

JSW/FB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

*covered shoes
and a pair of shoes*

Decision C.S.B. 13/82

1. My decision is that the decision of the Hull supplementary benefit appeal tribunal, dated 12 June 1981, is erroneous in law and is set aside.

2. This is an appeal by the benefit officer, who was represented at hearing before me by Mr R A Birch of the solicitor's office of the Department of Health and Social Security. The claimant appeared in person.

3. At the material time, the claimant's son, then aged 12, was resident at a school which is a community home provided and controlled by a local authority. The boy spends week end leave with the claimant either occasionally or regularly. The claimant has been in receipt of a supplementary allowance for some years and is the head of a single parent family. On 5 May 1981 she made a claim for a single payment for a pair of shoes for her son. The claim was made because the claimant's son had damaged his shoes beyond repair when climbing rocks while resident at the school. The benefit officer decided that the claimant was not entitled to a single payment because the conditions of the regulations were not satisfied because all clothing and footwear for her son were provided by the social services department of the local authority.

4. On the claimant's appeal, the appeal tribunal found that the claimant's son, who resided at a residential school, damaged his shoes beyond repair whilst climbing rocks and that she was entitled to a single payment to purchase a pair of shoes for her son. They made the award because, in their view, the provisions of regulation 27(1)(a)(iii) of the Supplementary Benefit (Single Payments) Regulations 1980 were satisfied. That regulation provides

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that a single payment for any item of clothing or footwear specified in column 1 of Schedule 2 to the said regulations shall be made where any member of the assessment unit needs new or replacement clothing or footwear and the need has arisen otherwise than by normal wear and tear, one of the examples given being where the need has arisen because of - "the accidental loss of, damage to or destruction of an essential item of clothing or footwear."

5. The first submission made was that the tribunal - "failed to give proper weight to evidence given by a benefit officer that all clothing needs for the claimant's son were met and were the responsibility of the local authority in whose care he was". The tribunal made no finding on that matter since there was no evidence before them to the effect stated. A benefit officer is not a witness but presents the case. If he gave evidence, a claimant would be entitled to insist on his presence at a hearing and he would be liable to be cross-examined. In cases in which an officer has visited the claimant or his residence and has made a statement as to what he saw or was told by the claimant or as to his examination of any property, furniture, clothing etc., the officer might be a witness of fact and the claimant would be entitled to cross-examine him. Decision R(SB) 1/81 is not authority for never having a visiting officer present at a hearing. In paragraph 6 the learned Commissioner stated -

"A claimant does not have the right to demand the presence of an official whose report or other activity has been unfavourable to him. There may be cases in which such presence may (be) necessary or desirable, but it is for the chairman of the tribunal to determine whether or not that is so and whether or not to adjourn a hearing to enable a person to attend."

6. The rules of evidence do not apply to proceedings before an appeal tribunal but there must be some elementary statement to support a submission, such as a letter from the local authority or, in other instances, from the source of the fact which it is desired to submit as evidence. A mere statement by a benefit officer is not evidence even in the very wide sense of evidence to support a fact before an appeal tribunal. According to the presenting officer's written report, the claimant's husband said that his son had a pair of black shoes and a pair of trainers which he believed had been provided by the school. That was some evidence that the local authority either had provided or were responsible for providing footwear for the boy. The question of weight to be attached to evidence is essentially a matter for the tribunal and is not a point of law unless there is no evidence to support a finding or the facts are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question. (Global Plant Ltd v Secretary of State for Social Services [1972] 1 Q.B. 139 and Decisions R(A) 1/72 and R(I) 14/75.)

7. Mr Birch then submitted that the tribunal failed to have regard to regulation 3(2) of the Single Payments Regulations. The findings and reasons of the tribunal for their decision make no mention of that important regulation, the relevant provisions of which are as follows -

- "3 - (1) In these regulations 'single payment' means supplementary benefit payable by way of a single payment to meet an exceptional need in circumstances to which Parts II to VIII of these regulations apply.
- (2) A single payment shall be made only where -
- (a) there is a need for the item in question; and
 - (b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

The provisions are in the same terms in regulation 3(1) and (2) of the 1981 regulations [S.I. 1981 No. 1528] now in operation.

8. The provisions of regulation 3(1) and (2) are often disregarded by tribunals, although it is plain from sub-paragraph (1) that they apply as an essential preliminary to all the regulations in Parts II to VIII of the regulations, (see also Decisions C.S.B. 16/81, paragraph 12, and C.S.B. 26/81, paragraph 8). The circumstances of the case clearly called for an inquiry into, and a finding on, the need for a pair of shoes in view of the evidence of the claimant's husband that his son had a pair of shoes which he believed had been provided by the school. The tribunal, however, failed to deal with that issue and, in their findings and reasons, dealt only with the provisions of regulation 27. In that respect their decision was erroneous in law.

9. Mr Birch submitted also that the tribunal should have considered and recorded findings on the claimant's having stated that she had to borrow a pair of shoes for her son to go back to school. It was submitted that the effect of regulation 3(2)(b) on the borrowing of a pair of shoes meant that the assessment unit (meaning the claimant and any partner and dependant of the claimant, regulation 2(1)) already possessed the item or had available a suitable alternative item. Mr Birch submitted that borrowing to meet a need is a legitimate method of providing for the "need" and that in itself extinguishes the need. I do not accept that wide interpretation of borrowing in relation to "need" in regulation 3(2) or the general-

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isation that borrowing satisfies a need in relation to clothing and footwear. In my opinion, it is a question of fact in the circumstances of each case rather than an issue of law. Borrowing a pair of shoes is a temporary expedient to overcome a need for shoes. Can it seriously be contended that the son should have returned to school bare-footed? There is an inevitable lapse of time before a "need" is met due to the procedure for claiming, waiting for an award to be made and receipt by a claimant of the money in order to purchase an item. In my judgment, borrowing an item or borrowing money to purchase an item for an immediate need does not extinguish a need or amount to a person being in possession of the item or having available a suitable alternative item. Borrowing money to finance a less urgent need, such as redecoration of a dwelling house or the purchase of an item of furniture or household equipment is in a different category (Decision R(SB) 8/81, paragraphs 5 to 7).

10. It was further submitted that the tribunal failed to comply with rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 in that they failed to record proper findings of fact material to their decision. It follows from my decision that the tribunal did not record relevant findings of fact.

11. Mr Birch submitted that the tribunal also failed to give reasons for their determination and referred to Commissioners' decisions and to Crake v Supplementary Benefits Commission [1980] S.B. 38 on whether a failure of a tribunal to record reasons is an error of law. It was decided by a Divisional Court of the Queens Bench Division in Mountview Court Properties Ltd v Devlin [1970] 21 P. and C.R. 689 that a failure of a rent assessment committee to give reasons pursuant to a duty imposed on them by section 12(1) of the Tribunals and Inquiries Act 1958 was not per se a ground on which the court could properly allow an appeal under section 9 of the Act by quashing the decision, the right of appeal under section 9 being conferred on a person who was dissatisfied with a decision on a point of law; that if the very insufficiency of the reasons given gave rise to a proper inference that there had been an error of law in arriving at the decision, that would constitute a case for quashing it. The court remitted the case to the committee to ask them to give further reasons on the point at issue. The reasoning of the decision in that case does not relate to the terms of any particular provision as to the stating of reasons in statutory regulations but applies generally to tribunals required to state reasons. The matter is academic in this appeal since the reasons given by the tribunal in themselves indicate an error of law.

12. The revised scheme for supplementary benefit by providing a statutory code has now been in operation for 17 months. It might be useful, and I hope helpful, to comment on some aspects of the scheme in operation. A main feature of the code is that there is little, if any, scope for the exercise of a discretion by a benefit officer or an appeal tribunal. As with all codes, there is little scope for flexibility because the regulations made under the enabling powers

of the Supplementary Benefits Act 1976, as amended by the Social Security Act 1980, attempt to define entitlement in precise terms. Amendments to regulations have since been made and will no doubt require to be made as the defects and anomalies in some of the details become manifest.

13. By section 15A of the Supplementary Benefits Act 1976, as amended, the Secretary of State may by rules make provision for any party before an appeal tribunal to appeal to a Commissioner against a decision of a tribunal. Regulation 8(1) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 provides that any person who is a party to proceedings before a tribunal may appeal to a Commissioner, with the leave of a Commissioner, against any decision of the tribunal given in those proceedings on the ground that the decision is erroneous in point of law.

14. Since the scheme is subject to a statutory code there is in a wide sense, law in every decision. An appeal lies to a Commissioner only if an appeal tribunal have failed to apply or observe the relevant law or have applied it wrongly or have infringed the general law, e.g. in regard to the conduct of proceedings, which affects all judicial hearings. In my opinion, the disclosure of an error of law in a decision does not compel a Commissioner to grant leave to appeal. That a right of appeal is subject to the granting of leave imports a discretion whether the bringing of an appeal should be authorised. Factors which affect the exercise of the discretion are the importance of the law involved generally as affecting other cases, the substance of the error of law and the relative cost of the bringing of an appeal in relation to the amount involved. I do not regard the right of appeal as involving merely the correcting of a decision of an appeal tribunal. In that regard, I think there is a responsibility and a discretion in the chief benefit officer as to whether to apply for leave to appeal. Such a discretion is often exercised by the chief insurance officer who, in my experience, does not always appeal and now does not apply for leave to appeal in every case in which there is, or might be, an error by a local tribunal. There is also, again in my view, a difference in considering applications for leave to appeal by claimants and applications by benefit officers. In the case of claimants, although the amount involved might be relatively small, it might be vital to his requirements and well being. In the case of a benefit officer, the amount saved by appealing successfully against a decision of a tribunal might be wholly disproportionate to the cost of the proceedings, which, I understand, amounts to several hundreds of pounds and more if there is an oral hearing. Even although the amount involved might be trivial, the particular decision might, however, be the means of obtaining a ruling on some point of general principle or might be necessary to correct an error persistently made by a tribunal or tribunals in general in particular cases.

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15. Appeal tribunals could, I think, be further assisted by the benefit officer and so avoid some of the errors of law and, may be, of fact. The written statement of the supplementary benefit officer on an appeal to a tribunal is, in general, concise, which is commendable. In the main, however, it does not seem to deploy the law adequately and in some instances the summary of facts is unduly limited. Tribunals would benefit by having the effect of the regulations applicable to the appeal set out in more detail. In some cases, it would assist to have the complete regulation set out when there are many facets to it for consideration. I doubt whether chairmen possess copies of the regulations when reading the details of cases and it is often more conducive to understanding when one has the text set out to read rather than to be informed of what it is said to mean. Tribunals should be guided to put their own interpretation correctly on a regulation rather than, in a contest between the benefit officer and a claimant on an appeal, to give the appearance of merely accepting the benefit officer's version, even although it may be correct. There might, of course, be a different interpretation contended for by a claimant or a representative.

16. In the respects indicated, the decision of the tribunal was erroneous in law. I direct that the claimant's appeal be reheard by a differently constituted tribunal, if possible, to find the facts material to the claim in accordance with regulation 3(2) of the Single Payments Regulations and, if need be, then to consider regulation 27(1) should its application arise.

17. The appeal of the benefit officer is allowed.

(Signed) J S Watson
Commissioner

Date: 27 April 1982

Commissioner's File: C.S.B. 477/1981
C SBO File: S.B.O 701/81

~~17/82~~

FROM STEVE

17/82

JSW/FB

SP (shoes) - failure to properly consider need + gmc reasons

SUPPLEMENTARY BENEFITS ACT 1976

note of evidence - AD's evidence concerning need for shoes have error of error in law

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

DECISION OF SOCIAL SECURITY COMMISSIONER

considered evidence from the supplementary tribunal

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Decision C.S.B. 13/82

1. My decision is that the decision of the Hull supplementary benefit appeal tribunal, dated 12 June 1981, is erroneous in law and is set aside.

2. This is an appeal by the benefit officer, who was represented at hearing before me by Mr R A Birch of the solicitor's office of the Department of Health and Social Security. The claimant appeared in person.

3. At the material time, the claimant's son, then aged 12, was resident at a school which is a community home provided and controlled by a local authority. The boy spends week end leave with the claimant either occasionally or regularly. The claimant has been in receipt of a supplementary allowance for some years and is the head of a single parent family. On 5 May 1981 she made a claim for a single payment for a pair of shoes for her son. The claim was made because the claimant's son had damaged his shoes beyond repair when climbing rocks while resident at the school. The benefit officer decided that the claimant was not entitled to a single payment because the conditions of the regulations were not satisfied because all clothing and footwear for her son were provided by the social services department of the local authority.

4. On the claimant's appeal, the appeal tribunal found that the claimant's son, who resided at a residential school, damaged his shoes beyond repair whilst climbing rocks and that she was entitled to a single payment to purchase a pair of shoes for her son. They made the award because, in their view, the provisions of regulation 27(1)(a)(iii) of the Supplementary Benefit (Single Payments) Regulations 1980 were satisfied. That regulation provides

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5. The first submission made was that the tribunal - "failed to give proper weight to evidence given by a benefit officer that all clothing needs for the claimant's son were met and were the responsibility of the local authority in whose care he was". The tribunal made no finding on that matter since there was no evidence before them to the effect stated. A benefit officer is not a witness but presents the case. If he gave evidence, a claimant would be entitled to insist on his presence at a hearing and he would be liable to be cross-examined. In cases in which an officer has visited the claimant or his residence and has made a statement as to what he saw or was told by the claimant or as to his examination of any property, furniture, clothing etc., the officer might be a witness of fact and the claimant would be entitled to cross-examine him. Decision R(SB) 1/81 is not authority for never having a visiting officer present at a hearing. In paragraph 6 the learned Commissioner stated -

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10. It was further submitted that the tribunal failed to comply with rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 in that they failed to record proper findings of fact material to their decision. It follows from my decision that the tribunal did not record relevant findings of fact.

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16. In the respects indicated, the decision of the tribunal was erroneous in law. I direct that the claimant's appeal be reheard by a differently constituted tribunal, if possible, to find the facts material to the claim in accordance with regulation 3(2) of the Single Payments Regulations and, if need be, then to consider regulation 27(1) should its application arise.

17. The appeal of the benefit officer is allowed.

(Signed) J S Watson
Commissioner

Date: 27 April 1982

Commissioner's File: C.S.B. 477/1981
C SBO File: S.B.O 701/81