

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFITS APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: _____

Supplementary Benefits Appeal Tribunal: Cardiff

Case No: 3/59

[HEARING]

*Single paym.
- need
- facts
- reasons*

*VO^s report should
be sent to A. before
Trib*

1. My decision is that the decision of the supplementary benefits appeal tribunal is erroneous in point of law in so far as it related to the award to the claimant of a single payment in respect of a pair of trousers.

2. In a letter dated 2 December 1980, the claimant (who was then aged approximately 17 years and in receipt of supplementary benefit) intimated that he was in "need" of at least one of the following articles of clothing - "A pair of trousers, A shirt, A Pullover and a warm jacket or coat for the winter". Apparently he submitted a claim on 5 December 1980 to a single payment to meet the cost of a pair of trousers, a shirt, a pair of shoes and a jacket and apparently, on the same day, the supplementary benefit officer (hereinafter referred to as the benefit officer) rejected his claim on the following grounds: "the appellant was not entitled to a single payment because the conditions laid down in the regulations are not satisfied in that the need for a trousers shirt shoes and jacket has arisen because of normal wear and tear". There is no documentary evidence in the papers before me in relation to these matters. The claimant then appealed to the supplementary benefits appeal tribunal (hereinafter referred to as the tribunal). He did not attend the hearing but was represented by Mrs. S. Owen, his landlady, who also gave evidence. The tribunal's decision was "Allow £36.55 for 1 shirt, 1 anorak and trousers". They gave the following reasons: "The Tribunal allowed a grant of £36.55 under Regulation 30 of the Supplementary Benefits (Single Payments) Regulations 1980 as:- 1) the appellant was in urgent need of clothing. He was advised to set aside money in the future for shoes etc. 2) Owing to the time of year there would be a serious risk or danger to his health if a grant was not given. 3) it was felt that he had insufficient funds to use a clothing club". That part of the decision relating to an anorak was duly implemented, but the benefit officer sought leave to appeal to the Commissioner on a point of law in relation to that part of the decision which referred to a shirt and a pair of trousers. I granted the application and also granted the benefit officer's subsequent request for a hearing. The hearing took place on 21 July 1981. The benefit officer was represented by Mr. R.A. Birch while the claimant, who did not attend, was again represented by Mrs. Owen (accompanied by a most well behaved child in a push chair). She explained that the claimant was not present as he was in hot pursuit of a job.

3. The benefit officer's grounds of appeal were the grounds given by him for making his application for leave to appeal. He referred therein to what had been "found as a fact" by the tribunal and to the absence of any evidence in relation to certain matters. Accordingly, I sought to ascertain what evidence was before the tribunal and what were their findings of fact. However, in that part of the record of the tribunal headed "Findings of Tribunal on question of fact material to decision" no findings are set out. What is set out in this part is a summary of the evidence made available (apparently written out by the chairman), with no indication as to what evidence was accepted. Apart from this summary (which I have no reason to believe was other than adequate) there was no other record of the evidence given. After I had made critical comments in relation to this aspect of the case during the course of the hearing, Mr. Birch produced a document which contained another summary of the evidence given. It was described as "clerk's notes" and was signed by the chairman. The details given differed in some material respects from those given in the record, for example the latter referred to the claimant as being in possession of "2 pairs of trousers and 1 pair of jeans", whereas the corresponding reference in the clerk's notes is to "3 t'sers (incl. 2 jeans)". In determining what evidence was and was not before the tribunal, am I to have regard to both these summaries or only one of them and, if so, which of them? If I am to have regard solely to that included in the record, what was the object of the chairman signing the clerk's notes? If I am expected to have regard to the latter, then they should have been included in the record. As they were not included and as no copy of them was supplied to the claimant in connection with this appeal, it is difficult to see how I can have regard to them. Among the other matters on which I commented was the statement in the summary contained in the record to the effect that "The Supplementary Benefits Officer reported that a visit was made on 12.12.80. The appellant then had 2 pairs of trousers, 1 pair of jeans, 2 shirts and 1 pair of shoes". The benefit officer would appear to have been relying upon the contents of this report in resisting the claimant's appeal to the tribunal. I enquired as to why, in the circumstances, a copy of the report had not been supplied to the claimant prior to the hearing before the tribunal and as to why the report itself was not produced at the hearing. I was informed that it was regarded as so highly confidential that it could not be shown to anyone!! Why should the tribunal and the claimant be expected to rely upon the benefit officer to give an accurate and complete account of the visiting officer's evidence when that evidence in the form of a report by him was readily available? I should have thought that it would be to the advantage of all concerned if a copy of the report had been supplied to the claimant prior to the hearing, accompanied by an invitation to him to indicate before the hearing whether he disputed any of the assertions of fact contained therein.

4. After considerable hesitation I have decided that, in all the circumstances, I should infer that the tribunal accepted all the evidence referred to in the summary included in the record and that, in accordance with that evidence, they found as a fact that at the relevant time the claimant was in possession of 1 wearable shirt and at least one pair of trousers. In contrast to the position in relation to shirts, there apparently was no direct evidence as to whether the trousers in the claimant's possession were wearable. In the absence of any evidence that they were not wearable, I am prepared to infer that the tribunal found that the claimant was in possession of at least 1 pair of wearable trousers and that the evidence was such as to entitle them to come to a

finding to this effect. During the course of the hearing, Mr. Birch intimated that he wished to withdraw the appeal in so far as it related to a payment in respect of 1 shirt. I gave my consent to this course.

5. As far as the payment in respect of a pair of trousers was concerned, Mr. Birch submitted that the tribunal were required to determine whether the requirements of regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No.985] (see the Appendix) were satisfied and that, if they were not satisfied, then they were not entitled to provide for a single payment in respect of a pair of trousers. He asserted that, as the claimant already had at least 1 pair of trousers, neither the requirements set out in regulation 3(2)(a) nor those set out in regulation 3(2)(b) were satisfied and that, accordingly, the tribunal were not entitled to make an award of a single payment in respect of a pair of trousers. (It will be noted that this was not the basis of the original decision given by the benefit officer). He went on to submit that even if this was not so, the tribunal had still erred in law. He maintained that the tribunal had purported to make the award under the provisions of regulation 30 of the Regulations referred to above (see the Appendix). He submitted that, as the claimant was clearly unable to satisfy the requirements of regulation 27 of these regulations, it should be accepted that the requirements of regulation 30(a) were satisfied and that regulation 30(b) did not apply and that, accordingly, the tribunal were then entitled to consider whether they should award a single payment in respect of a pair of trousers because such a payment was the only means by which serious damage or serious risk to the health or safety of the claimant might be prevented. He asserted that, as the claimant already had at least 1 pair of trousers, there was no evidence on which the tribunal could come to the conclusion that a single payment in respect of a pair of trousers was the only means of preventing serious damage or serious risk to the claimant's health or safety.

6. I accept the submissions of Mr. Birch outlined in paragraph 5 for the reasons he has given. Accordingly, I hold that the tribunal erred in law and that their decision in so far as it related to the award of a single payment in respect of a pair of trousers is set aside. I direct that this issue be heard and determined by a differently constituted tribunal. I wish to add that the tribunal may well be held to have also erred in law on grounds other than those to which I have referred (see for example, the benefit officer's submission when applying for leave to appeal). However, in view of my decision, I do not find it necessary to pursue the matter.

7. The benefit officer's appeal is allowed to the extent indicated.

(Signed) E. Roderic Bowen
Commissioner

Date: 31 July 1981

Commissioner's File: C.W.S.B. 1/81
S.B.O. File: SBO.47/81

APPENDIX

The Supplementary Benefit (Single Payments) Regulations 1980

"3.- (1)

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

- (a) there is a need for the item in question; and
- (b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item".

"30.- Where a claimant is entitled to a pension or allowance and he -

- (a) claims a single payment for an exceptional need under any of the regulations in Parts II to VII, but fails to satisfy the conditions for that payment; or
- (b) claims to have an exceptional need for which no provision for a single payment is made in any regulation in those Parts,

a single payment to meet that exceptional need shall be made in his case if, in the opinion of a benefit officer, 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".

ERP/TC

✓ Ec / ~~JA~~ / R. S. 181

Copy
CWSB 1/81

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFITS APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Peter Lewis

Supplementary Benefits Appeal Tribunal: Cardiff

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[HEARING]

Single payment.
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