

T/RJK

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

CSB / 532 / 1981

need is to be determined at date of claim

1. Our decision is that the decision of the supplementary benefit appeal tribunal dated 12 February 1982 is erroneous in point of law. We set it aside and refer the case to another tribunal for determination in accordance with our directions.
2. This is the second of three appeals which were heard together by a Tribunal of Commissioners. Our decision in this appeal should be read with our decision on the first appeal, the reference to which on Commissioner's file is CSB/256/1981. The appeal gives rise to the same point of law as the first appeal, namely at what date should "need" be determined when a single payment is claimed. It also gives rise to the further question as to the date at which there shall be determined the question whether the assessment unit already possesses the item claimed or has a suitable alternative item or has unreasonably disposed of or failed to avail itself of such an item: see regulation 3(2)(b) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985] and the same regulation (which is in identical terms in this respect) in the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528]. In our judgment, the answer to this question must be the same as the answer to the primary question, namely the date when need is to be determined, and must accordingly be the date of claim. The same considerations which led to our decision that need should be determined at the date of claim apply.
3. (1) The appeal is brought by the claimant against the decision of a supplementary benefit appeal tribunal dated 12 February 1982 affirming the decision of a supplementary benefit officer issued on 17 November 1981 refusing a single payment for "essential furniture".

(2) At the oral hearing, the claimant was represented by Mr N Westwood of the Liverpool Welfare Rights Advice Centre. The benefit officer was represented by Mr D James, whose arguments also represent the views of the Secretary of State.

4. According to the written submission of the supplementary benefit officer to the tribunal, the appellant is a married woman, aged 33, who has the sole care of her dependent child because her husband is at present serving a prison sentence. Her husband jumped bail in July 1981 and was arrested on 25 October 1981. When visited on 17 November 1981 the appellant claimed a single payment for essential furniture informing the Visitor that she and her husband left the flat for a period of 2 months prior to his arrest in order to avoid the police after he had jumped bail, during which time the flat was vandalised. The appellant later claimed that she left her flat for several weeks in February 1981 in order to look after her mother and that during her absence the flat was vandalised. She was not married at that time. The reasons for the benefit officer's decision were stated to be that he had decided that the appellant was not entitled to a single payment for essential furniture in view of the appellant allowing the furniture to be disposed of when she left the flat unoccupied for 2 months, and by so doing gave an open invitation to vandals. The allegation that the appellant's flat was vandalised while she was caring for her mother was considered - but the supplementary benefit officer was not satisfied that this was the case.

5. The chairman's signed note of evidence states:

"The appellant attended the hearing and stated that her flat had been vandalised and all the furniture stolen whilst she was away at her mother's for approx 2 months.

The Tribunal were not satisfied that sufficient care had been taken by the claimant of the flat and its contents."

6. The facts found, the decision and the reasons therefor, as set out on form LT 235 are as follows. The facts found were:

"1. [The appellant] is in receipt of a Supplementary Allowance because she has sole care of her dependent daughter.

2. She claimed a single payment for essential furniture on 17.11.81 on the grounds that whilst she was away from her flat in February 1981 for a few weeks, looking after her mother who was ill, the flat was vandalised and all her furniture was stolen.

3. She returned to the flat in November 1981, having been away from it since the end of February 1981."

The tribunal decision was:

"That a single payment for essential furniture should not be allowed."

The tribunal's reasons were:

"The Tribunal decided that [the appellant] was unable to satisfy regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1980 in that she had not exercised sufficient care of her possessions whilst she was temporarily away from her flat. They decided that the Supplementary Benefit Officer had thus been justified in stating that [the appellant] had 'unreasonably disposed of or failed to avail herself of these items' as provided by this Regulation."

7. In their written submissions on this appeal, the supplementary benefit officer and the claimant's representative are in agreement that the tribunal misconstrued regulation 3(2)(b) of the Single Payments Regulations and that in concluding that the claimant had unreasonably disposed of the property during her absence from her flat, the tribunal reached a decision to which no reasonable tribunal could have come, some deliberate action from the claimant to rid herself of the item in question being required before she could be said to have disposed of it. In this respect, we agree with both submissions that the decision must be erroneous in point of law. The error of law in this case appears on the face of the document and consists in the wrong construction of the meaning of the expression "unreasonably disposed of, or failed to avail itself of, such an item" in regulation 3(2)(b) of the Supplementary Benefit (Single Payments) Regulations 1980. Regulation 3(2)(b) provides:

"A single payment shall be made only where-

(a) ...; 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."

A failure to exercise sufficient care of her 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.

8. If the material facts had been found by the tribunal, we would be able to give the decision that the tribunal should have given. But these facts have not been found. As the claimant's representative has submitted, the tribunal have made no clear finding of fact as to whether they believed that the furniture was stolen and the flat vandalised whilst the claimant was away from her flat for a few weeks.

The benefit officer who gave the original decision did not accept that it had been vandalised while the claimant was caring for her mother: see paragraph 4 above. It is not clear from the tribunal decision what they considered the facts to be. Did they accept the claimant's story? Or did they reject it? If they rejected it, what were the facts? Was the property ever vandalised at all? If so, when? The claimant has in effect submitted that she is left guessing. We agree.

9. The tribunal which re-hears the case should be differently constituted and ought, in finding the facts, to:

(1) determine what the items claimed, and for which the benefit officer in his decision on 17 November 1981 refused to make a single payment, in fact were. They are not specified anywhere in the case papers!

(2) decide whether, at the date of claim, there was a need for the items claimed. Need must, for the reasons given in our decision on the first appeal, a copy of which accompanies this decision, be determined at the date of claim;

(3) if there was a need, find the material facts. Sufficient primary facts must be found to show that any regulation under which a payment is

sought by the claimant does or does not apply. As regards furniture, regulation 9 of the Supplementary Benefit (Single Payments) Regulations 1980 will be in point;

- (4) consider whether, if there was a need for the items claimed, there was, at the date of claim, any particular item that the assessment unit already possessed, or which had been unreasonably disposed of or whether there was a suitable alternative item of which the assessment unit failed to avail itself, in terms of regulation 3(2)(b) of the 1980 Single Payments Regulations. The regulations in force at the date of claim are those which apply: see paragraph 20 of our decision on the first appeal. In the event of an affirmative answer to any of these questions as regards any particular item, the claim for a single payment for that item must fail;
- (5) in considering regulation 3(2)(b) the tribunal should make findings as to who were the members of the "assessment unit" at the date of claim. This finding is necessary because, according to the benefit officer, the claimant was not married at the time of claim.

10. Our decision is set out in paragraph 1.

Signed: I O Griffiths
Chief Commissioner

Signed: V G H Hallett
Commissioner

Signed: D G Rice
Commissioner

Date: 15 March 1983

Commissioner's file: CSB/533/1982
C SBO file: SBO 520/82