the Resources Regulations" - which regulations are in turn defined to mean the Supplementary Benefit (Resources) Regulations 1980 ("the Resources Regulations").

14. (1) (i) Regulation 6(1) of the Resources Regulations directs disregard of certain specific assets in calculating a claimant's "capital resources".

(ii) Regulation 6(2) operates more generally by directing disregard of a claimant's capital resources as calculated in accordance with those regulations (i.e. after subtracting assets specifically specified for disregard) where their value is £2,000 or less:

"except in so far as any provision of the Act or regulations made pursuant to it provides otherwise".

(iii) There is so far as I am aware no such other "provision" bearing in cases such as the present.

(2) Thus under Regulation 5 of the Single Payments Regulations the "ceiling" £300 is reached when after debiting the amount otherwise receivable as a single payment a claimant would have left more than £300 of what is or are to be counted as capital resources after taking due account of the specific disregards stipulated by Regulation 6(1).

- (3) In order to decide whether or not Regulation 5 bears in a particular case it is thus necessary to make a close appraisal of a claimant's assets in the context of the Resources Regulations in general and Regulation 6 of those in particular.

15. Few claimants will conduct their personal financial affairs with the degree of refinement between capital resources and income resources, or capital liabilities and revenue (i.e. income) liabilities, which is required for business and tax accounting purposes. But the detailed provisions of the Resources Regulations do distinguish even in the case of individuals in modest circumstances between "income resources" and "capital resources". They do not, however, contain any comprehensive definition of what constitutes a "capital resource". And whilst they identify some specific items as being or not being such it is necessary if one is entertaining whether a particular asset not specifically designated for disregard is to be regarded as comprising or included in the £300 material under Regulation 5 of the Single Payments Regulations to decide whether that asset is a "capital resource" at all.

16. The general inference to be drawn from the Resources Regulations considered as a whole is clearly that any particular asset is a "capital resource" unless they stipulate that it is an income resource or it is the subject of specific provision for disregard of it as a "capital resource"; and certainly so as regards any form of money savings. The latter can readily be inferred from the provision in Regulation 6(1) which specifically provides for disregard (see Regulation 6(1)(d)) of "any savings of mobility allowance paid under the Social Security Act which the recipient intends to use in connection with mobility". Nor would most people quarrel with the proposition that in general a person's savings from any source should in general be considered as a "capital resource" of his or hers even if mentally earmarked for a future contemplated expenditure, and the more so if merely "put by for a rainy day".

17. It is not in dispute that the present claimant had at all material times a savings account in credit in a sum of approximately £400, or that if these constitute "capital resources" in the context of Regulation 5 of the Single Payments Regulations, Regulation 5 would have operated to deprive the claimant of entitlement to a single payment in respect of repairs to the wash boiler even had there been any need for which the qualifying conditions were otherwise met under those regulations.

18. However, the present claimant has convincingly indicated that this credit balance did not constitute in her case a "general reserve" in any sense, but constituted as to some £200 moneys she had earmarked to pay for her own burial expenses at her death and as to the balance moneys she was accumulating week by week out of her supplementary allowance to meet the cost of her accruing liability for current rent and general and water rates payable half yearly.

19. (1) I have found nothing in the Resources Regulations which authorises disregard of any savings account credit (or other accumulation of savings) in respect of either of these two "earmarked" purposes.
- (2) As regards burial expenses it may well be that since Social Security benefits can be provided to meet such, Parliament has seen no occasion to protect a person's financial provision for them by "disregard", notwithstanding the strength of feeling many have held as to the need to provide by savings for the expenses which will be incurred on one's death; and I say no more under this head.
- (3) However, as regards the putting aside of moneys for accruing current rent and rates liability, if moneys so put by are then taken into account as "available capital" under Regulation 5 of the Single Payments Regulations - and so may operate to debar a claimant from receiving a single payment which but for their being taken into computation would be payable - there appears to me to be a clear anomaly in the nature of "double booking".
20. (1) If one applies the standards of accounting practice applicable in commercial spheres it is to my mind readily apparent that any portion of current revenue which is set aside to meet an accruing current liability would not be regarded as a "capital resource" - it would be regarded as a "revenue provision" or "revenue reserve". And, one may well ask, how is a claimant expected to meet the liability for, say, half yearly rent or rates liability out of a weekly periodic payment of supplementary allowance unless by putting it by. Some may use the "vessels on the mantelpiece" system of accountancy in this respect, others may regard it as unsafe to keep money in the house and safer to bank it. Where is the line to be drawn? If rent is paid weekly on a Friday and benefit on a Monday, does putting by the week's rent on a Monday make it a "capital resource"? What if the rent is payable fortnightly, monthly or quarterly and the vase or teapot on the mantelpiece receives its weekly contribution? Can it make any difference if instead of the vase or teapot the saving is by a national savings or building society deposit? Can it be the true intention of Parliament that a claimant be deprived of an otherwise payable single payment by reason of moneys properly put aside in respect of accruing current rent and rates? Is it contemplated that a claimant should in his or her own interest promote action under Regulation 23 of the Claims and Payments Regulations (direct payment of pension or allowance to third parties) so that the housing requirement element of his or her supplementary allowance never comes to his hands to be so counted?

- (2) At first glimpse it might appear that a solution emerges from Regulation 26(1)(b) of the Single Payments Regulations,, which authorises the making of a single payment where a claimant "has spent, on any item for which had he claimed it a single payment would have been made under these regulations, money set aside to provide for any item to which the category of normal, additional or housing requirements relates, and as a consequence is unable and cannot reasonably be expected to meet the cost of any item to which one of those categories relates which it is essential that he should meet."
- (3) However, it will on closer analysis be apparent that such regulation does not bear in the contemplated circumstances - because had the claimant applied the moneys set aside to provide for his housing requirements and invoked that regulation the answer would have been given that the expenditure had been on an item for which, had he claimed it, a single payment would not have been made - because of the intervention of Regulation 5.

21. For the reasons I have earlier indicated I have found myself unable to allow the present appeal in any practical sense. I hope that the circumstances on which the claimant has thrown light may nevertheless merit some official consideration.

22. My decision is as indicated in paragraph 1 above.

(Signed) I. Edwards-Jones
Commissioner

Date: 16 June 1982

Commissioner's File: C.S.B 332/1981
CSBO File: S.B.0 385/81