

Commissioner's File: CSB/480/1987

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Christine L

Social Security Appeal Tribunal: Rochdale

Case No: 9/07

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 19 February 1987 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This is an appeal to the Commissioner by the claimant, a single woman aged 22 years at the material time. The appeal is from the unanimous decision of the social security appeal tribunal dated 19 February 1987 which dismissed the claimant's appeal from the local adjudication officer's decision not to grant a single payment to the claimant for a large number of household items. She had claimed the single payment on 6 December 1985, because she was then pregnant, the baby being due on 11 April 1986. The local tribunal held that the claim must fail because there was no "need" shown for the items in question within the meaning of regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981 and in particular that provision which states that there is no "need" where a claimant "has .. unreasonably either disposed of or failed to avail [herself] of such an item" (regulation 3(2)(b)(iii)).

3. There was detailed evidence before the tribunal as to the possession by the claimant of some if not all of the items in question during the time that she had possession of a house at 59, _____ Avenue from 11 June 1984 to 29 April 1985. But during the claimant's short absence for about a fortnight from that house, it was broken into and a large number of items stolen. The new tribunal will need itself to ascertain the detailed facts relating to the circumstances and make appropriate findings on material issues of fact.

4. The original tribunal clearly took trouble with the case and made detailed findings of fact but their reasons for decision were simply, "The appellant has not established the need for the items claimed. The tribunal finds her evidence inherently improbable". Those reasons are not sufficient reasons, as required by regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986, as indeed is submitted by the claimant's representative and the adjudication officer now concerned (the latter in written submissions dated 26 June 1987). I accept as correct the following extract from the adjudication officer's submission,

"Although, in my submission, the tribunal complied sufficiently with the requirements of paragraph 15 of R(SB)33/85 in that it was clear they rejected [the claimant's] evidence as they did not believe her version of what had happened to the contents of her former home I submit that they had still not done enough to justify their decision. It would not seem to be in dispute that the claimant had a need of the items in terms of regulation 3(2)(a) so that the only point at issue was whether there was unreasonable disposal in terms of regulation 3(2)(b)(iii). Having rejected the claimant's evidence as to what had occurred, presumably the tribunal have therefore concluded she had disposed of the items. However they could not, I submit, properly conclude that any such disposal was unreasonable without establishing the claimant's intentions at the time. For example if the tribunal had found that when she gave up the tenancy of her home on 29.4.85 she had intended living with her mother indefinitely then she would presumably have had no further foreseeable need for the items so that their disposal at that time would not have been unreasonable and regulation 3(2)(b)(iii) would therefore have no application. The tribunal made no findings of fact in regard to the matters referred to above and neither did they give any clear reason why they considered the claimant had not established a need for the items claimed. I submit that the decision is therefore erroneous in law (see R(SB)11/82, paragraph 14)."

5. The new tribunal must investigate these matters for itself. If it comes to the conclusion that the claimant did not actually dispose of the items in question but that they were stolen or otherwise taken away from her home while she was absent from that home they will need to take into account the statement of a Tribunal of Commissioners that a failure to exercise sufficient care of [a claimant's] possessions whilst she was temporarily away from her flat cannot be regarded as a disposal of them by the assessment unit in terms of regulation 3(2)(b), nor as a failure to avail itself of a suitable alternative item (R(SB)26/83, Second Decision, paragraph 7).

6. If the tribunal should conclude that there is a "need" within regulation 3 as at the date of claim and that there is nothing in regulation 3(2) disabling the claimant eg unreasonable disposal then they will then need to consider under regulations 9 and 10 of the above cited Single Payments Regulations whether the claim should succeed in relation to each of the items claimed a list of which should be supplied to the new tribunal. It would appear that the claimant being pregnant at the time and having recently become the tenant of unfurnished accommodation she prima facie satisfied the requirements of regulation 10(1)(a).

(Signed) M.J. Goodman
Commissioner

Date: 14 March 1988