CSB 355/1981

DGR/BOS

SUPPLEMENTARY BENEFITS ACT 1976

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

Decision C.S.B. 2/82

1. My decision is that the decision of the supplementary benefit appeal tribunal was erroneous in point of law, and accordingly I set it aside.

2. The claimant, now aged 20, had been ordered by the Magistrates Court to do community service of 240 hours. The Northamptonshire Probation and After-Care Service applied on his behalf for help to meet the cost of overalls and boots. He needed the former as protective clothing to prevent his normal clothes becoming spoilt by paint, and he needed the boots to replace his shoes which were split. On 18 March 1981 the benefit officer decided that the claimant was not entitled to a single payment of benefit for overalls and boots because he did not satisfy the conditions for a single payment under the Supplementary Benefit (Single Payments) Regulations 1980 /S.I. 1980 No 985 as amended by S.I. 1980 No 1649/.

3. The claimant appealed against that decision to the Supplementary Benefit Appeal Tribunal, who unanimously decided to allow payment of £10.75 for a boiler suit and £12.50 for boots. The findings of the tribunal on questions of fact were as follows:

> "The tribunal found that the Appellant had been sentenced by Corby Magistrates Court to 240 hours community service work. They also found that the Appellant would need some protective clothing to carry out the work involved, namely gardening and decorating. Appellant was aged 19 and had a wife and child under 12 months of age to support and was in receipt of supplementary benefit."

They gave as their reasons for their decision the following:

> "The tribunal considered that there was a need and that a discretionary payment should be made under Regulation 30 of the Single Payments Regulations 1980. The work was of a kind which although unpaid was work in the broader sense of the word.

> The tribunal expressed the view that there was a lacuna in the Single Payments Regulations as it was not clearly set out that provision of protective clothing required to do work after a sentence of a Court was clearly excluded and the Tribunal felt that they had discretion."

The benefit officer then applied for leave to appeal against the decision of the tribunal on the ground that it was erroneous in point of law, and on 27 August 1981 I gave the necessary leave. The benefit officer requested an oral hearing of the appeal itself, an application to which I acceded. At the hearing the benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. I am grateful to her for her submissions. The claimant did not appear.

4. The tribunal purported to make their award in reliance on Regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980. However, an award cannot be made under that regulation unless the conditions therein set out have been satisfied. As was said in paragraph 12 of unreported Decision C.S.B. 16/81 (to be reported as R(SB) 15/81):

> "It cannot be too strongly stressed, however, that no claimant can successfully ground a claim for any of the single payments the subject of parts II to VIII (Regulations 7 to 30) of the Regulations unless he can first bring himself within the general provisions of Part I (Regulations 1 to 6)."

Now, the tribunal have not indicated how it is that the claimant brings himself within the general provisions of Part I.

5. In particular, they have not shown how the claimant can avoid the consequences of Regulations 6(2)(j). The relevant provision reads as follows:

> "(2) Notwithstanding any provision in these regulations, in particular Regulation 30 (discretionary payments), no single payment shall be made in respect of any of the following .....
>
> (j) expenses arising from an appearance in a court such as travelling expenses, legal fees, court fees, fines, costs, damages or subsistence."

Now, in my judgment, the expenses occasioned by the need for boots and overalls are a consequence of the claimant's appearance in the Magistrates' Court. The "travelling expenses, legal fees, court fees, fines, costs, damages or subsistence" referred to in the Regulation are merely examples of "expenses arising from an appearance in court", and are not, nor do they purport to be, exhaustive. Accordingly, I am persuaded that Regulation 6(2)(j) applies in the present case and necessarily prevents the operation of Regulation 30. In reaching a contrary view and in concluding that they were at liberty to apply Regulation 30 the tribunal were manifestly erroneous in law, and I have no hesitation in setting aside their decision.

6. Although what has been said above is enough to dispose of this appeal, I think it would be helpful if I went on, as invited so to do by Miss Shuker, to point out various other respects in which the tribunal erred in law. Firstly, the tribunal have expressed the view in their reasons for their decision that the community service work was, albeit unpaid, nevertheless work "in the broader sense of the word". The benefit officer, when he made his original decision, decided that the appellant was not entitled to a single payment because he did not satisfy a basic requirement of the application of Regulation 23, namely that he was about to take up employment. Employment is defined in Regulation 2 as meaning "full-time work, other than self-employment, within the meaning of section 6 of the Act". Although the tribunal apparently regarded Regulation 23 as not applying to the present case, they seem to have gone out of their way to reject the basis on which the insurance officer himself decided on the inapplicability of that regulation. In the interest of avoiding error on some future occasion I think it would be helpful if I said categorically that, in my judgment, community service imposed by a Magistrates' Court does not constitute employment within Regulation 23.

7. The decision of the tribunal is also erroneous because they failed to explain where exactly lay the serious damage or serious risk to health and safety, which the award they purported to make under Regulation 30 was to prevent. The need for overalls to prevent damage to clothing and the desirability of having new boots to replace shoes which were split are understandable. However, it does not follow that the failure to satisfy these particular wants will result in a serious risk to health. (See unreported Decisions C.S.B. 11/81 paragraph 7, and C.S.B. 21/81 paragraph 5). Furthermore, even if the tribunal had purported to find a connection between the wants in question and a serious risk to health, in my judgment, the evidence would not have supported such a finding, and the finding would have had to be treated as perverse.

8. In addition, the tribunal failed to consider whether a single payment was the only means of avoiding a serious risk to health. They should have considered whether the cost of providing protective clothing could be defrayed out of the funds of the probation office or whether the claimant might solve the problem by joining a clothing club.

9. Accordingly, for the reasons given above, quite apart from the effect of Regulation 6(2)(j), the tribunal failed to make the appropriate findings to justify the application of Regulation 30, and in any event there was no supporting evidence to justify an award under that Regulation. It follows that on these further grounds the decision of the tribunal was erroneous in point of law.

10. In the circumstances I have no alternative but to set aside the tribunal's decision and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 3 February 1982

Commissioner's File: C.S.B. 355/1981
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