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NOTE TO ACCOMPANY DECISION C.S.B. 470/1982

This long and turgid decision makes no new law; and substantial parts of it are obiter. It is in no way meet for starring. I have, however, thought it worth circulating to Commissioners and Legal Assistants. Anyone possessing the stamina to read it will find that it reviews the main provisions (in the Requirement Regs and in the SP Regs) relating to redecoration and repairs. Since the interrelation of those provisions is somewhat complex, reference to this decision may save time for those who have not yet performed for themselves the exercise of analysing the interrelation. On the other hand, they may well think that the exercise was not worth performing - or has been ineptly essayed. In that case they can throw their copy into the wastepaper-basket. (Paras 13 to 19 refer.)

Some of the relevant regs bear the same numbers in the Req Regs as do others in the SP Regs. This has involved the infelicitous repetition of the full titles of those Regs - again and again and again.

J.M.

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JM/RPM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. This a claimant's appeal, brought by leave of the Commissioner, against a decision of the supplementary benefit appeal tribunal dated 1 February 1982 which confirmed a decision of the benefit officer issued on 8 July 1981.

2. I held an oral hearing of the appeal on 2 September 1983. That morning (and before the hearing) a communication was received from the claimant stating that she would not be attending the hearing on account of "an infection". She did not ask for an adjournment. In other circumstancees I would, nevertheless, have adjourned the proceedings in order to ascertain whether the claimant wished to be given a further opportunity of attending before me. Since, however, her appeal was supported both by the benefit officer now concerned and by Miss L Shuker (of the Solicitor's Office of the Department of Health and Social Security) who appeared before me on his behalf, and since I considered such support to be well founded, I took the view that the claimant's interests would not be furthered by her appearing before me. Accordingly, I proceed now to determine her appeal. Lest she be left in doubt as to the justice of this course, I must enphasise that in this jurisdiction the Commissioner is confined to the consideration of points of law. He does not hear evidence and is not empowered to make his own findings of fact. In so far as the claimant wishes to expand upon the facts of her case - and, indeed, upon the application of the law thereto - she will have the opportunity of so doing before a fresh appeal tribunal.

3. At the material time the claimant was in receipt of a supplementary allowance. So far as I can make out from the papers, she lived in a house of which she was the owner. She claimed a single payment for the cost of erecting a very short stone wall between her premises and those of a neighbour. This was refused by the benefit officer on 8 July 1981.

Details of her claim more fully appear from the grounds upon which she appealed to the appeal tribunal:

> "I wish to appeal against the DHSS's decision not to make a payment towards an erection of a dividing stone wall between the existing hedge and my house to form a divide between my house and [the adjacent premises]. The previous divide was a wooden fence which has rotted away. I already have the necessary stone and have only asked for £20 (cost of wooden fence) against the cost of £36 for erecting a stone wall.
>
> As I am a claimant in receipt of an amount from DHSS for house insurance, I feel that the £20 for necessary repairs should be paid as the divide is classed on my insurance policy as part of my habitable home.
>
> In regard to a risk to health, since the fence rotted away I am being pestered by dogs doing their dirt in my garden. Dog dirt is now regarded by medical persons as a risk to health.
>
> I would be obliged if the Tribunal could please attend to this matter immediately."

4. The claimant appeared before and gave evidence to the appeal tribunal. Her appeal was disallowed. On the relevant form LT 235 the reasons for the decision were set out thus:

> "After giving very careful consideration to the representations made by the appellant the Tribunal are of the considered opinion that this wall is not an essential repair,and does not fulfil the criteria laid down in Single Payment Regulation 17(a).
>
> The appellant stated that the fence had rotted away over a period of eight years during which time she had been in receipt of an allowance for repairs. Therefore Single Payment Regulation 17(c)(d) are not applicable.
>
> The Tribunal have carefully examined Regulation 30 and are of the considered opinion that the fact that dogs are fouling the garden does not consitute a serious risk to the health of the appellant."

5. So far as is material to this appeal, rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 provides as follows:

> "(2) The tribunal shall -
>
> (a) record every determination in writing; and
>
> (b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and
>
> (c) ....."

The benefit officer now concerned submits that the reasons which I have set out in paragraph 4 above did not comply with that rule (as it and its equivalent in the national insurance jurisdiction have been interpreted by the Commissioners) in that -

(i) they amount only to a conclusion that the statutory conditions had not been met;

(ii) they do not demonstrate the selective process by which the evidence had been accepted, rejected, weighed or considered; and

(iii) they do not enable the claimant to discern why the evidence failed to satisfy the appeal tribunal.

6. As Miss Shuker readily agreed, the benefit officer is right in assailing the relevant form LT 235 but is somewhat off target in his specific criticism thereof. The fundamental defect in the form LT 235 is that it does not record a single finding of fact. The relevant box on the reverse of the form contains only a summary of what the claimant said to the tribunal. That is supplemented by the chairman's note of evidence but nowhere is there any express indication as to how much of the claimant's evidence, or of the benefit officer's written submission for that matter, the tribunal found to be factually true. Had there been appropriate findings of fact, I should not myself have been over-critical of the manner in which the tribunal recorded its reasons. The repair/replacement of the fence either was or was not "essential to preserve the home in a habitable condition" (regulation 17(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1980). The fouling by dogs of the claiamnt's garden either was or was not "a serious risk to the health or safety of any member of the assessment unit" (regulation 30 of those Regulations). In expressing conclusions in respect of such straightforward, commonsense issues, no elaboration is called for provided that such conclusions can be seen to flow reasonably from the primary facts as found and recorded.

7. In the absence of any findings on material questions of fact I have no alternative but to hold the tribunal's decision to be erroneous in law and to set it aside. I do so with little enthusiasm. The tribunal appears to have gone into the case with some care; and I doubt whether the claimant will fare any better at the rehearing. However, a rehearing there must be, because, in the absence of any findings of fact, I cannot myself give the decision which the tribunal should have given.

8. In view of the points canvassed by the claimant in her grounds in support of her application to the Commisisoner for leave to appeal and in support of the appeal itself, I must say something more in respect of the law relevant to her case.

9. In the first place, the claimant seems to be aggrieved that certain information which she regards as confidential was laid before the appeal tribunal. So far as I can make out, her particular objection is to the tribunal's having seen a completed form LT 205 which set out (as it

always does in this type of case) her current requirements and resources, along with details of the allowance in payment. Her complaint is entirely misconceived. Of course, information furnished by claimants to the Department is "confidential" in the sense that such information cannot lawfully be indiscriminately disclosed. Disclosure to the statutory determining authorities is not, however, indiscriminate. Those authorities cannot do justice unless they are furnished with all information, including information in the possession of the Department, relevant to any given case before them. In this particular case the information on the form LT 205 was certainly relevant, for the tribunal required to know what sum, if any, was in payment to the claimant pursuant to regulation 17 of the Supplementary Benefit (Requirements) Regulations 1980 (maintenance and insurance). It was the claimant herself who chose to take her claim to the appeal tribunal. She cannot reasonably have expected that she could then pick and choose in respect of the evidence to be presented thereto on behalf of the Department.

10. I note in passing that the claimant persuaded the Department to delete her name, and to substitute "Mrs X", on certain of the documents which were prepared for and laid before the appeal tribunal. If the Department and appeal tribunals are prepared to accommodate claimants in this respect, so be it. The claimant should understand, however, that this was a concession (unique in my experience) to which she was in no way entitled in law. Subject to certain exceptions specified in rule 6 of the aforesaid Appeals Rules, members of the public are excluded from hearings before the appeal tribunal. That is a sufficient safeguard of privacy.

11. The claimant further complains that the chairman of the appeal tribunal did not answer a question which she put to him; it was answered by an observer from the Department. There is no substance in this complaint. A claimant is not entitled to question the chairman - although, as a matter of courtesy, a chairman may be disposed to assist by answering. The Appeals Rules provide that observers shall take no part in the proceedings (rule 6(7)(b)). But if the observer was able to answer the claimant's question, her objection is pedantic; and I cannot blame the chairman for permitting such answer.

12. Next, the claimant makes reference to her financial position in the period 1967 to 1975. I cannot pretend to understand exactly where this fits into the picture. No doubt, however, the tribunal which rehears her appeal will afford her the opportunity of developing this aspect of the case and will make such findings in respect thereof as necessary.

13. Regulation 17 of the Single Payments Regulations 1980 was clearly designed to supplement regulation 17 of the Requirements Regulations. The latter provides for a modest weekly sum to cover "essential routine minor maintenance of the home and insurance of the structure of the home" (my underlining). The former provided (as its successor in the 1981 Single Payments Regulations now provides) for a single

payment in respect of essential repairs falling beyond the scope of what could reasonably be expected to be covered by the aforesaid weekly sum. The repairs envisaged, although not "minor", are relatively modest. There was a cost ceiling of £225 (recently increased to £325). (More extensive repairs have to be brought within the ambit of regulation 18 of the Requirements Regulations, which provides for the payment of interest upon sums borrowed for the purpose of executing such repairs). The tribunal which rehears this case must look carefully at the position as it unfolded throughout the continuous period (immediately prior to the claim) during which the claimant was in receipt of a weekly sum in respect of maintenance and insurance. What was the state of the fence at the beginning of that period? Was it such that the claimant could have been reasonably expected to restore and maintain it out of the weekly sum (as well, of course, as making provision for the other items comprehended by the sum)? It is a matter for the tribunal and not for me. It may well be, however, that the tribunal may come to the conclusion that the claimant can bring herself within sub-paragraph (c) of regulation 17(1) of the Single Payments Regulations 1980. (I should point out here that the claimant was, justifiably, confused by a misprint in the then current Yellow Book, which had, in regulation 17(1) of the Single Payments Regulations "....falling within sub-paragraph (a), (b) or (c) or paragraph (1) of regulation 17 of the Requirements Regulations.....", whereas the words in the Queen's Printer's text were ".....falling within sub-paragraph (a), (b) or (c) of paragraph (1) of regulation 17 of the Requirements Regulation....." (my underlining).)

14. That is not, of course, the end of the matter. The claimant's biggest obstacle would seem to be sub-paragraph (a) of regulation 17(1) of the Single Payments Regulations 1980. The question to be answered is not merely whether the relevant repairs are essential, but whether they are "essential to preserve the home in a habitable condition". No doubt the tribunal will wish to hear details as to the extent of the fouling by dogs. It will be entitled to take notice of the fact that a substantial number of the gardens of England (and those by no means confined to the poorer sectors of the population) are wide open to the attentions of roving dogs. (The like consideration is relevant to the applicability of regulation 30 of the Single Payments Regulations 1980.) It will be noted, moreover, that regulation 17(2) of the Single Payments Regulations 1980 makes it clear that the single payments envisaged by regulation 17(1) are not intended to cover home improvements at large.

15. In her grounds of appeal to the Commissioner the claimant canvasses (for the first time, I think) the applicability of regulation 21 of the Single Payments Regulations 1980. Neither that regulation nor its identical successor in the Single Payments Regulations 1981 was or is frequently invoked. I set it out in full:

> "21(1) Where in the determination of the claimant's housing requirements no amount is applicable under regulation 17 or 19 of the Requirements Regulations (maintenance and insurance and miscellaneous outgoings respectively)

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for an item solely because charges for the item occur only irregularly (for example charges under a lease for re-decoration of common and external areas, or charges for emptying of a cess-pit or septic tank), a single payment shall be made of an amount equal to the amount of each charge.

(2) For the purposes of this regulation, the provisions of regulation 5 (effect of available capital on amounts payable) shall not apply." (My underlining.)

16. I have already stated the effect of regulation 17 of the Requirements Regulations (see paragraph 13 above). Regulation 19 cannot be so readily summarised. I must set it out in full, as it stood at the relevant time:

"19. The amounts, calculated on a weekly basis, of the following miscellaneous outgoings payable in respect of the home shall be applicable under this regulation -

(a) general rates, less any rebate;

(b) charges or rates in respect of water, sewerage and allied environmental services;

(c) recurring charges for the emptying of cess-pits and septic tanks and the cost of fluid and materials to service a chemical toilet;

(d) ground rent or, in Scotland, feu duty;

(e) service charges (for example for maintenance, insurance, management and the cleaning of common areas) but subject to deduction, where the charges provide for any item which is identified in regulation 4(1) (meaning of normal requirements) or referred to in sub-paragraphs (a) to (d) of regulation 14(3) (deductions from inclusive rent), of the amount which in the opinion of the benefit officer is attributable to that item;

(f) contributions to the cost of improvements (including redecoration) made by a squatters' organisation or association, provided that the home is occupied with the permission of the owner;

(g) outgoings analogous to those mentioned in the preceding paragraphs."

17. I must confess that when I canvassed with Miss Shuker the effect of regulation 21 of the Single Payments Regulations, the interrelation between the regulation, on the one hand, and regulations 17 and 19 of the Requirements Regulations, on the other hand, was not readily apparent

to me. It will be noted, for example, that although regulation 21 of the Single Payments Regulations and regulation 19 of the Requirements Regulations are clearly intended to be mutually exclusive, each refers expressly to charges for the emptying of cess-pits. Upon reflection, however, I am satisfied that (at least so far as regulation 19 goes) my difficulties were apparent rather than real. Regulation 19 was obviously designed to cater for certain outgoings which recur at sufficiently frequent or regular intervals to permit of their ready conversion into a weekly sum to be carried into the computation of a claimant's housing requirements. Regulation 21 of the Single Payments Regulations is directed to the same class of outgoings, but is designed to cater for those which recur so irregularly as to make conversion into a weekly sum impracticable. I take the specific case of the emptying of a cess-pit. It may well be that a claimant's cess-pit is habitually emptied at reasonably regular intervals - say twice a year. Regulation 19 of the Requirements Regulations will then apply. On the other hand, the practice may be that the claimant only calls for the emptying of his cess-pit when he sees that it is nearly full; and that there is no set pattern about this. That will be a case for regulation 21 of the Single Payments Regulations.

18. The interrelation between regulation 21 of the Single Payments Regulations and regulation 17 of the Requirements Regulations is less simple both to see and to explain. I have come to the conclusion that there can be but few cases in which a claimant will be able to show that "no amount is applicable under regulation 17.....of the Requirements Regulations.....for an item solely because charges for that item occur only irregularly". It will be borne in mind that the maintenance envisaged by the said regulation 17 must be "essential" and "routine" and "minor". It must also be borne in mind that -

(a) regulation 17 of the Single Payments Regulations covers (up to a cost limit) repairs "essential to preserve the home in a habitable condition", where such repairs go beyond what is envisaged by regulation 17 of the Requirements Regulations (cf. paragraph 13 above);

(b) regulation 18 of the Single Payments Regulations covers draughtproofing;

(c) regulation 19 of the Single Payments Regulations covers essential internal decoration; and

(d) regulation 20 of the Single Payments Regulations covers fuel meters and reconnection charges.

What, then, did the draftsman have in mind when he saw fit to include in regulation 21 of the Single Payments Regulations a reference to regulation 17 of the Requirements Regulations? He cannot himself have thought that the answer to that question would leap readily to the mind, for he furnished an example in the text of the regulation:

"charges under a lease for redecoration of common and external areas" (my underlining). So there it is. A claimant may be

able to recover such charges under regulation 21 of the Single Payments Regulations; but only, of course, if they are "minor". If they are not minor, he will face difficulties. He cannot invoke regulation 19, which applies only to internal redecoration "to a claimant's home" - and the definition of "home" (regulation 2(1)) does not extend to the "common and external areas" to which a tenant has access pursuant to his lease. He cannot invoke regulation 17 of the Single Payments Regulations unless the redecoration is "essential to preserve the home in a habitable condition". He cannot invoke regulation 18 of the Requirements Regulations, which is confined to (i) "major repairs necessary to maintain the fabric of the home" and (ii) certain specified "improvements". If he is to succeed at all, he must show that the relevant charges are "analogous to" the outgoings specified in regulation 19 of the Requirements Regulations (see paragraph 16 above). It is all hideously complex.

19. Where, then, does the claimant's wall/fence fit into all this? In my view, the answer is: "Nowhere". Neither the rebuilding nor the reinstatement nor the repair of a wall or fence is included in the list of outgoings set out in paragraphs (a) to (f) of regulation 19; nor can such rebuilding, reinstatement or repair reasonably be regarded as "analogous" to any of the outgoings there set out. Accordingly, the claimant cannot begin to demonstrate that no amount is applicable under regulation 19 of the Requiremnets Regulations in respect of the wall/ fence "solely because charges for that item occur only irregularly" (cf. paragraph 15 above). No amount in respect of the wall/fence could ever be applicable under regulation 19 - not even if the claimant had regularly to rebuild it every six months. Nor can the claimant demonstrate that that it is "solely because charges for [the wall/fence] occur only irregularly" that no amount is applicable in respect thereof under regulation 17 of the Requirements Regulations. One can well imagine a claimant's telling the benefit officer that he (the claimant) was from time to time required by the terms of his lease to pay charges for redecoration of common and external areas; and the benefit officer's replying that -

(i) it was not practicable to meet that contingency by a weekly increase of the sum paid in respect of housing requirements; but

(ii) if and when such charges were levied, the claimant could apply for a single payment under regulation 21 of the Single Payments Regulations.

It is inconceivable, however, that a like answer would be given to an owner/occupier (under no contingent contractual liability) who told the benefit officer that he (the owner/occupier) might, in the future, repair or reinstate a short boundary wall/fence. Surely the benefit officer would reply: "Well, if you cannot manage to do that out of the weekly sum awarded pursuant to regulation 17 of the Requirements Regulations, you can, when the time comes, try your luck under regulation 17 of the Single Payments Regulations."

20. I can now summarise the effect of paragraphs 13 to 19 by saying that if the claimant is to succeed, it must be under regulation 17 or regulation 30 of the Single Payments Regulations 1980. No other provisions of the legislation can avail her.

21. The claimant's final complaint is that whenever she appears before her local appeal tribunal she encounters "the same two chairmen". I do not understand the thrust of this complaint. So far as I can make out, she does not allege that either of those chairmen has shown himself to be biased against her or to be otherwise unlikely to give her a fair hearing. It is in the nature of things that those who have frequent recourse to their local appeal tribunal will frequently encounter the same chairmen - just as those who have frequent recourse to their local County Court will frequently encounter the same judge. There are no grounds for believing that the quality of justice is impaired thereby.

22. My decision is as follows:

(1) The claimant's appeal to the Commissioner is allowed.

(2) The decision of the appeal tribunal dated 1 February 1982 is erroneous in law and is set aside.

(3) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 12 October 1983

Commissioner's File: C.S.B. 470/1982
C SBO File: 251/82
Region: North Eastern