

MJG/SG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

CSB 385/1981 clothing. Reg 27 Reg 26 (now 28)

No need => bought items before claiming
meaning of 'set aside' in reg 26 [now reg 28]

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 13 April 1981 and I set that decision aside as being erroneous in law. I remit the case for re-hearing and re-determination, in accordance with this decision, to a differently constituted tribunal: Supplementary Benefits Act 1976, section 15A and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 /S.I. 1980 No. 1605 as amended by S.I. 1982 No. 407 rules 7(2) and 10(3).

2. This appeal by a claimant was the subject of an oral hearing before me on 24 February 1983 at which the claimant was not present but was represented by Mr A Randall of the Citizen's Advice Bureau in the area in which the claimant lives and the supplementary benefit officer was represented by Miss I Shuker, Counsel, of the Solicitor's Office of the Department of Health and Social Security. I am indebted to Mr Randall and to Miss Shuker for their assistance to me at the hearing.

3. The appeal concerns a claim which the claimant made on 9 March 1981 for reimbursement of £28 spent by him on buying two nightdresses (£10) one dressing-gown (£15) and one pair of slippers (£3) for his wife on Monday 2 March 1981. He bought the clothing because his wife had been taken suddenly, as an emergency case, into hospital on Sunday 1 March 1981. The tribunal by its decision dated 13 April 1981 upheld the benefit officer's decision to refuse a single payment for these items. The tribunal clearly erred in law in that they considered that they were precluded from considering the claim by regulation 27(1)(b) of the Supplementary Benefit (Single Payments) Regulations 1980, /S.I. 1980 No. 935 as amended by S.I. 1980 No. 1649, which provides as follows:

"27(1) A payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made

where any member of the assessment unit needs new or replacement clothing and -

- (a)
- (b) that need arises because he is admitted to hospital or similar institution as a patient or to a re-establishment course as a resident and for the purposes of his stay there."

The tribunal clearly misread the regulation because that type of need, i.e. admission to hospital, is precisely one where regulation 27(1)(b) recognises that a single payment can be made. The tribunal's decision must be set aside on that ground alone as it was a clear error of law. This is not, however, a case where I can, under the amended rule 10(8) of the Appeals Rules, myself give the decision which the tribunal ought to have given because (for the reasons set out below) new evidence needs to be taken and the Commissioner in this jurisdiction is not a judge of fact but only a judge of law.

4. Since the hearing before the tribunal there have been further submissions by the parties and new matters have been raised. Consequently I should indicate to the new tribunal that re-hears this case the matters which I now consider they ought to investigate. It is clear that the claimant cannot as such be entitled to a single payment under regulation 27(1)(b) of the Single Payments Regulations (cited above) because the claimant cannot show compliance also with regulation 3(2)(a) of the Single Payments Regulations (regulation 3 of course qualifies the whole of the succeeding regulations including regulation 27). Regulation 3(2)(a) requires that there shall be "a need for the item in question" but at the time the claim was made the claimant did not need the item in question because he had already bought it with his own money (see reported Commissioner's Decision R(SB) 8/81 paragraph 6). Mr Randall on behalf of the claimant did not seek to argue otherwise.

5. However, there has been argued before the Commissioner a matter that does not appear to have been before the tribunal, namely the possibility that the claimant could have claimed a single payment (and the new tribunal have power to adjudicate on this point) under regulation 26 of the Single Payments Regulations. So far as is material, that provides as follows:

- "26(1) A single payment shall be made where a claimant -
- (a)
 - (b) 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.

(2) The amount payable in a case to which paragraph (1) applies shall be the amount of the cost, or where more than one item is concerned the aggregate amount of the costs, which he is unable to meet, subject to a maximum of -

(a)

(b) in a case to which paragraph (1)(b) applies, the amount of the single payment which would otherwise have been made".

6. In the present case the tribunal that originally heard the case recorded that the claimant had paid the £28 for the wife's clothes "out of his supplementary benefit". It is possible therefore that the claimant might have a valid claim under regulation 26. However to do so he would have to show the following matters, all of which should be investigated by the new tribunal that re-hears this case. First, he must show that had he claimed a single payment for the cost of the clothing before he bought it himself he would have been entitled to a single payment under the other single payments regulations. That may well be so because he satisfies that part of regulation 27(1)(b) which refers to the need for the clothing arising as a result of admission to hospital. (It should be noted that the version of regulation 27(1)(b) that applies to this case is as cited in paragraph 3 above and not the amended version introduced only as from 27 July 1981 by S.I. 1981 No. 815 and repeated in the 1981 Single Payments Regulations [S.I. 1981 No. 1528] regulation 28). It was conceded by Miss Shuker that the claimant did satisfy the original version of regulation 27(1)(b) but rightly pointed out that there also had to be compliance with regulation 3(2)(b) of the regulations (on the hypothesis posed by regulation 26(1)(b) there was a "need" under regulation 3(1)). It must therefore be shown that the claimant's wife did not (i) already possess the clothing in question or (ii) have available suitable alternative items or (iii) had not had them and unreasonably disposed of them. There was some evidence before the original tribunal that she did in fact already have some of the items in question but they were either dirty or torn. This must be investigated by the new tribunal. On the facts as found by the original tribunal, Miss Shuker in my view rightly conceded that it could not be said that the claimant had "failed to avail" herself of items that might have been available in the hospital and the new tribunal should not therefore find that the claimant had failed to avail herself of any such clothing.

7. In addition the claimant would have to show that he had "set aside" money from his normal weekly supplementary benefit allowance to provide for "any item to which the category of normal additional or housing requirements relates" (regulation 26(1)(b)). As to the meaning of "set aside", I adopt and approve the words used by the Commissioner in a Decision on Commissioner's File C.S.B. 683/1982 as follows:

"In my judgment that phrase [money set aside to meet ...] should not be restrictively construed. It would be reasonable to hold that money is set aside for a purpose in terms of the regulation without its being shown to have been placed to the credit of a separate account or kept in a separate place, if for instance, it has been budgeted for or otherwise mentally set aside for that purpose".

8. The claimant would also have to show that as a consequence of using money so set aside he could not have been reasonably expected to meet the cost of any item or items for which he had set that money aside and that it was "essential" that he should meet that cost (regulation 26(1)). When considering whether or not it was "essential", the new tribunal should bear in mind the wide definition of "essential" (in another context but equally applicable to this case) in reported Commissioner's Decision R(SB)10/81 (paragraph 9),

"Essential" means 'necessary' in the sense in which luxuries are differentiated from 'the necessities of life' and as importing a requirement of substantial need, judged by the modest general standard of living to the provision of which the award of supplementary benefit is directed; but falling short of a requirement of being 'indispensable' if life is to be sustained or of so rigorous a test as is imposed by regulation 30 of the same regulations which enables discretionary payments to be made outside the range of specific needs catered for by the preceding regulations only if payment is 'the only means by which serious damage or serious risk to ... health or safety ... may be prevented'".

9. Lastly, it would have to be shown that as well as it being "essential" that the claimant should meet the cost of the item, he also satisfied once again in this context the overriding requirements of regulation 3. No doubt if he is able to show the new tribunal that it was "essential" that he should meet the cost of a particular item or items, he would also normally show compliance with regulation 3, i.e. that there was a "need" etc. Nevertheless, the new tribunal should consider regulation 3 in this context.

10. In conclusion I should emphasise that regulation 26 does not represent a ready 'way round' the requirement of "need" in regulation 3(2)(a) or the ruling in Decision R(SB) 8/81. Regulation 26 can apply only if each and every of the requirements of that regulation are fulfilled, as set out above. In particular it is not sufficient simply for it to be shown that the claimant used his weekly supplementary benefit to make a payment which could have been the subject of a "single payment", if claimed before the money was spent. It must be shown in addition that the claimant would otherwise have spent the money on an item or items of "normal, additional or housing requirements" for which the money was "set aside" and that it was "essential" that the claimant should meet the cost of that item or these items.

(Signed) M J Goodman
Commissioner

Date: 20 April 1983

Commissioner's File: C.S.B. 385/1981
C SBO File: 466/81