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Commissioner's File: CSB/425/1985  
C A O File: AO 3137/SB/85  
Region: London North

**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: Walthamstow**

**Case No: 10/28/05**

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 17 December 1984, insofar as they decided that the claimant was not entitled to a single payment for the cost of a high chair, was not erroneous in point of law, and accordingly this appeal fails.
2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 17 December 1984, insofar as the tribunal decided that the claimant was not entitled to a single payment for the cost of a high chair.
3. On 19 March 1984 the claimant, who was in receipt of supplementary benefit, claimed a single payment for a high chair. However, this item had been purchased on 9 March 1984 by means of the claimant's Visa credit card. Not surprisingly, on 21 March 1984 the benefit officer (now the adjudication officer) disallowed the claim on the basis that the claimant was unable to satisfy the provisions of regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528].
4. In due course, the claimant appealed to the tribunal, who in the event upheld the benefit officer. The tribunal gave as the reasons for their decision the following:

"S.B. Regulation 3(2) points out that a payment can only be made when a need exists. R(SB) 47/83 makes it clear that a need can only be assessed from the date of the claim. As the claim was not made until 19.3.84, and the chair had already been bought by then, no need existed. SBR3 is an overriding regulation and ∴ no later regulation could apply".
5. Manifestly, the claimant had made the necessary purchase prior to the date of claim. There is no evidence that the card company defaulted, and in consequence payment was made some ten days before the date of claim. The position governing credit cards is set out in paragraph 4 of the unreported decision on Commissioner's file CSB 277/1983:

"It has been held that where a debt is paid by cheque which is accepted by the creditor the debt is not immediately regarded as paid but the right to

sue for the debt is suspended (see Halsbury's Laws of England (4th Edition) vol 9 paragraph 501). But payment for an item by credit card (where the card company becomes liable to the supplier of the item) in my judgment more closely resembles payment by confirmed letter of credit, which operates as conditional payment of the debt (see the above volume of Halsbury's Laws of England at paragraph 500). If the debt is duly discharged by the card company the payment becomes absolute. In my judgment unless the card company defaults (and in this case it did not) the debt must be regarded as paid from the moment that the card is accepted by the creditor. I hold therefore that the decision was not erroneous in point of law. The debt had been paid at the time of the claim".

Accordingly, in the present case the claimant could not establish any need, in terms of regulation 3(2), for a single payment in respect of the cost of a high chair.

6. However, the next question to arise is whether or not the claimant can rely on regulation 28(1)(b). The tribunal do not appear to have adverted to this possibility. That regulation provides as follows:

- "28.-(1) A single payment shall be made where a claimant either - ...
- (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 -
    - (i) to which the category of normal, additional or housing requirements relates,
    - (ii) .....
    - (iii) .....

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".

The importance of regulation 28(1)(b) was stressed in the decision of a Tribunal of Commissioners, R(SB) 12/85. As was said in paragraph 11:

"Accordingly it is in general right that, in cases where the claim is not made until after the item has been acquired or paid for, the adjudication officer and the appeal tribunal should consider the possibility that there may be entitlement under regulation 28".

However, the Tribunal of Commissioners went on to add the important rider:

"That will not, of course, apply where, for one reason or another, it is obvious that there can be no entitlement under that regulation - e.g. where the claimant states that the item was paid for with money borrowed for that express purpose (see Decision of a Tribunal of Commissioners R(SB) 47/83, paragraph 12)"

Manifestly, in the present case where the money necessary for purchase of the high chair was acquired by means of credit extended by the credit card company, there can be no question of the claimant's having "used money set aside to provide for any item to which the category of normal, additional or housing requirements relates".

7. The claimant has endeavoured to meet this point by suggesting that money set aside for general living was eventually applied in repayment of his indebtedness to the credit card company and was therefore in effect used to pay for the high chair. I do not accept this

submission. What has happened in this case is that the claimant bought the high chair, arranging for the cost to be discharged by the credit card company. In due course the latter would have paid the account, presumably at a small discount, and then called on the claimant to reimburse it for the nominal cost of the item (i.e. without any discount) together with interest if such reimbursement was not effected within a specified time. Accordingly, if money set aside by the claimant to meet living expenses was used to discharge his indebtedness to the credit card company, such money was clearly not applied to the purchase of the high chair. It was used for another purpose altogether. In my judgment, the language of regulation 28 contemplates direct purchases of items for which a single payment, if claimed, would have been made, and not indirect purchases made one step removed.

Accordingly regulation 28(1)(b) can have no application, and there was no need for the tribunal to advert thereto.

8. However, the claimant seeks to rely on regulation 28(1)(a). This regulation reads as follows:-

- "28.-(1) A single payment shall be made where a claimant or his partner either -
- (a) in respect of a past period has not received an amount of pension or allowance -
    - (i) to which he or his partner was entitled, or
    - (ii) to which he or his partner would have been entitled had he or his partner made a claim for it and satisfied the conditions for claiming and payment of it prescribed pursuant to section 14 of the Act".

The claimant seeks to establish that his claim fell for alternative consideration under this provision. However, even had the question whether the claimant had been entitled to, but had not received, an amount of supplementary benefit in respect of a past period been raised before the tribunal (and apparently it was not), this would not have been a matter properly within their jurisdiction. As was said in paragraph 12 of the unreported decision on Commissioner's file CSSB 49/50/51/1985:

- "12. Even if on proof of all the elements of the provisions of regulation 28(1)(a) a claimant could obtain a single payment for an item, e.g. of clothing, for which he had been held ineligible for a single payment in the ordinary way, I do not consider that such a radical and complicated alternative case can properly be regarded as within the scope of an ordinary claim for a single payment so as to enable it to be put forward for the first time to a social security appeal tribunal hearing an appeal against the refusal of a single payment. Such a claim necessarily involves investigation of a claimant's past entitlement to weekly awards of supplementary pension or allowance as well as proof of the specified consequences of any deficit. Under the provisions of regulation 65 of and Schedule 4 to the Adjudication Regulations the provisions of section 102(1) of the Social Security Act 1975 whereby a tribunal may consider questions first arising before them has not been extended to social security appeal tribunals dealing with supplementary benefit cases. In my judgment the issues raised for the first time before the tribunal in the present case as to the possible application of regulation 28(1)(a) of the Single Payments Regulations represented "questions first arising" which the tribunal did not have jurisdiction to deal with. The tribunal in the present case therefore erred in my judgment in entertaining this argument and it is unnecessary to consider the adequacy or otherwise of their treatment of it in the decision".

Accordingly, in the present case it was not open to the tribunal to consider any contention based on regulation 28(1)(a), and the tribunal did not err in not referring to it.

9. Finally, the claimant contends that the tribunal were in breach of natural justice in that he was not allowed to present his case in full. I invited him to state what it was that he wished to say which he was prevented from doing, and it appears from his submissions to me that he wanted to pursue his case under regulation 28. However, as any further submission based on that regulation would not have assisted the claimant at all, there was no injustice in precluding him from developing a hopeless argument.

10. Accordingly, I do not see in what respect it can be said that the tribunal erred in point of law. They made perfectly adequate findings of fact and gave adequate reasons for their decision.

11. I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice  
Commissioner

Date: 27th March 1986