

R/S/D/JAT e/m

CSSB 16/1981

JGM1/IM

SUPPLEMENTARY BENEFITS ACT 1976

FAMILY INCOME SUPPLEMENTS ACT 1970

APPEAL TO THE COMMISSIONER FROM DECISION OF
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

Decision No. C.S.S.B.2/81

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1. My decision is that the decision of the supplementary benefit appeal tribunal dated 13 January 1981 is erroneous in law and is set aside.
 2. This is an appeal by the supplementary benefit officer to whom leave to appeal was granted on 5 May 1981. The appeal was heard at an oral hearing before me at which the supplementary benefit officer was represented by Mr. Milledge of the Solicitor's Office of the Department of Health and Social Security, and the claimant, who attended in person, was represented on a voluntary basis by a friend, Mr. Macleod.
 3. At the beginning of December 1980 the claimant, who was in receipt of supplementary allowance, was living alone at an address in Corby. His house was then destroyed by fire but alternative accommodation was provided by the local authority. He moved into his new address on 11 December 1980 but had no cooker until 19 December 1980. On 18 December 1980 he claimed an extra allowance to cover the additional cost of eating out between 11 and 18 December. On 18 December 1980 the supplementary benefit officer in effect refused the claim by awarding supplementary allowance at the rate of £33.64 in an assessment which did not include this claimed extra allowance. The claimant appealed to the supplementary benefit appeal tribunal who awarded a single payment of £4.20 to cover the claimed extra expense. It is argued on behalf of the supplementary benefit officer that the tribunal's decision is erroneous in law and cannot stand.
 4. It is to be noted that the claimant had not appealed against the refusal of a claim for a single payment under section 3(1) of the Supplementary Benefits Act 1976. His appeal was against an award of supplementary allowance which did not include his claimed extra allowance for eating out. That claim does not come within the scope of "additional requirements" which can be included in an award under the Supplementary Benefits (Requirements) Regulations 1980 (the "Requirements Regulations") and no doubt for this reason the tribunal / considered

considered and awarded a single payment under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980 (the "Single Payments Regulations"). It was not suggested by Mr. Milledge that the tribunal had no jurisdiction to consider a single payment under regulation 30 in such circumstances, and having regard to the terms of regulation 30(b) set out below I consider that the tribunal did have jurisdiction so to do. But the question arises whether the tribunal erred in law in granting such a single payment.

5. In the reasons for their decision the tribunal state:-

"The Tribunal is agreed that an extra expense has been incurred by Mr. McAuley in having to eat out during the period 11.12.80 to 18.12.80 and they estimate this extra cost as being 60p per day and, therefore, 7 days at this amount (£4.20) is considered reasonable. As exceptional hardship had been caused by the extra expense for hot food, being a possible risk to health. (Discretionary Single Payment Regulation 30(b))".

It may therefore be deduced that the tribunal accepted that the claimant had incurred an extra expense in being obliged to eat out or at least to purchase cooked food in the period specified and made an award representing the estimated additional cost by way of a single payment under regulation 30(b) of the Single Payments Regulations.

6. That regulation is in the following terms:-

"30. Where a claimant is entitled to a pension or allowance and he -

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, such a payment is the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented".

In terms of regulation 3(1) of the same regulations a "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". (Regulation 30 forms Part VIII). Regulation 3(2)(a) provides that a single payment shall be made only where "there is a need for the item in question".

7. In approaching questions of the construction and scope of regulation 30 I bear in mind that it is clearly intended as a "long-stop" discretionary provision enabling a single payment to be made in cases of exceptional need which cannot otherwise be met and when the consequences of deprivation are likely to be serious. These considerations suggest that the regulation should be broadly rather than over-strictly construed and that the exercise by a benefit officer or Appeal Tribunal of the discretion to make a single payment under it should not be disturbed unless upon no reasonable view could the circumstances have enabled the discretion legitimately to be so exercised.

8. The pre-requisites for the operation of regulation 30 are that the claim must be for an existing exceptional need which cannot otherwise be met under the regulations, and the payment must be the only means by which serious damage or serious risk to the health or safety of, in this case, the claimant, may be prevented. A serious question therefore arises on the very first requirement. Were the tribunal in the present case entitled to proceed on the basis that the claimant had at the date of claim an existing need for a single payment to cover the additional costs of the purchase of cooked food? The provisions of the regulation look forward and not back. On the face of it the claimed need was in respect of a past period ending on the day of claim and there was no possibility of the single payment averting consequential serious damage or serious risk as contemplated by the regulation since any such damage or risk must have accrued by the date of claim. I consider that this objection is fatal to the operation of regulation 30 in the present case. It was suggested on the claimant's behalf that in claiming for a cooker (which he was said to have done on 11 December 1980) he was expressing a need for cooked food and could be regarded as claiming on this basis on 11 December 1980. The acceptance or rejection of this proposition would however be a matter for the Secretary of State under the provisions of regulation 3 of the Supplementary Benefit (Claims and Payments) Regulations 1980 and not the Commissioner. In any event it appears to me that there is another even more serious objection to the use of regulation 30 in the present case.

9. It may be accepted that the claimed need came under regulation 30(b) as being one for which no other provision was made in the regulations, but it must be asked whether there were any considerations on the basis of which the tribunal could legitimately conclude that the payment afforded the only way of preventing "serious damage or serious risk to the health" of the claimant. What was being sought was a payment to cover a period of 7 days in respect of the additional cost (that is, over and above the normal food element of the supplementary benefit allowance) of purchasing cooked food. The tribunal accepted that an additional expense, estimated at 60p per day, had been incurred and stated that the "exceptional hardship" of this expense was a "possible risk to health". Those findings fall far short of the statutory criterion. It was explained to me on the claimant's behalf that the tribunal were informed that at the time of the fire leading up to this claim the

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claimant was suffering from alcoholism and was under-weight and his doctor regarded it as important that he build himself up with regular meals and hot food. There is no reference to these matters in the record of the tribunal decision or the chairman's notes, but even accepting that there was such evidence before the tribunal (as I am for present purposes prepared to do), I do not consider that this or indeed any tribunal could reasonably conclude that the payment claimed represented the only means by which serious damage or a serious risk to the claimant's health might be prevented.

10. My conclusion is that the supplementary benefit appeal tribunal misdirected themselves as to the requirements of regulation 30 and did not have material before them upon which they were entitled to exercise their discretion to award a single payment under that regulation. These are errors in point of law in respect of which their decision must be set aside. I have given consideration to the question whether in the circumstances of this case it is necessary to refer the case to another tribunal. It was correctly conceded on behalf of the claimant at the hearing before me that the extra allowance claimed was correctly disallowed as not coming within the scope of the Requirements Regulations (and in particular of the "miscellaneous outgoings" referred to in regulation 14(e) and 19 thereof). I have set aside the award which the tribunal themselves made under regulation 30 of the Single Payments Regulations and having regard to my reasons for so doing there appears to be no possible advantage to the claimant in inviting the Secretary of State to reconsider the date of the claim on the basis of the argument dealt with in paragraph 8 above. It might therefore be thought that there would be little or no content in any reference back to a differently constituted tribunal. I note that in unreported decision C.I.15/63 the Commissioner did not find it necessary to refer a case back to another medical appeal tribunal but in that case the original decision had been set aside on the ground that the tribunal had erroneously entertained an appeal which was held not to have been made to it. In the present case the claimant did undoubtedly appeal to the supplementary benefit appeal tribunal and I consider that as the tribunal's decision on that appeal has been set aside and as the Commissioner has not been given power under rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 to substitute his own decision, the case must be referred to another tribunal for disposal of the claimant's appeal. The case will not be heard de novo but will fall to be disposed of in accordance with the directions upon the law contained in this decision and summarised in this paragraph.

11. The appeal of the supplementary benefit officer is allowed.

(Signed)

J. G. Mitchell
Commissioner
Date: 4 August 1981

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