

Claim for SP for clothing for herself and 4 children (22) who had left their clothing in former matrimonial home when they had been forced to leave by violent H. SSAT had erred in not considering whether under reg 3 the claimant's attempt to retrieve clothing had been reasonable.

DR/DH

Commissioner's File: CSSB/16/86

CAO File: AO 3144/85

LO

LO Ref No

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

1. My decision is that the decision of the social security appeal tribunal dated 23 October 1985 is erroneous in point of law and is therefore set aside.

2. The claimant at the time in question was the head of a single parent family with four dependant children. She was separated from her husband, and she was in receipt of a supplementary allowance. On 30 April 1985 she claimed a single payment for clothing in respect of herself and her four children. She maintained that the only clothing she had was what the family were standing in. She also stated that when she and her husband had separated, she left all the family's clothing in the marital home. The local adjudication officer decided that the claimant was not entitled to a single payment for clothing for herself and her children having regard to the provisions of regulations 27 and 30 of the Supplementary Benefit (Single Payments) Regulations 1981. The claimant appealed against that decision, but a social security appeal tribunal confirmed the decision of the local adjudication officer. Thereafter the claimant applied for leave to appeal to a Commissioner on a question of law from the tribunal's said decision, and that application was granted by a tribunal chairman. I am now concerned with the appeal.

3. The facts relating to this case as given to the said tribunal were apparently to the effect that the claimant had left her violent drinking husband for the second time about the end of March 1985 and had gone to live in a Homeless Persons Unit. She submitted her claim for clothing on 30 April 1985. According to the tribunal the clothes which were left in the matrimonial home were in reasonable condition. She had apparently got a friend to visit the matrimonial home, but the claimant's husband had only handed over the pram and two items of baby clothes. The claimant's information was also to the effect that the

clothes/

clothes had been dumped.

4. Regulation 27 of the said Single Payments Regulations provides that a single payment shall be made for certain items of clothing set forth in the said regulations where the need has arisen otherwise than through normal wear and tear and otherwise than in the normal course of events. Regulation 3 of the said regulations lays down that a single payment shall only be made where there is a need for the item in question and that the assessment unit does not have available to it a suitable alternative item.

5. The tribunal in question reached their decision on the basis that the claimant did not satisfy the provisions of said regulation 27 or regulation 30. It seems to me, however, that the real question at issue did not turn on whether the claimant satisfied the provisions of said regulation 27. The items of clothing in the matrimonial home were apparently in reasonable condition. The case in my view therefore seems to me to turn on the question regarding whether there was a need for the items in question and whether the claimant had failed to avail herself of the items in the said matrimonial home i.e. having regard to the provisions of said regulation 3 mentioned above. In their findings of fact the tribunal in question stated that the claimant had access to a solicitor but had chosen not to pursue her right to enter the matrimonial home to regain the clothing for herself and her children. The evidence before the tribunal was to the effect that the claimant had arranged for a neighbour to try and get the said items of clothing but that had been unsuccessful. The real question in my view before the tribunal was not whether the provisions of said regulation 27 were satisfied but whether the claimant had taken reasonable and adequate steps to obtain the clothing in the former matrimonial home and whether or not the provisions for a single payment under said regulation 3 were satisfied. It was for the tribunal to decide whether the claimant's evidence about her attempts to obtain the clothing for herself and her children were reasonable in the circumstances. The tribunal in my view have not dealt adequately with that issue in their decision, and in those circumstances the tribunal did not comply adequately with regulation 19 of the Social Security (Adjudication) Regulations 1984 which lays down a duty on the chairman of a tribunal to set forth in the tribunal's decision their findings in fact on all questions material to their decision.

6. The adjudication officer now concerned with the case also maintains that the tribunal failed in their duty to deal adequately with each item of clothing relating to the claimant and her children having regard to what was laid down in decision R(SB)42/83. In my view, however, it was up to the claimant to give details to the tribunal regarding the particular items of clothing which she maintained should be given for herself and the children. Doubtless if the tribunal in question had decided that the claimant was entitled to a single payment in respect of clothing, they would have asked the claimant to give details of the particular items requested by her.

7. In all the circumstances I have reached the conclusion that the decision of the said social security appeal tribunal must be set aside,

and/

and the case must now be reconsidered by another tribunal.

8. The appeal which was brought on behalf of the claimant is allowed.

(signed) Douglas Reith
Commissioner
Date: 19 June 1986