

Calculation of UNP under reg 5~~5~~ UC Regs -
25% reduction in reg. only applies from date of claim. 25/88

JGMi/JOB

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LO: Rutherglen
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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Frances WEST (Miss)

Social Security Appeal Tribunal: Glasgow East

Case No: 09/11/15/06

ORAL HEARING

1. My decision is that the decision of the social security appeal tribunal dated 17 April 1985 is erroneous in law and is set aside. The claimant's case is referred to a differently constituted tribunal for reconsideration.

2. This is an appeal by the claimant, with leave, against the above-mentioned tribunal decision. The appeal was initially deferred because of an appeal to the court in an analogous case. The claimant's representative however requested that this appeal should proceed and I acceded to that request in view of the uncertain nature of the further delay likely to be caused otherwise. The appeal was dealt with at an oral hearing held before me at which the claimant was represented by Mr B McGarr, Welfare Rights Officer with Strathclyde Social Work Department and the adjudication officer was represented by Mr N Storey of the Solicitor's Office of the Department of Health and Social Security. Arising out of the hearing I directed the adjudication officer to lodge a further submission. That submission was duly received. I have also received and considered observations thereon by the claimant's representative. The appeal is now before me for determination.

3. The essential facts of this case are not in dispute although not all of them have been expressly found by the tribunal. The claimant, then a single woman aged 22 in receipt of supplementary benefit, made a claim on 20 February 1985 for payment under the Supplementary Benefit (Urgent Cases) Regulations 1981 (S.I. 1981 No 1529). She stated that she had received a giro cheque for £29.45 by way of a net payment of supplementary benefit for the period of one week on 19 February 1985. She stated that she had purchased food and paid certain debts with the proceeds of the giro cheque after which she placed the remaining £19 in

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an envelope. She had then lost this envelope somewhere in Glenacre Terrace, Glasgow near her home. She reported the loss to the police. She stated that she had no credit facilities and no-one from whom she could borrow. An adjudication officer accepted the claim under the Urgent Cases Regulations and calculated that the claimant was entitled to a payment of £1.50 under regulation 10 of the Urgent Cases Regulations together with a payment of 50p for bus fares. The claimant regarded this sum as inadequate and appealed to a social security appeal tribunal.

4. Section 4 of the Supplementary Benefits Act 1976 makes provision for cases of urgent need. Regulation 3 of the Urgent Cases Regulations defines urgent cases and contains the following provisions material for present purposes:-

"3.- (1) for the purposes of section 4 (provision for cases of urgent need) urgent cases shall be ... only those cases to which Parts II, III and IV of these Regulations apply where the item in question, or funds for that item or, ... funds to meet the expenses in question are not readily available to the assessment unit from its own resources or from any other source (for example, friends, relatives, credit facilities, a voluntary organisation) or in particular in a case to which Part II applies, from a local authority or relief fund; and -

(a) in determining whether funds are readily available to the assessment unit, regard shall be had to its requirements determined in accordance with regulation 5(2) (a) and (3) (a) and (b) (but not regulation 5(2)(c));

(b) in determining the assessment unit's own resources for the purposes of this paragraph regard shall be had to any capital, including any capital otherwise disregarded, and income resources calculated in accordance with regulation 5(2)(b).

(2) in an urgent case there shall be payable in accordance with these regulations supplementary benefit by way of a single payment or pension or allowance, and accordingly -

...

(e) schedule 1 to the Act (provisions for determining right to benefit and amount of benefit) shall be modified in accordance with regulation 5, ..."

The provisions of regulation 3(1) represent a restrictive definition of cases which may be accepted for consideration under the Urgent Cases Regulations ("only those cases ... where .."). For any case to be dealt with as an urgent case accordingly it must satisfy the initial test that the needed item or as in this case the needed funds "are not readily available" as therein mentioned.

5. Specific provision is made in regulation 10 in Part III of the Urgent Cases Regulations for urgent need arising out of the loss of

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money. Regulation 10(1) contains the following material provisions:-

"10.-(1) Where a sum of money ... is lost ... there shall be payable to the claimant an amount of pension or allowance determined in accordance with regulation 5, except that in aggregate the amount paid under this regulation shall not exceed the amount of that sum."

It is noteworthy that what is payable under regulation 10 is not the replacement of the sum lost by way of a single payment but "an amount of pension or allowance determined in accordance with regulation 5" not exceeding the sum lost. It is therefore a modified allowance of benefit, presumably to assist with essential living expenses for which the sum lost is unavailable.

6. Regulation 5 of the Urgent Cases Regulations referred to in both regulation 3 and regulation 10 is a regulation of considerable length and complexity. Those provisions which appear to be material for present purposes are as follows:

"5.-(1) The amount of any pension or allowance to which a claimant is entitled under these regulations shall, except in a case to which regulation 23 applies, be the amount by which his resources fall short of his requirements.

(2) For the purposes of ascertaining that amount -

(a) the claimant's requirements shall be determined in accordance with paragraph 2 of Schedule 1 to the Act except in so far as it is modified by paragraph (3) of this regulation;

(b) the claimant's resources shall be calculated pursuant to paragraph 1(2) and (3) of Schedule 1 to the Act except in so far as it is modified by paragraph (4) of this regulation;

(c) paragraph 3 of Schedule 1 to the Act shall apply except in so far as regulation 22 provides otherwise.

(3) The modifications mentioned in paragraph (2)(a) shall be as follows:-

(a) for 14 days beginning on the first day of the period to which paragraph (7) applies, and for any day thereafter falling before the first day of the benefit week beginning next after the 15th day, the weekly amount applicable for normal requirements shall be-

.....

(ii) in respect of a claimant who is a householder or a person to whom paragraph 1 or 2 of Schedule 1 to the Requirements Regulations (non-householders other than dependants) applies, the ordinary rate for the time being applicable to that householder or other person less 25 per cent.,

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any sum of 25 per cent. which is not a multiple of 5 pence being rounded down to the nearest such multiple;

- (b) for the period to which sub-paragraph (a) applies no additional or housing requirements shall be applicable;
- (c) for any period subsequent to the period to which sub-paragraph (a) applies the claimant's requirements shall be determined in accordance with paragraph 2 of Schedule 1 to the Act

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(4) The modifications mentioned in paragraph (2)(b) shall be as follows:-

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(b) any resource which would fall to be taken into account under the Resources Regulations, but including any capital or income otherwise disregarded, shall be taken into account except -

- (i) that in a case to which regulation 10 applies the sum lost, to which regulation 11 applies the income resource not paid, and to which regulation 13 applies the income mentioned in regulation 13(2), shall be disregarded,

.....

(7) the period for which any amount of pension or allowance is payable by virtue of any regulation in these regulations shall be -

- (a) the period during which the conditions of entitlement applicable continue to be satisfied; or
- (b) the period, if any, specified in that regulation,

whichever is the shorter, but in any case not to begin before the day on which the claim is made."

7. The social security appeal tribunal who heard the claimant's appeal unanimously upheld the decision of the adjudication officer awarding the sum of £1.50 plus 50p bus fares to the claimant. The tribunal's reasons were stated as follows:-

"The tribunal consider that the urgent need was satisfied by payment from another source ie (Social Work Department). (Reg 3(1) Urgent Cases Regs). One of the members agrees with DHSS's

calculation of resources - that the fuel direct payment is a form of expenditure in the same way as the £10 which she spent on food and bills on 19/2/85. The chairman and one member agree that £8.85 should not be included in resources as it was not readily available to the appellant."

It appears from the chairman's note of evidence that the claimant obtained, at an unspecified time, a sum of £10 from the Social Work Department. It also appears that there was dispute between the claimant's representative and the presenting officer regarding whether for the purposes of calculating the award there should have been included in the claimant's resources an amount of £8.85 deducted from the claimant's gross supplementary benefit allowance for payment direct to the electricity authority for current and past fuel consumption. The presenting officer supported its inclusion and the claimant's representative opposed this.

8. In my judgment the decision of the tribunal is erroneous in law in a number of respects. In the first place the tribunal decision leaves confusion as to whether the tribunal regarded the case as coming within the scope of urgent cases or not. If, whether correctly or not, the tribunal took the view indicated by the first sentence of the reasons quoted above that the claimant's urgent need was met by a Social Work Department payment they ought logically to have found that the claimant had no entitlement to an urgent cases payment. Instead however the tribunal upheld the adjudication officer's award. Furthermore the tribunal have not explained the basis upon which the Social Work Department payment was taken into account. It is not found that the payment was made before the claim for an urgent cases payment was made. Indeed it does not appear to be in dispute that it was in fact after the urgent cases payment had been made that the Social Work Department advanced a sum of £10. No facts are found to justify an inference that such funds were "readily available" for the purposes of regulation 3(1). (Although there is a reference in regulation 3(1) to the possibility of funds from a local authority, that reference applies in the particular context of a case to which Part II of the Regulations applies. Part II deals with emergency relief in cases of disaster. Regulation 10 is in Part III.) Furthermore the tribunal decision contains no explanation of the computation of the award upheld by the tribunal. The decision cannot be justified as a simple adoption of the adjudication officer's calculations. As the tribunal's reasons show, the majority of the tribunal considered that the sum of £8.85 deducted for fuel payments should not have been included in the claimant's resources. In those circumstances it was illogical to uphold an award which was based on taking that sum into account.

9. For the foregoing reasons the tribunal decision must be set aside as erroneous in law. The claimant's case will require to be referred to a differently constituted tribunal for consideration afresh. In that connection various points of considerable difficulty arise under the Urgent Cases Regulations. In the first place, as mentioned above, a claimant under those Regulations must show that his is an urgent case by satisfying the conditions of regulation 3(1). In my judgment the wording of regulation 3(1), including sub-heads (a) and (b), clearly indicates that this involves an exercise in the consideration of

requirements/

requirements and resources which is quite separate from that required for the computation of the appropriate award which may thereafter be made. In this case the award would fall to be made as an allowance under regulation 5 for the purposes of regulation 10. In other cases the award might be in the form of a single payment, as in a case under regulation 8(1) which deals with emergency relief. Since for this preliminary purpose attention is specifically directed to the consideration of what funds are or are not "readily available" to the claimant's assessment unit, I consider that when regard is had to income resources there should be disregarded the amount of supplementary benefit deducted from the claimant's girocheque because it was the subject of direct payment for fuel costs. Similarly there should in my judgment be disregarded funds no longer available out of the claimant's benefit because already spent. Furthermore, in the absence of any evidence establishing that a Social Work Department advance was known to be readily available, the amount of that advance which was not paid until after the claim for an urgent cases payment was made and dealt with should also be disregarded. I emphasise that these considerations apply in favour of a claimant only at the stage when consideration is being given to whether or not the case in question is an urgent case within the meaning of regulation 3(1).

10. Assuming the new tribunal is satisfied that the claimant's was indeed an urgent case for the above purposes, numerous questions arise upon the calculation of the appropriate award under regulation 10. The broad scheme of the calculation falling to be made under regulation 5 of the amount by which the claimant's resources fall short of his requirements for the purposes of an award under regulation 10 is as follows:-

- (1) Under regulation 5(2)(a) the claimant's requirements are determined in accordance with paragraph 2 of Schedule 1 to the Act (which fixes the normal, additional and housing requirements of various categories of claimant) as modified by paragraph (3) of Regulation 5;
- (2) Under regulation 5 (3)(a)(ii) and (b) the normal requirements of a householder claimant are reduced by 25% in the relevant period of (up to) 14 days (which under regulation 5(7) begins not earlier than the date of claim) and no additional or housing requirements are applicable;
- (3) Under regulation 5(2)(b) the claimant's resources are calculated pursuant to paragraph 1(2) and (3) of Schedule I to the Act, that is, in accordance with the Supplementary Benefit (Resources) Regulations 1981 (S.I. 1981 No 1527) as modified by paragraph (4) of regulation 5;
- (4) Under paragraph (4)(b) (i) the sum lost is not to be taken into account as a resource.

11. In the further written submission put forward by Mr Storey on behalf of the adjudication officer after the hearing in this case it is suggested that a claim under the Urgent Cases Regulations may be regarded as a request for a review of the claimant's entitlement to

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requirements and resources which is quite separate from that required for the computation of the appropriate award which may thereafter be made. In this case the award would fall to be made as an allowance under regulation 5 for the purposes of regulation 10. In other cases the award might be in the form of a single payment, as in a case under regulation 8(1) which deals with emergency relief. Since for this preliminary purpose attention is specifically directed to the consideration of what funds are or are not "readily available" to the claimant's assessment unit, I consider that when regard is had to income resources there should be disregarded the amount of supplementary benefit deducted from the claimant's girocheque because it was the subject of direct payment for fuel costs. Similarly there should in my judgment be disregarded funds no longer available out of the claimant's benefit because already spent. Furthermore, in the absence of any evidence establishing that a Social Work Department advance was known to be readily available, the amount of that advance which was not paid until after the claim for an urgent cases payment was made and dealt with should also be disregarded. I emphasise that these considerations apply in favour of a claimant only at the stage when consideration is being given to whether or not the case in question is an urgent case within the meaning of regulation 3(1).

10. Assuming the new tribunal is satisfied that the claimant's was indeed an urgent case for the above purposes, numerous questions arise upon the calculation of the appropriate award under regulation 10. The broad scheme of the calculation falling to be made under regulation 5 of the amount by which the claimant's resources fall short of his requirements for the purposes of an award under regulation 10 is as follows:-

- (1) Under regulation 5(2)(a) the claimant's requirements are determined in accordance with paragraph 2 of Schedule 1 to the Act (which fixes the normal, additional and housing requirements of various categories of claimant) as modified by paragraph (3) of Regulation 5;
- (2) Under regulation 5 (3)(a)(ii) and (b) the normal requirements of a householder claimant are reduced by 25% in the relevant period of (up to) 14 days (which under regulation 5(7) begins not earlier than the date of claim) and no additional or housing requirements are applicable;
- (3) Under regulation 5(2)(b) the claimant's resources are calculated pursuant to paragraph 1(2) and (3) of Schedule I to the Act, that is, in accordance with the Supplementary Benefit (Resources) Regulations 1981 (S.I. 1981 No 1527) as modified by paragraph (4) of regulation 5;
- (4) Under paragraph (4)(b) (i) the sum lost is not to be taken into account as a resource.

11. In the further written submission put forward by Mr Storey on behalf of the adjudication officer after the hearing in this case it is suggested that a claim under the Urgent Cases Regulations may be regarded as a request for a review of the claimant's entitlement to

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supplementary benefit or alternatively as a separate claim. As regards the first alternative it is submitted:-

"If the request were regarded as a request for a review of the claimant's entitlement to supplementary benefit on the grounds that there has been a material change in the claimant's circumstances the payment of Supplementary benefit for that week, less the amount lost, is a resource to be taken into account in full under the Resources Regulations, regulation 11(2)(q). As such it would fall to be attributed to the same benefit week as that for which it was paid (Resources Regulations, regulation 9(2)(b)(ii) and 9(2)(a)(i))."

This novel suggestion has some plausability in relation to cases in which the claimant is an existing recipient of supplementary benefit and the award under the Urgent Cases Regulations takes the form of an allowance. It could not however be applied in the case of a claimant not ordinarily in receipt of supplementary benefit nor in a case where the award under the Urgent Cases Regulations takes the form of a single payment. Furthermore even in those cases where the award does take the form of supplementary allowance and the claimant is already a supplementary benefit claimant the concept is inappropriate for cases under regulation 12 (which covers the period between the date of an initial claim and the first day of entitlement to benefit) or cases under regulation 17 (where entitlement to allowance has not been established). Even in relation to a case under regulation 10 the recovery provisions under regulation 25 are inconsistent with the concept of review. There is so far as I am aware nothing in either the Urgent Cases Regulations or the provisions governing review giving sanction or support to the adjudication officer's suggestion.

12. For the foregoing reasons I conclude that the claim for an urgent cases payment cannot be regarded as a request for review and must be treated as a separate claim. So treated, a number of problems arise in the calculation of the award based on the broad scheme outlined in paragraph 10 above. There has been no controversy in this case over the period in respect of which the award is made. Regulation 5(7) of the Urgent Cases Regulations and regulation 6(2)(b) of the Supplementary Benefit (Determination of Questions) Regulations 1980 (S.I. 1980 No 1580) enable that period to be fixed as the period from the date of claim to the day before the next ordinary supplementary benefit pay day.

13. It is submitted on behalf of the adjudication officer that where, as here, the relevant period is not a week or a multiple of a week regulation 7 of the Determination of Questions Regulations will not apply to establish the pay day required for the attributing of resources under regulation 9(2) of the Resources Regulations. Reliance is therefore placed on the practice of attributing a notional pay day which in the case of a supplementary benefit claimant is taken to be the claimant's normal supplementary benefit pay day. It is clearly necessary to establish the date from which, as well as the period for which, income resources are to be taken into account and the notional pay day suggested is entirely logical. The claimant's representative objected to the taking into account of any income resources received before the date of claim. It was argued that such resources might not

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still be in existence or be in the same form. If they were received before the date of claim they should not be taken into account. It seemed to be envisaged that only resources in the claimant's hands on the date of claim should be considered. To support this approach reference was made to the concept of "funds readily available." As already pointed out however that concept applies at the preliminary stage of testing whether a claimant can bring his or her case within the definition of "urgent cases" for the purposes of regulation 3. Unless for the purposes of assessing the award under the Urgent Cases Regulations some different method of dealing with income resources can be pointed to, these resources must be dealt with under the rules applicable to supplementary benefit cases generally. If under those rules an income payment received before the date of claim falls to be taken into account it seems to me that the same principle must be applied in an urgent case. In R v Bolton Appeal Tribunal, ex parte Fordham [1981] 1 All ER 50 the Court of appeal held that a monthly payment received on 15 November 1977 must be taken into account as a resource in relation to a claim for the period from 1-15 December 1977. Denning MR, quoted at p53 the following passage from R v Preston Appeal Tribunal ex parte Moore [1971] All ER 807 at 812:-

"Again his earnings are to be calculated at a weekly sum, even though they are paid monthly or quarterly. Suppose he is paid monthly in advance. He may spend it all in the first day or two in buying a new stove or a suit of clothes. Yet his resources during the whole of that month are to be taken as the weekly equivalent."

Although it is surprising in a codified system to be required to have resort to practice or general principles, my conclusion is that the claimant's supplementary benefit, which is an income resource failing to be taken into account in full under regulation 11(2)(g), and which she received on 19 February 1985 must be taken into account as a resource when computing the urgent cases payment.

14. A separate question arises regarding whether the sum of £8.85 deducted from the claimant's benefit for direct payment to the Electricity Board for current and past fuel consumption should be disregarded. The adjudication officer's position on this matter has fluctuated but Mr Storey submitted that this sum was part of the claimant's supplementary benefit and must be taken into account at this stage, although not at the earlier regulation 3 stage. Undoubtedly the sum concerned does form part of the claimant's supplementary benefit. Its application goes to diminish the claimant's requirements for fuel and in so far as it is applied to clear a debt for past consumption it seems no different from any other debt payment. If it is right in principle to take account of the claimant's supplementary benefit I can see no ground for excluding this sum.

15. Upon the basis that the £10 received by the claimant from the Social Work Department was not paid until after the urgent cases award was made, Mr Storey has submitted, following unreported decision CSSB/157/82, that this sum was not a resource which at the date of claim was "readily available" for the purposes of regulation 3(1). But no account has been taken of that sum for the purposes of the adjudication officer's calculations, adopted by Mr Storey, of the appropriate amount

of the urgent cases award in the claimant's case. I regard that as a separate concession (in view of my conclusions in paragraph 9 above that the calculation of an award is a separate exercise from that required in qualifying as an urgent case under regulation 3(1)) which is in favour of the claimant and which I think it right to accept. The sum of £10 should accordingly be disregarded altogether.

16. It is now necessary to consider the proper application of the provisions governing the assessment of the claimant's requirements, which in this case are found in regulation 5, paragraphs (2)(a), (3)(a)(ii) and (b), and (7) quoted above. These restrict the allowance for requirements to the basic rate of normal requirements for a householder which in turn is reduced by 25%. The calculations put forward by the adjudication officer apply these restrictions throughout the period from the notional pay day (19 February 1985) to 25 February 1985, the day before the claimant's next ordinary pay day. It is however clear in my judgment that such an application is excessive and not warranted by the provisions referred to, which do not justify any restriction being applied prior to the date of claim. In putting the claimant's requirements against her resources for the purposes of calculating the award I consider that for any day (in this case only 1 day) prior to the date of claim, the appropriate proportion of the claimant's ordinary allowance for requirements must be taken without modification.

17. An argument was also presented on behalf of the claimant that the tribunal ought also to have considered the possible application of regulation 24 of the Urgent Cases Regulations. That regulation provides:-

"24. where a claimant either -

- (a) claims an amount of supplementary benefit by way of a single payment or pension or allowance under any of the regulations in Part II or III of these regulations, but fails to satisfy the conditions for that amount; or
- (b) claims to have an urgent need for which no provision is made in Part II or III of these regulations,

there shall be payable to the claimant to meet that urgent need an amount of supplementary benefit by way of a single payment determined in accordance with regulation 4 or, as the case may be, an amount of pension or allowance determined in accordance with regulation 5 if, in the opinion of a benefit officer, a payment of such amount 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."

18. I accept that the tribunal also erred in failing to deal with the possible application of regulation 24 which was referred to in the claimant's appeal against the adjudication officer's decision. Regulation 24 was however inapplicable in my judgment. I refer to and adopt the following passage from unreported decision CSSB/182/86, paragraph 8:-

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"It is important to note the limitations of regulation 24. Having regard to its terms, the broad intention of the regulation appears to be to cover cases which may give rise to serious damage or serious risk to health or safety and which either arise in circumstances of urgency foreseen in Parts II and III of the Urgent Cases Regulations (where regulation 24(a) governs the situation) or which arise in some other circumstances of urgency not so foreseen (where regulation 24(b) is applicable). Once the claimant had been found entitled to "an amount of allowance" under regulation 10 he could not in my view come within the scope of regulation 24(a) at all. Nor, in pursuance of that claim at least, could he come under regulation 24(b) since his urgent need was not one for which "no provision is made in Parts II or III". On the contrary some provision is made."

19. The new tribunal will require a fresh calculation from the adjudication officer of the amount of the claimant's entitlement in the period from 20 February 1985 to 25 February 1985. The calculation should be made in accordance with the directions in this decision unless of course these directions, or any of them, have in the meantime been held to be erroneous by the Court. I cannot leave this case without remarking that it is both ironic and unsatisfactory to find that the considerations and calculations involved in "urgent cases" are so complex as virtually to preclude proper application in an emergency.

20. The appeal of the claimant is allowed.

(signed) J G Mitchell
Commissioner

Date: 24 March 1988