

Appellant's Name: Joseph Heads

Commissioner's File: C.S.B. 521/1982

This decision is starred because

- (1) It rejects the view, which seems to be the official view, that regulation 8 of the Urgent Cases regulations imposes a 14 day time limit on claims under that regulation.
- (2) It considers the meaning of "readily available" in regulation 3(1) of those regulations.

J G M

JGM/BOS

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Joseph Heads

Supplementary Benefit Appeal Tribunal; South Tyne

Case No: 02/72

[ORAL HEARING]

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 31 March 1982 was erroneous in point of law and it is set aside. The matter must be referred to another tribunal.

2. This is an appeal by the benefit officer from a decision awarding claimant a total of £406.40 under regulation 8 of the Supplementary Benefit (Urgent Cases) Regulations 1980 [S.I. 1980 No 1642] some of which, though not regulation 8, were amended with effect from 27 July 1981 by regulation 9 of the Supplementary Benefit (Miscellaneous Amendments) Regulations 1981 [S.I. 1981 No 815]. The provisions have since been consolidated and are contained in the Supplementary Benefit (Urgent Cases) Regulations 1981 [S.I. 1981 No 1529]. In this decision I shall refer to the 1980 Regulations as amended by the Amendment Regulations of 1981 as the "1980 Urgent Cases Regulations as amended". 27.7.81 Supp 5

3. The resources of the claimant's assessment unit including some employers' sick pay exceeded their requirements. For this reason, if for no other, the claimant could not qualify for a single payment under section 3 of the Supplementary Benefits Act 1976 as amended and regulations made under it, viz. at the time the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No 985] (the Single Payments Regulations). Thus when the claimant's house and its contents were destroyed by fire on 19 July 1981 he could obtain payment by way of supplementary benefit in respect of the uninsured clothing and furniture, if at all, only on the basis of an urgent case within the 1980 Urgent Cases Regulations as amended or possibly as the amendment was subsequent to the fire under those regulations as they stood prior to their amendment.

22nd 4. The claimant's claim for payment found to have been made on 25 September 1981 was rejected by the benefit officer. The ground of rejection according to the benefit officer's submission to the appeal tribunal was that (for the reasons above given) a single payment (under section 3) could not be made and that no payment could be made in respect of a fire that occurred some 8 weeks earlier than the date

of claim (a reference it would seem to regulation 8 of the 1980 Urgent Cases Regulations as amended) and that a payment was not the only means by which serious damage or serious risk to health or safety of any member of the assessment unit could be avoided (a reference to regulation 24 of the same Regulations).

5. The claimant appealed and the appeal tribunal allowed the appeal to the extent of awarding £406.40 for the non-clothing items under regulation 8. In the reasons for their decision they indicated that a single payment could not be made under regulation 4 of the Single Payments Regulations. But they took the view that the family had a new emergency situation broadly at the time of the claim when new unfurnished premises were made available for them to move into and that they were in the words of the tribunal "therefore within the 14 days of the 14 day rule at the time that they claimed". The reference to the 14 day rule was a reference to certain provisions of regulation 8 and is considered below. They also stated in their reasons that the claimant did not have £300 capital. This I understand was stated because when the original claim was rejected, it was rejected by reference to regulation 5 of the Single Payments Regulations, which subject to exceptions, has the effect, among other things, of permitting the award of a single payment under those regulations to a claimant with resources of up to £300. This however has no bearing on any question relating to urgent cases under the 1980 Urgent Cases Regulations as amended.

6. The benefit officer appealed to the Commissioner against this decision. He was represented at the oral hearing before me by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security and the claimant was represented by Mrs M Cowan of the Citizens Advice Bureau in the claimant's area. The benefit officer made two main complaints about the decision and there were certain subsidiary points to which I shall refer. The first main point was based on regulations 3 and 4 of the 1980 Urgent Cases Regulations as amended. Of these regulation 3(1) as at the date of claim (which following the analogy of what was said in the first of the Decisions R(SB) 26/83 at paragraph 22 I hold to be the relevant date to take) provided as follows:-

"For the purposes of section 4 (provision for cases of urgent need) urgent cases shall be only those cases to which Parts II, III and IV of these regulations apply where the items in question, or funds for that item or funds to meet the expense in question are not readily available to the assessment unit from its own resources or from any other source (for example, friends, relatives, credit facilities, a voluntary organisation) or in particular in a case to which Part II [i.e. regulation 8] applies from a local authority or relief fund; and

- (a) in determining whether funds are readily available to the assessment unit, regard shall be had to its requirements determined in accordance with regulation 5(2)(a) and (3)(a) and (b) but not regulation 5(2)(c);

(b) in determining the assessment unit's own resources for the purposes of this paragraph, regard shall be had to any capital, including any available capital, and income resources calculated in accordance with regulation 5(2)(b)."

and regulation 4(1)(c) (which related to cases under regulation 8(1) and regulation 24) provided as follows:-

"Where funds mentioned in regulation 3(1) are available to the assessment unit, but are insufficient to meet the cost of the item or services in question, the amount of the single payment payable shall be the difference between those funds and the amount which would, but for those funds, be payable by virtue of paragraph (b) above". [Paragraph (b) provides for the amount payable where no funds are available].

7. There was evidence before the tribunal from a written statement from the claimant's wife that they had £288 subsequently increased to £310 in a bank. The tribunal found as a fact that they had £288. It was a subsidiary point of Miss Shuker's that they did not explain why this figure was taken rather than £310. Her main contention on this aspect of the case was that this sum ought under regulation 4(1)(c) to have been deducted from the amount awarded (if, which she disputed, any award was justified). The tribunal deducted nothing. If they deducted nothing for the reason mentioned at the end of paragraph 5 above they clearly erred in law. If they deducted nothing as the result of giving effect to regulation 3(1)(a) above quoted they did not set out in the reasons for the decision how they arrived at their conclusion and the decision was on that ground erroneous in law. Either way it must be set aside. I will return to the directions appropriate to be given to the new tribunal on this point.

8. The benefit officer's second main complaint (which if sound is still more comprehensive) is based on the terms of regulation 8 of the 1980 Urgent Cases Regulations, which so far as material provides as follows:-

"(1) 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 [sic] of any item to which column 1 of Schedule 1 to these regulations applies [it includes clothing, footwear, furniture and household equipment]; 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.

- (2) Where any member of the assessment unit is affected by such a disaster and because of the disaster he is in need of living expenses, there shall be payable for the period mentioned in paragraph (3) to the claimant an amount of pension or allowance determined in accordance with regulation 5.
- (3) This regulation shall apply for a period of 14 days immediately following the disaster, except where it appears to the Secretary of State [for Social Services] that there are, will or likely to be [sic] 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 he may direct that that period may be extended, and a direction under this paragraph may be expressed -

(a); and

(b)"

9. The benefit officer originally rejected the claim on the basis of the so-called "14 day rule" that is embodied in this regulation. He would seem (though I may be misjudging him) to have regarded the provisions of paragraph (3) about the provisions governing and the practice relating to claiming etc. as an indication that there was a 14 day time limit for making claims under the regulation, and to have considered that the claim made 8 weeks after the fire was out of time. The appeal tribunal met this in a somewhat novel way. The claimant and his family were offered fresh unfurnished accommodation in September 1981 and then for the first time sought to obtain new furniture and clothing to replace that lost in the fire. The tribunal treated this offer as a fresh emergency situation and measured the 14 days from then, and made an award for the non-clothing items. Miss Shuker made the subsidiary point that they did not explain why there was no award for the clothing items, though I think that it is reasonably certain that they were excluded because the rationale of the new emergency situation was not considered relevant to the claim for clothing. I need not consider this because it is clear that there was no justification for re-calculating the 14 day period from the later date. By no stretch of the imagination can an offer of unfurnished accommodation be termed a disaster and it is from the disaster that the 14 days has to be calculated. The decision was erroneous on this ground also.

10. This is not however the end of the matter, as I need to give some guidance to the new tribunal. I shall deal first with the point relating to the 14 day rule, because, if the claimant cannot surmount it then, subject to regulation 24, no award can be made and the new tribunal will not need to consider the other point, relating to deductions.

11. It has been stated by the benefit officer now concerned that the Secretary of State has indicated that he would not contemplate extending the 14 day period. In my judgment is not adequate that an unidentified representative of the Secretary of State should make such a statement.

The claimant is in my judgment entitled to a formal decision refusing or allowing an extension and I direct the benefit officer to obtain one before the matter comes before the new appeal tribunal. Neither the tribunal nor the Commissioner has any jurisdiction to disturb the Secretary of State's decision, but it may be amenable to some kind of challenge and the claimant is entitled to have a formal decision.

(2) In giving guidance to the new tribunal I shall deal with regulation 8 on the footing that the period relevant is one of 14 days immediately following the fire. If it is extended the following paragraphs will require to be treated as modified accordingly. Regulation 8(1) dealt with cases where in the relevant 14 day period a claimant is because of the disaster in need of any item to which Schedule 1 to the Regulations applies. Household furniture and equipment and footwear and clothing are included in such items. Regulation 8(2) provides for the awarding of a supplementary allowance for the relevant period of 14 days. Regulation 8(3) is confined to defining the period of 14 days and for its extension by the Secretary of State. The regulation does not in my judgment lay down any period within which a claim has to be made. I have difficulty in following why paragraph (3) permits extension on a seemingly irrelevant ground relating to the provisions and practice governing claiming etc. But I do not see that I can construe those provisions as converting the provisions of paragraphs (1) and (2), which have nothing whatever to do with the * time of claiming, into provisions requiring the claim to be made in the 14 day period. No doubt the time limits in regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1980 [S.I. 1980 No 1579] or regulations replacing them govern claims under regulation 8(2). But the only rule governing the time of claims under regulation 8(1) must be analogous to that applicable to claims under the Single Payments Regulations, viz. that the relevant need must exist at the time of claim (see Decisions R(SB) 26/83). The relevant need that has to exist at the date of claim in the present case is the need that under regulation 8(1) must arise in the 14 day period. Further in my judgment, the question whether funds to meet the need exist in terms of regulation 3(1) must also be determined as at that date (cf. the decision on file C.S.S.B. 76/82 (not reported) at paragraph 8).

13. The question for the tribunal will therefore be: Was the claimant in need of the items in question (both of furniture and of clothing) within 14 days of the fire? If so (in relation to each item) was the item itself or were funds to meet the item readily available to the assessment unit at the date of the claim? These questions being determined as at the date of claim, the meaning of the phrase "readily available" falls to be determined by reference to the regulation as it stood as at that date. (1)

14. On the question whether the claimant was in need of the items within 14 days, Miss Shuker submitted that in relation to the furniture the need did not arise until the claimant had somewhere to put it, and that as that was more than 14 days after the fire the claim in respect of the furniture must fail. It is I think for the new tribunal to decide when the need for the furniture arose. But fire and flood are (2)

the two types of disasters specifically given as examples of disaster in the regulation. It must be unusual for a person whose house is burnt down or rendered uninhabitable by a flood to have unfurnished accommodation to move into within 14 days. If Miss Shuker's view is right there will be virtually no one who will ever get a payment for furniture under regulation 8; it will be noted that the difficulty in securing accommodation is not a ground on which an extension of the 14 day period is permitted. I question, Miss Shuker's submission and leave it to the tribunal to decide whether the claimant was in need of the items for which he claimed within the 14 days. If he was they have to go on to consider regulations 3 and 4. If he was not or if for some other reason they are unable to award a payment under regulation 8 they must go on to consider whether in terms of regulation 24 a payment to meet the urgent need represented at the date of claim the only means by which serious damage or serious risk to the health or safety of the assessment unit could be prevented.

15. If as the result of their consideration of regulations 8 or 24 the tribunal reach the conclusion that (subject to regulations 3 and 4) some payment should be made, they have then to consider regulations 3 and 4. In particular they have to decide whether at the date of the claim funds to meet the cost of the items were readily available in terms of regulation 3(1). If they were, then under regulation 4(1)(c) the amount of such funds must be deducted from the overall payment. I am not here concerned with assets that are difficult to realise, as the only funds that have been suggested as available were the moneys in the bank account; and an adequate finding of what the amount was at the time of the claim, if necessary with reasons for selecting one figure rather than another, should be made. It has then to be decided how much of those funds could be regarded as readily available. Submissions were made to me about the meaning of this phrase, but no reference was made at the hearing to paragraphs (a) and (b) of regulation 3(1), which are set out in paragraph 6 above and which, as it seems to me, answer the points debated before me.

16. Under paragraph (b) regard is to be had to any capital including any "available capital" and any income resources calculated in accordance with regulation 5(2)(b). The inclusion of "available capital" (defined in regulation 2(1)) brings in certain resources that are disregarded for some other purposes; indeed the regulations now in force have dropped the phrase "available capital" in favour of the phrase "capital otherwise disregarded". Regulation 5(2)(b) has the effect of incorporating with modifications the provisions of paragraph 1(2) and 1(3) of Schedule 1 to the Act, which have the effect among other things of aggregating the resources of husband and wife. There is nothing in regulation 3(1)(b) that permits deduction for debts (cf. Decision R(SB) 2/83). Although I consider that resources that for one reason or another cannot in law be applied for a purpose are not available for that purpose, I do not consider that (save as mentioned in the next paragraph) the existence of debts that might be discharged out of certain resources means that those resources are not available for any other purpose, such as the satisfaction of an urgent need.

17. I consider however that regulation 3(1)(a) authorises some deduction for debts inasmuch as it provides that regard shall be had to the claimant's requirements as computed under regulation 5(2)(a), 5(3)(a) and (b) which, as with resources, imports, subject to modifications, the provisions for aggregation. The effect is that so much of the available funds as the tribunal consider to be required for normal requirements so computed, which must I think include normal requirements accruing and accrued but not yet paid for, is deductible. After these have been deducted from the available funds the balance remaining has to be deducted under regulation 3(1)(c) from any payment that can be made under regulation 8 or regulation 24.

18. The benefit officer's appeal succeeds.

required for normal requirements
So much of the available funds, which include normal requirements accruing and accrued but not yet paid for, is deductible. After deduction the balance has to be deducted under 3(1)(c) from any payment made.

(Signed) J. G. Monroe
Commissioner

Date: 26 August 1983

Commissioner's File: C.S.B. 521/1982
CSBO File: 627/82
Region: North Eastern