

Claim for cooker & double bed under reg 30 - failure to give adequate reasons. Not nec. for claimant's evidence as to medical condition to be considered - see R(SB) 33/85.

RFMH/SH/18

Commissioner's File: CSSB/284/1987

Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George Bonner

Social Security Appeal Tribunal: Glasgow South

Case No: 439/08

1. My decision is that the decision of the social security appeal tribunal given on 26 February 1987 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.
2. The claimant, who was in receipt of supplementary benefit and had no capital, claimed on 18 November 1986 single payments for a double bed, a cooker, and other items which are not the subject of this appeal. The claim was in due course rejected and the claimant appealed against the decision to the tribunal.
3. In his written observations on the claimant's appeal, the adjudication officer submitted that single payments could not properly be made because the claimant did not satisfy the conditions of either regulation 10(2) or 30 of the Supplementary Benefit (Single Payments) Regulations 1981, as amended.
4. In the event the tribunal on 26 February 1987 dismissed the appeal. The findings of fact read:-

"The claimant is aged 29, married with two dependant children. He received supplementary benefit. He received a single payment for a new cooker 4.9.85 and for double-bed 27.11.84. Cooker he now has is not cooking properly but does not appear to have been officially condemned by Scottish Gas Board or disconnected. Bed is alleged to be in poor condition and creates back troubles for claimant and wife but no medical certificate provided. Claimant and family are in general good health."

The reasons for decision read:-

"Regulations 9, 10 and 30 correctly applied as single payments made within three years of current claim and no evidence of serious risk or damage to health if single payments not made. Tribunal considered arguments re: ultra vires but did not accept new regulations were ultra vires."

The claimant now appeals to the Commissioner on a point of law, leave having been granted

by a Commissioner.

5. Regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present case, for the reasons stated below, the decision did not comply with the statutory requirements. Accordingly it was erroneous in law and I have no alternative but to set it aside. I should put on record that the adjudication officer now concerned supports the appeal on this ground.

6. The adjudication officer now concerned submits that the tribunal had no jurisdiction to decide the vires of statutory instruments. This is not correct. It misconceives the statutory duty of the statutory authorities (the adjudication officer, the social security appeal tribunal and the Commissioner). In Decision R(SB)10/88 a Tribunal of Commissioners considered this precise issue. At paragraph 16 they stated as follows:-

".. Where a claimant raises a question relating to the determination of benefit, which is assigned to the statutory authorities and which can only be answered by ruling on the validity of a regulation, the adjudicating authority is obliged so to rule and it is not open to that authority to refuse to do so. Such a refusal would amount to a breach of their statutory duty to determine - and, by virtue of section 117 of the Social Security Act 1975, finally determine (subject to the statutory rights of appeal with leave) the question assigned to them. All questions relating to single payments to meet an exceptional need (including the need for carpets or curtains) are so assigned; see sections 2(1) and 3(1) of the Supplementary Benefits Act 1975."

The tribunal rightly concluded that they had jurisdiction to determine the issue. Their decision was not erroneous on this ground.

7. With effect from 11 August 1986 the Single Payments Regulations 1981 were amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [SI 1986 No. 1259]. The adjudication officer accepted that there was a "need" in terms of regulation 3(2) for the items claimed. Regulations 9 and 10 of the new regulations go together to provide for the circumstances in which a payment will be made for the purchase, repair or installation of essential furniture and household equipment. Regulation 9 sets out the items defined as essential furniture and household equipment. Sub-paragraphs (a) and (c) respectively lists double-bed base and mattresses and a cooker. Regulation 10 sets out the conditions in which a payment will be made. The adjudication officer accepted that the claimant satisfied the conditions of regulation 10(1), in that he satisfied the conditions of sub-paragraph (f). However, regulation 10(1) is subject to the additional conditions contained in regulation 10(2), which provides so far as relevant to the present appeal:-

"(2) The further conditions mentioned in paragraph (1) are that -

(a) neither the claimant nor his partner has within the three years immediately preceding the date of claim -

(i) other than in a case to which head (ii) applies, received a single payment for the purchase of such an item or a reasonably suitable alternative item;

(ii) not applicable;

unless the item is required for a member of the assessment unit who is either over pensionable age or chronically sick or mentally or physically disabled; .."

6. The tribunal found as fact that the claimant had received a single payment for a new cooker on 4 September 1985 and for a double-bed (which I presume included a double-bed base and mattress) on 27 November 1984. They failed to refer to the date of claim although it does not seem to be in dispute that it was 18 November 1986. In my view the tribunal were entitled to conclude that single payments could not properly be made under the new regulation 10. Their decision was not erroneous on this ground.

9. The claimant's representative relied on regulation 30 of the Single Payments Regulations which provides that a single payment can be made to meet an exceptional need in a case where "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". The tribunal took the view that the conditions were not satisfied, presumably on the basis that so far as the double-bed was concerned that the claimant's representative's evidence as to the back trouble experienced by the claimant and his wife was not corroborated by medical evidence. It seems that they held the erroneous view that unless evidence in this respect was corroborated by medical evidence, it should be disregarded. That is not so. In Decision R(SB)33/85 the Commissioner stressed that corroboration of a claimant's evidence was not a necessity and that "put at lowest the tribunal in the present case were not entitled to dismiss the claimant's evidence without proper explanation of their reason for such rejection". In the present case the tribunal failed to give these reasons. With regard to the cooker, the chairman's notes of evidence records "cooker only had one year guarantee and was secondhand. .. Cooker was condemned by Gas Board in November and DHSS informed. There is a continuous leak as it is still switched on. Spare parts not available.". The tribunal gave no reasons for rejecting this evidence and concluding that the conditions of regulation 30 were not satisfied. The tribunal's decision was erroneous on this ground.

10. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 9 June 1988