

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Normal Course of events
Cause No. 1158

1. My decision is that the decision of the supplementary benefits appeal tribunal of 29 October 1982 is erroneous in point of law and is set aside.
2. This appeal by the benefit officer relates to the award by the tribunal (a unanimous decision) of £14.75 to the claimant in respect of a dufflecoat, which the claimant had maintained was needed by her son, aged approximately 3 years, to enable him to attend nursery school. He did not have a warm overcoat. In the reasons given for their decision the tribunal stated, "The Tribunal was satisfied that the requirement was for a new need ie overcoat. This was allowed by the terms of Paragraph 27(1) of the Single Payment Regulations 1981". At the hearing of the appeal before me on 23 February 1983 (which the claimant was unable to attend) Mr. R.A. Birch, a member of the solicitor's office of the Department of Health and Social Security, stoutly maintained that this was not so.
3. Regulation 27(1) provides for the making of a single payment in respect of an item of clothing, for example a dufflecoat, where any member of the assessment unit needs new or replacement clothing and that need has arisen otherwise than by normal wear and tear. Mr. Birch did not dispute that these requirements were fulfilled in this case. However, it is also laid down in the regulation that a payment cannot be made by virtue of this regulation "where the need has arisen in the normal course of events (for example where an item of clothing or footwear is outgrown)". The following submission was made by the benefit officer in relation to this provision when applying for leave to appeal - "I submit that in the normal course of events a child will need a winter coat whether or not the need arises more specifically because he is about to start nursery school. I further submit that, even if the item is the child's first coat - by virtue of his transition from baby to toddler, described by the tribunal as a 'new need' - such a need has arisen in the normal course of events. The claimant's normal weekly requirements is intended to cover in particular those items referred to in regulation 4 of the Requirements Regulations including the normal purchase of clothing. (For this proposition I refer to the numbered decision of Commissioner Mitchell CSB 26/81 paras 6 and 10). It is in the nature of a child's development that, the type of clothing at any one stage may be different from that required at an earlier stage; however, the need to replace one type of clothing by another in these circumstances arises, in my submission, in the normal course of events and is accordingly outwith the scope of regulation

27. Further I submit that the test is not whether the item is new in the context that it has never been bought before but that the need was unexpected ie not in the normal course of events. The Tribunal therefore applied the wrong test". Mr. Birch relied upon this submission. I am satisfied that it is well founded and that the construction placed upon regulation 27(1) by the tribunal was accordingly erroneous in law. They were justified in describing the need in this case as a "new need". However, it was also a need which had arisen in the normal course of events, namely a need which was attributable to the fact that the child concerned was growing up.

4. The record of the tribunal indicates that while the entitlement to a payment in respect of a dufflecoat was only considered in relation to the provisions of regulation 27(1), entitlement to a payment in respect of shoes was considered in relation to both the provisions of regulation 27(1) and also regulation 30 of the single payment regulations and it was determined that there was no entitlement under either of these regulations. The contents of the chairman's notes confirm that this is the approach that was adopted. Presumably the tribunal did not consider it was necessary to apply the provisions of regulation 30 in relation to the claim for a payment in respect of a dufflecoat because they came to the conclusion that they were entitled to make a payment by virtue of the provisions of regulation 27(1). In view of their misinterpretation of those provisions, I set aside their decision and direct that the claimant's entitlement to a payment in respect of a dufflecoat be considered afresh by a differently constituted tribunal who should have regard to the provisions of regulation 27(1) and regulation 30: When applying regulation 27(1), they should follow the interpretation outlined in paragraph 3 above and when applying regulation 30, they should have regard to the stringent requirements of that regulation and the guidance provided in Decisions R(SB) 8 and 9/82 as to whether they have been fulfilled.

5. The supplementary benefit officer's appeal is allowed.

(Signed) E. Roderic Bowen
Commissioner
Date: 24 February 1983

Commissioner's File: C.W.S.B.9/83
S.B.O. File: S.B.O.92/83