

CSB 402/1981

DGR/MP

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF SUPPLEMENTARY
BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: Hereford and Worcester

Case No: 11/234

ORAL HEARING

1. I grant the claimant leave to appeal. My decision on the appeal itself is that the decision of the supplementary benefit appeal tribunal given on 24 March 1981 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.

2. On 27 February 1981 the supplementary benefit officer disallowed the claimant's claim for an urgent needs payment covering bedding, cooking utensils and clothing. At that time the claimant, a single man aged 38, was in receipt of £31.45 weekly invalidity benefit and was not entitled to supplementary benefit. He had been receiving invalidity benefit since December 1975. His home was a caravan, and in the first week of January 1981 he had suffered a mental breakdown, as a result of which he had destroyed many of his belongings, including the interior fittings and equipment of his caravan and his spare clothing. He had been admitted to hospital immediately following his breakdown, and not discharged until 19 February 1981. The Social Services Department had managed to acquire a replacement caravan for him, and on 10 February 1981 they had written to the Department on the claimant's behalf requesting an urgent needs payment to enable him to purchase replacement clothing and items for his new home.

3. Manifestly, at the date of claim the claimant was not entitled to a single payment under the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No 985] because he was not entitled to a supplementary allowance. His weekly income from his invalidity benefit exceeded any supplementary benefit that might otherwise have been payable. However, he could claim under the Supplementary Benefit (Urgent Cases) Regulations 1980 [S.I. 1980 No 1642], provided, of course, he satisfied the relevant provisions.

4. The benefit officer took the view that the claimant could not succeed under those Regulations unless he satisfied regulation 8(1), which reads as follows:-

'Where any member of the assessment unit is affected by a disaster (for example a fire or flood), whether or not it affects other persons, and in the period mentioned in paragraph (3) -

- (a) because of the disaster he is in need of any item to which column 1 of Schedule 1 to these Regulations applies; and
- (b) the Single Payments Regulations do not apply to that item in those circumstances,

the claimant shall be entitled in respect of that item to an amount of supplementary benefit determined in accordance with regulation 4'

Paragraph (3), referred to above, provides that the regulation shall only apply for 'a period of 14 days immediately following the disaster, except where it appears to the Secretary of State that there are, will or likely to be circumstances making impracticable or unduly difficult the normal operation of the provisions governing or the practice relating to the claiming, awarding or payment of supplementary benefit' in which event he may direct that the period be extended. No such direction has been given in the present case.

5. The benefit officer based his refusal of the application on the meaning of 'disaster' in the relevant regulation. According to him 'a disaster in normal terms is a flood, fire, earthquake, storm or some similar sudden and terrible mishap on a large scale'. The claimant could not therefore invoke regulation 8(1). The benefit officer also went on to state that the claimant was 'expected to obtain the items required by other means; for example from relatives, friends, voluntary organisations or use his available income or credit facilities with which to purchase those articles required'.

6. Thereupon the claimant appealed against that decision to the supplementary benefit appeal tribunal, but without success. They gave as the reasons for their decision the following

'Although the tribunal were satisfied that the appellant had suffered a disaster within the meaning of the SB (Urgent Cases) Regulations 1980, they considered that it had not been proved that a single payment was the only means by which serious damage or risk to his health could be prevented. (For example two charitable organisations had been approached).'

7. The claimant sought leave to appeal against the decision of the appeal tribunal on the basis that it was erroneous in point of law, and asked for an oral hearing, a request to which I acceded. At that hearing he was represented by Miss Janet Allbeson of the Child

Poverty Action Group, and the benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security.

8. At the commencement of the hearing Miss Shuker conceded on behalf of the benefit officer that the appeal tribunal had been erroneous in point of law on various counts. In making this concession she departed from the written submissions, which took the opposite view, but I consider that the course she adopts was wholly correct and proper. Indeed, Miss Shuker and Miss Allbeson were substantially in accord with one another on all the relevant issues.

9. The appeal tribunal can be said to have erred in law in respect of the following matters. First, they should have considered regulation 3 of the Supplementary Benefit (Urgent Cases) Regulations 1980 [now 1981] which provides in effect that a claimant will not be entitled to a payment if there are other sources readily available to him. As will be explained later, it seems that the tribunal did in fact take the view that the claimant might be able to obtain help from various charitable organisations without relying on state funds, but they did not make any findings of this kind specifically with reference to regulation 3. Their failure to consider this Regulation and to make appropriate findings constitutes a clear error of law.

10. Secondly, although the tribunal came to the conclusion that the claimant had suffered a disaster within the meaning of regulation 8(1), which on the face of it would have entitled the claimant to succeed, they gave no explanation why this was not the result, but went on to consider the claimant's entitlement under regulation 24, albeit they made no specific reference to that particular regulation. It was presumably the case that they concluded that the claimant was not entitled under regulation 8(1) for the simple reason that he was out of time under paragraph (3). If they did, they should have specifically so stated, and to this extent also they were erroneous in point of law.

11. A third error on the part of the tribunal was that, although they concluded that it had not been proved that a single payment was the only means by which serious damage to the claimant's health might be averted, so that presumably the claimant did not qualify under regulation 24, they failed to explain specifically why this was so. The reference to charitable organisations having been approached suggests that they took the view that there were other sources, on which the claimant could rely, but they failed to explain where exactly the claimant was to look for help, and why it was that they believed such help was certain to be forthcoming. In short, the claimant was left quite in the dark as to why he had not succeeded, and there can be no doubt that in consequence the tribunal erred in point of law.

12. In the course of the hearing I invited Miss Allbeson to make submissions on the meaning of disaster in regulation 8(1). The supplementary benefit officer had given a restricted meaning to that expression, and the written submissions put forward before me on behalf of the benefit officer supported this approach, albeit this

was not the view of Miss Shuker. Miss Allbeson argued that the word 'disaster' was not a term of art, but it was not confined to disasters in the nature of acts of God, nor was it in any way restricted to the kind of disasters against which insurance is commonly provided. She relied on Brutus v Cozens [1972] 2 ALL E.R. 1297 and cited Lord Reid's observation at page 1299 that 'the meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what the unusual sense is. But here there is in my opinion no question of the word "insulting" being used in any unusual sense. It appears to me, for reasons which I shall give later, to be intended to have its ordinary meaning. It is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision'.

13. In the present case Miss Allbeson contended that 'disaster' should be interpreted in its every day meaning and she cited the definition contained in the Oxford English Dictionary, namely, 'anything that befalls of ruinous or distressing nature; a sudden or great misfortune, mishap or misadventure; a calamity'. She did, however, concede that 'disaster' in the context of regulation 8(1) did not embrace a calamity which was purely self-induced. Thus, if a person becomes roaring drunk and smashes up his caravan, the consequences of which are to him calamitous, this will not be a disaster within the Regulation. He brought the situation on himself by his conduct in allowing himself to become drunk in the first place. However, the position will be totally different for his family who were in no way instrumental in bringing about the damage, but were necessarily involved in the consequences thereof. Miss Shuker agreed with this approach.

14. I accept the above liberal interpretation of the word disaster, and reject the limiting approach of the benefit officer adopted on 27 February 1981 and confirmed in the written submissions put forward to me on his behalf. Whether or not a disaster has occurred is essentially a question of fact to be determined in the circumstances of the case. In the present instance, the loss of the caravan and the claimant's possessions therein was calamitous to him, and I am satisfied that the tribunal were entitled on the evidence before them to come to the conclusion that in effecting the damage the claimant was so under the influence of his mental breakdown that he was not consciously instrumental in bringing upon himself the misfortune in question. Accordingly, the tribunal were entitled to reach the view that the claimant satisfied regulation 8(1).

15. They were also entitled to conclude that the claimant fell within regulation 24, provided, of course, he satisfied all the

various provisions contained therein, notwithstanding that he was caught by paragraph 3 of regulation 8. Regulation 24 reads as follows:-

'Where a claimant to whom regulation 8(1) or 9 applies:-

- (a) claims an amount of supplementary benefit by way of a single payment or pension or allowance under any of the regulations in Part II or III of these regulations, but fails to satisfy the conditions for that amount; or
- (b) claims to have an urgent need for which no provision is made in Part II or III of these regulations,

there shall be payable to the claimant to meet that urgent need an amount of supplementary benefit by way of a single payment determined in accordance with regulation 4 or, as the case may be, an amount of pension or allowance determined in accordance with regulation 5 if, in the opinion of a benefit officer, a payment of such an amount 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'.

Clearly, this is a 'last resort' provision, to which persons who have suffered a 'disaster' may have resort, and it matters not that their entitlement under regulation 8(1) has been lost by virtue of delay. Any other view would make nonsense of the 'long-stop' nature of regulation 24. It is important to note that the qualifying condition (omitted from the 1981 Regulations) is that the claimant is one to whom paragraph (1) of regulation 8 applies, and not the entire regulation including paragraph (3). Admittedly paragraph (1) contains the words "and in the period mentioned in paragraph (3)", but these words do not refer to any time limit for claiming, but merely to a time limit within which the relevant need must arise. This is clear from sub-paragraph (a) of regulation 8(1).

16. Early in the hearing I was quite satisfied that the claimant had established a right to appeal, and both Miss Allbeson and Miss Shuker proceeded on the basis that the decision of the tribunal would have to be set aside. However, it does not appear that, technically speaking, either Miss Allbeson or Miss Shuker, before or during the hearing, ever formally consented to my treating the hearing of the application as a hearing of the appeal itself. However, after the hearing formal consent was obtained. Accordingly, I go on in this decision to determine the appeal itself, and give the decision set out in paragraph 1.

17. The reconstituted tribunal will consider the matter afresh in the light of the guidance here provided. In particular, in so far as the tribunal has to consider regulation 24, they must have regard to whether or not the claimant is likely to suffer serious damage or serious risk to the health or safety of any member of the assessment unit, if a payment is not made. In this connection, Miss Allbeson pointed out at the hearing that it was highly artificial that the

tribunal had to reach a conclusion as to the effect on the claimant's health of his not being provided with money for clothing which he originally sought some 17 months ago. In the case of applications made under the Urgent Needs Provisions time was crucial. I see the force of this, and the desirability of some special machinery being set up to deal expeditiously with appeals on questions of law where the outcome affects a case of this kind. However, these are matters which lie outside my province. The tribunal must in the circumstances do the best they can.

18. I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 10 September 1982

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