

*See page 4, 5, 6 & 7 of the hearing transcript*

JGMi/JH

Commissioner's File: CSSB/67/85

C.A.O. File: AO 2426/13/85

L.O: Partick

L.O. Ref. No: 1511/15665

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION  
OF SOCIAL SECURITY APPEAL TRIBUNAL UPON  
A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow West

Case No: 45/21/02

[ORAL HEARING]

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1. My decision is that the decision of the social security appeal tribunal dated 19 October 1984 is erroneous in law and is set aside. The claimant's case is referred to a differently constituted tribunal for consideration afresh.

2. This is an appeal by the claimant, with leave, against the above mentioned decision of a social security appeal tribunal. The case has an unfortunate history. The claimant made a claim for supplementary benefit by way of a single payment at the end of September 1982. The claimant was in receipt of supplementary allowance and claimed a single payment for a blouse, skirt, jumper, jacket and shoes which she said she needed for the purpose of forthcoming job interviews, one of which was imminent. On 8 November 1982 a benefit officer disallowed the claim. The claimant appealed to a supplementary benefit appeal tribunal who refused the appeal and upheld the decision of the benefit officer. The claimant appealed to a Commissioner and by his decision in case CSSB/99/83 dated 6 April 1984 the decision of the tribunal was set aside and the case was remitted for rehearing by a differently constituted tribunal. On 17 October 1984 a different tribunal reconsidered the case but unanimously upheld the refusal of the claim. Having obtained leave to appeal the claimant again appealed to the Commissioner upon a point of law. The present appeal was dealt with at an oral hearing held before me at which the claimant, who attended in person, was represented by Mr. C. Orr of Strathclyde Social Work Department and the adjudication officer was represented by Mr. C. A. M. E. D'eca of the Solicitor's Office of the Department of Health and Social Security.

3. In their decision dated 19 October 1984 the social security appeal/

appeal tribunal unanimously held: 1) that it was not shown that there was an "exceptional need" within the meaning of regulation 3 of the Supplementary Benefit (Single Payments) Regulations 1981 for the items claimed, 2) that any need which might have arisen had in any event been satisfied between the date of the claim and the date of the refusal of the claim by the benefit officer, and 3) that in any event the need had arisen through normal wear and tear and in the normal course of events within the meaning of regulation 27 of the Single Payments Regulations.

4. Regulation 3 of the Single Payments Regulations contains the following provisions:-

"3.-(1) In these regulations "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.

(2) A single payment shall be made only where -

(a) there is a need for the item in question; and .... "

Regulation 27 of the Single Payments Regulations contains the following provisions:-

"27.-(1) A single payment for any item of clothing or footwear specified in column 1 of Schedule 2 shall be made where any member of the assessment unit needs new or replacement clothing or footwear and -

(a) that need has arisen otherwise than by normal wear and tear, for example where the need has arisen because of -

(i) pregnancy, the birth of a child or rapid weight loss or gain,

(ii) heavy wear and tear on clothing or footwear resulting from any mental or physical illness, handicap or disability (where an additional requirement is applicable),

(iii) the accidental loss of, damage to or destruction of an essential item of clothing or footwear,

(iv) physical or mental illness or disability which necessitates the purchase of a particular or additional item of clothing or footwear,

but not where the need has arisen in the normal course of

events/

events (for example where an item of clothing or footwear is outgrown)."

5. It is not explained by the tribunal in the present case, nor is it apparent, how the tribunal reached the conclusion that it was not shown that there was an "exceptional need" for the purposes of regulation 3 quoted above. The need put forward by the claimant was certainly not of a recurring nature. The tribunal quote observations from the case of Supplementary Benefit Commission v. Clewer (High Court 17 May 1979 reported in "Decisions of the Courts relating to Supplementary Benefits" Page 153) and the decision of the Commissioner in case CSB 29/81. The latter decision was subsequently reversed by the Court of Appeal on the issue of whether the application of regulation 3 involved the exercise of a discretion. It is not clear that the tribunal took account of the Court of Appeal decision, of which they may not indeed have been made aware. The existence of an exceptional need for the purposes of regulation 3 had hitherto been accepted in the present case. While the tribunal might have been entitled to decide upon the facts of this case that there was no exceptional need, they were not entitled to do so without stating those facts and explaining the reasons for their conclusion.

6. The question of need for the purposes of both regulation 3 and regulation 27 referred to above should in any event have been assessed by the tribunal in the present case with reference to each of the items claimed and to the claimant's existing clothing stock. In the absence of any findings as to the nature and condition of the claimant's existing clothing stock and the condition of, or reasons for the absence of, the items of clothing covered by the claim, no proper decision could be reached either on the existence or otherwise of a need for a single payment or on the circumstances in which the need had arisen for the purposes of regulation 27. The first and third conclusions of the tribunal quoted in paragraph 3 above must therefore be held to be erroneous in law as they are unsupported by adequate findings and reasons in compliance with the requirements of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984.

7. The tribunal fell into a further error of law in my judgment in their second ground for rejecting the claim which was that under the provisions of regulation 3(2)(a) of the Single Payments Regulations any need which might have arisen had already been satisfied between the date of claim and the date of the supplementary benefit officer's refusal to award a single payment. The tribunal do not in fact record the date of claim, but this ground for their rejection of the claim proceeds on the basis that a claim was made by the claimant for the clothing items prior to the date of a job interview on 15 October 1982 and prior to the claimant obtaining, by other means, the articles in question. It is clearly established (see Decision R(SB) 42/83, the Decision of a Tribunal of Commissioners) that need for the purposes of a single payment falls to be adjudged at the date of claim. The fact that the claimant subsequently was

able/

able to meet the need by other means should not have been held to vitiate her claim by precluding proof of need for the purposes of regulation 3(2)(a).

8. In the foregoing circumstances the decision of the tribunal must be set aside as erroneous in law. I regret that I have no option but to refer the claimant's case yet again to a differently constituted tribunal for consideration afresh. The new tribunal will require to consider the question of need, at the date of claim and for the purpose stated, in relation to each item of clothing claimed and do so in light of the nature and condition of the claimant's existing stock of clothing. The tribunal will of course take account of the decision of the Court of Appeal referred to above (printed as an Appendix to Decision R(SB) 21/84). It is to be noted however that in that case the claimant had been attending job interviews regularly and it was not there suggested that the clothes owned by the claimant were inherently unsuited for job interviews. The Court of Appeal decision does not in my judgment exclude the possibility of a single payment being made for clothing for a job interview in circumstances in which a claimant did not at the material time possess (and perhaps never had possessed) clothing of a type suitable for that purpose.

9. There was some discussion before me on the meaning and application of the expressions "normal wear and tear" and "in the normal course of events" as contained in regulation 27(1)(a) of the Single Payments Regulations. It was suggested that a claimant who had a low clothing stock through lack of funds could establish that the wear and tear on the limited items which he or she did possess was abnormally high, so that the need for replacement could be regarded as arising otherwise than by "normal wear and tear". Although it was suggested before me that this might be applicable in the claimant's circumstances, the point does not directly arise for decision and was not fully argued. As at present advised I would not be disposed however to accept the contention. Looking to the provisions of regulation 27(1)(a) it appears to me that the type of abnormal wear and tear envisaged by the regulation is exemplified by the "heavy wear and tear" provisions and the "damage" and "destruction" provisions of sub-heads (ii) and (iii) of regulation 27(1)(a), and that natural wear and tear on an item constantly worn, whether through necessity or indeed choice, would not cease to be normal wear and tear for the purposes of the regulation.

10. As regards the expression "the normal course of events" I consider that in its context in regulation 27 in connection with need for items of clothing it is to be construed as referring to the normal course of events affecting such items and not at large as referring generally to what may be the normal course of events affecting a claimant. Thus although a job interview might, on one view, be regarded as something occurring in the normal course of events for a person seeking employment I would not regard a

need/

need for clothing for a job interview, which might otherwise be accepted, as ruled out by the final provision of regulation 27(1)(a) as being a need arising in "the normal course of events". I am fortified in this view by the inclusion in the earlier sub-head (i) of regulation 27(1)(a) of circumstances such as pregnancy or the birth of a child, provisions which would otherwise be rendered nugatory since a need arising in such circumstances would no doubt fall to be regarded as a need arising in the normal course of events.

11. I should add that at an earlier stage in the history of this case the claimant maintained that after making the claim she had bought the items claimed on the faith of a representation by an officer of the Department of Health and Social Security that she would be entitled to a single payment for them. The tribunal whose decision is under appeal considered this matter carefully but came to the conclusion that there had been a misunderstanding between the claimant and the officer concerned, and did not accept that the representation that a single payment would be forthcoming had been made. The tribunal therefore did not require to consider any possible argument that the Department was barred from disputing the claimant's eligibility. The tribunal's conclusion on that point was not challenged before me.

12. The appeal of the claimant is allowed.

(signed) J. G. Mitchell  
Commissioner  
Date: 24 October 1985