

CSB 525/1984

MJG/BOS

Storage charges

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Feyyaz Soker

Supplementary Benefit Appeal Tribunal: Wimbledon

Case No: 19/22

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 31 October 1983 (relating to the claim for removal costs from storage to the claimant's home of his own personal property) and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451], regulation 27.

2. This is one of four appeals by the claimant to the Commissioner from 4 decisions given by the supplementary benefit appeal tribunal. I have given separate decisions on the other 3 appeals (on Commissioners' files Nos C.S.B./523/1984, C.S.B./524/1984 and C.S.B./526/1984). In the decision on Commissioner's file No C.S.B./524/1984, I have set out the full facts and history of the matters that have led to these appeals, and I will not therefore reiterate them here, except in so far as is necessary to decide the issues in this particular appeal. This appeal in common with the others, was on my direction the subject of an oral hearing before me on 9 November 1984, at which the claimant was present and was accompanied by Mr L C Held and the adjudication officer was represented by Mr C d'Eca of the Solicitor's Office of the Department of Health and Social Security. I am indebted to the claimant and to Mr d'Eca for their assistance to me at the hearing.

3. The claimant is a married man, 63 years old at the material time, who on 27 September 1982 separated from his wife. Prior to the separation, he and his wife and daughter were living together as a family in temporary furnished premises in Streatham where they had moved in August 1982 after leaving their accommodation in the wing of a large house in Kent. As they could not take their furniture and effects with them to the furnished premises in Streatham they had to put them into storage in Rye. There were 4 containers put into storage

there, but 5 cartons of items needed immediately were forwarded to the accommodation in Streatham. Immediately after the separation from his wife, the claimant left Great Britain and from 1 October 1982 to 29 January 1983 was staying with his mother in Turkey. On 22 June 1983, the claimant received a single payment of £204.96 removal expenses, being the cost of transporting the family's possessions from the house in Kent to storage in Rye, plus the cost of forwarding the 5 cartons of items to Streatham. On 2 July 1983, the claimant made a further claim for a single payment of £103.70 removal charges for the cost of transporting his own personal belongings from storage in Rye to the Young Men's Christian Association at Wimbledon, where he was at the time living. By the time of the hearing on 31 October 1983 before the local tribunal, he had again moved from the YMCA Wimbledon to an address in the centre of London. I should explain that although I have set out the facts, as I understand them to be, for the guidance of the new tribunal, I have no jurisdiction to make findings of fact and the new tribunal should satisfy itself of these matters and make its own findings of fact on all material issues.

4. The present appeal concerns the claim for removal expenses of transporting the claimant's own belongings from storage in Rye to the YMCA Wimbledon. Unfortunately as the adjudication officer now concerned submits, the tribunal that originally heard this case made an error of law in that they looked at the circumstances of the matter as at the date of hearing before them (31 October 1983) and not as at the date of claim, namely 2 July 1983, when the claimant was still living at the YMCA Wimbledon and had not moved to the centre of London. That is a clear error of law being contrary to the decision of a Tribunal of Commissioners, in R(SB) 26/83. For that reason alone, I must set the tribunal's decision aside and the new tribunal that rehears this case should consider matters as they were as at the date of claim.

5. The new tribunal will then have the opportunity to consider all relevant requirements of regulation 13 of the Supplementary Benefit (Single Payments) Regulations 1981, [S.I. 1981 No 1528 as amended] to ascertain whether the claimant can bring his claim within that regulation. Factually that is a matter for the new tribunal but I should give some guidance on the legal issues particularly as the adjudication officer now concerned (in a written submission dated 16 August 1984) has submitted that the claimant in the circumstances fails to satisfy the condition precedent to be found in regulation 13(1) that the claim should be made at a time when the claimant "is moving to a new home". The adjudication officer submits (paragraph 12) that the claimant was not "about to move to a new home but had already moved" and cites paragraph 12(1) of the decision on Commissioner's file C.S.B./442/1983 (to be reported as R(SB) 39/84) in support. He also cites paragraph 7 of the unreported decision on Commissioner's file C.S.B./237/1984. Both of these decisions should be made available to the tribunal that rehears this case.

6. Whether or not the claimant was at the time of the claim for removal expenses in July 1983 "moving to a new home" is in many respects a question of fact and I therefore leave it to the new tribunal. I

should however say that I do not accept the submission of the adjudication officer now concerned that the claimant cannot in any circumstances bring himself within this requirement of regulation 13(1). The fact that the claimant had already received a payment for removal of the effects in question into storage, does not in my view, preclude a further payment for removal out of storage, to whatever might be the claimant's home at the time. Interim storage is a common feature of moves nowadays and I do not see anything in regulation 13 to prevent such payments. Moreover I note that regulation 13(1)(c) refers to one of the circumstances potentially bringing the regulation into operation as being that "the change of home is in consequence of any breakdown of the marriage" . That was the position here, I would have thought, and I see no reason why prima facie that particular condition should not have been fulfilled in this case.

7. However, the new tribunal must make the final judgment on that matter, and indeed must of course be satisfied, if the claimant's appeal is to be allowed, that all the other requirements of regulation 13 are fulfilled. In particular, the new tribunal will want to look at the question of the obtaining of an estimate or estimates (see regulation 13(4)). As I have said in my decisions on the other 3 appeals, in view of the length of time these cases have already taken and the complexity of the appeals, it might be thought desirable for the new tribunal that rehears these 4 appeals to be chaired by a full-time chairman. I am not myself able to give the decision which I might consider the original tribunal ought to have given, because for the reasons indicated in all 4 appeals, there are outstanding undecided issues of fact, and I have no jurisdiction to decide those, the Commissioner being empowered only to decide questions of law.

(Signed) M J Goodman
Commissioner

Date: 18 December 1984

Commissioner's File: C.S.B./525/1984
CSBO File: 299/84
Region: London South

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