

Reg 10A - 28 days in Reg 10A(1) was from date  
became tenant, not date moved in (GTS/244/1987  
Wishg) (11)

JGMI/JOB

Commissioner's File: CSSB/486/87

LO: Kilmarnock

LO Ref No: 2211/168546

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: John HOPES

Social Security Appeal Tribunal: Ayr & Wigtown

Case No: 155/02

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 25 March 1987 whereby the tribunal upheld the adjudication officer's refusal of a claim for a single payment for miscellaneous furniture and household equipment needs under regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981, as amended, is erroneous in law and is set aside. The decision which I substitute as the decision which the tribunal should have given is that an oral claim for a single payment for such needs was made on behalf of the claimant in the latter part of September 1986 within the period of 28 days from 6 September 1986, the date when the claimant's partner became tenant of the home at 3 Barleith Court, Hurlford, Kilmarnock. There is referred to the Secretary of State the question whether that oral claim is accepted by him under regulation 3(5) of the Supplementary Benefit (Claims and Payments) Regulations 1981.

2. This is an appeal by the claimant, with leave on a point of law, against the above-mentioned tribunal decision. The appeal was dealt with at an oral hearing held before me at which the claimant was represented by his partner, Mrs Morris, and the adjudication officer was represented by Mr Heggie of the Office of the Solicitor to the Secretary of State for Scotland.

3. At the material time in this case the claimant was a man aged 42 in receipt of supplementary allowance. He was living with his partner and her three children, one of whom was still a dependant. This appeal arises out of a refusal of a claim made by the claimant for a three piece suite, floorcoverings, curtains and towels. It is accepted that the claim for those items constituted a claim for miscellaneous furniture and household equipment needs for the purposes of regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981 as amended. The claim was refused under the "28 day" rule in regulation 10A(1) and the claimant appealed to a social security appeal tribunal.

The tribunal concerned dealt with other matters in the course of their decisions on 25 March 1987 but it is accepted that those do not form any part of the present appeal.

4. Regulation 10A(1) of the Supplementary Benefit (Single Payments) Regulations 1981, as amended, contains the following provisions relative to the period within which a claim is to be made:-

10A.-(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs ..... where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home, notwithstanding that he is not yet in actual occupation of that new home, ..."

5. The tribunal upheld the decision of the adjudication officer on the ground that the claimant's claim was not made within 28 days of the date when his partner became the tenant of their home within the meaning of the above quoted regulation. It was an indispensable element of a valid decision on that ground that the tribunal should establish and record findings on the date when the person concerned became the tenant and the date when the claim was made. As regards the first of those dates the tribunal found that the claimant's partner became tenant on 6 September 1986, the date established by the lease in her favour. There was however evidence before the tribunal that the claimant's partner had agreed with her estranged husband and the local housing authority not to take possession of the home until her husband, who was living there, was given possession of an alternative house, as evidently happened some weeks later in October 1986. In unreported decision CSB/244/87, paragraph 9, a Commissioner, in a decision on regulation 10A(1), held that the definition of "tenant" as a person who "occupies his home under a tenancy .." contained in regulation 2 of the Single Payments Regulations gave a special meaning to the word "tenant" for the purposes of those regulations and he held that to come within that definition a person must actually occupy his home in addition to having a right to occupy it. If that decision is correct, it would follow that the tribunal in the present case erred as to the date when the claimant's partner became tenant of the home and accordingly erred in their conclusion regarding the impact of the 28 day rule.

6. With respect to the Commissioner concerned however I am unable to accept his view upon this matter. The 28 day rule in regulation 10A(1) includes the specific provision that the period of 28 days will begin to run from the date when the person concerned became the tenant "notwithstanding that he is not yet in actual occupation of that new home". The words just quoted are not referred to by the Commissioner in CSB/244/87 in paragraph 9. They are quite explicit in their terms and in my view they exclude the element of occupation by a tenant which the Commissioner imports from the definition in regulation 2. Regulation 2 is of course an interpretation regulation and regulation 2(1) contains the important preliminary qualification: "...unless the context otherwise requires", which is applicable to all of the succeeding definitions including the definition of "tenant". In my judgment the context does so otherwise require in regulation 10A(1). Accordingly I do not consider that the tribunal erred in law in their finding regarding the date when the claimant's partner became the tenant of their home.

7. As regards the date of the claim, the tribunal found this to have been made on 3 November 1986. On the facts before the tribunal however that was the date of a different claim and it does not seem to be in dispute that the date was in fact 19 October 1986. This error would not of itself affect the tribunal's conclusion. However in addition to that

matter there was evidence before the tribunal to the effect that in the latter part of September 1986 the claimant's partner had gone to the local office of the Department of Health and Social Security with the relevant household items on a list in order to claim what they were entitled to but was advised that a claim could not be made until they were in possession of their home. The claim was therefore delayed until 10 October 1986 by which date Mrs Morris's husband had been offered alternative accommodation. The gist of this evidence is included in the tribunal chairman's note of evidence but the tribunal made no findings whatsoever about it. The tribunal merely upheld the adjudication officer's decision upon the ground that the claim was not made within 28 days.

8. The claimant's appeal to the Commissioner is supported by the adjudication officer on the ground that the tribunal erred in law by failing to investigate and make findings upon the possibility that the claimant's partner's actings constituted a valid oral claim for the benefit in question at a date within the period of 28 days. I accept that the tribunal did so err in law. I have been referred to unreported decision CSB/0144/86, a somewhat similar case in which the Commissioner, proceeding on a finding by the tribunal about analogous earlier actings, gave a decision holding that the claimant had made such a valid claim. In the present case clear and convincing written and oral evidence to the effect summarised in paragraph 7 above was put before me and in pursuance of the power now available under section 101(5)(a)(ii) of the Social Security Act 1975, as amended, I find in fact that a claim for miscellaneous household items was made on behalf of the claimant at the Kilmarnock local office of the Department of Health and Social Security in the latter part of September 1986 when it was stated that the claim could not be entertained until the person concerned was put in possession of the home. Under the provisions of regulation 3(5) of the Supplementary Benefit (Claims and Payments) Regulations 1981 there is reserved to the Secretary of State for Social Services the power to decide whether he will in any particular case accept such a claim for benefit by way of a single payment. I therefore refer to the Secretary of State the question whether in his discretion he accepts this particular oral claim for benefit that was, as I have found, actually made. That is a matter for the Secretary of State to determine. In light of the Secretary of State's decision on the question referred the claimant's case will require to be placed before another tribunal for ultimate disposal.

9. The appeal of the claimant is allowed.

(signed) J G Mitchell  
Commissioner

Date: 5 May 1988