

### SUPPLEMENTARY BENEFIT

#### Single Payment—"only means" of preventing serious damage or serious risk to health or safety

A request for help with a coal bill of £24 40 was refused because the claimant had other means, namely savings amounting to £380 from which to meet the bill. The question of whether there was a serious risk to health was not in dispute. On appeal, a majority of the Tribunal awarded a single payment under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1980 on the grounds that the claimant's savings were fully earmarked for her funeral and were not therefore available to her. The supplementary benefit officer appealed to a Social Security Commissioner.

*Held that —*

- 1 To be entitled to a single payment under regulation 30, a claimant must satisfy the conditions of the regulation, which are strictly defined. If the provisions of the regulation are not satisfied, there is no innate discretion to award a payment (paragraphs 7 and 8),
2. The availability of other means of preventing serious damage or serious risk to health or safety must be proved on the balance of probabilities and not just simply suggested as possible. In the case of clothing or footwear, it might be shown that a claimant was a member of a clothing club. Evidence as to borrowing or credit facilities would have to be compelling before it could be determined that such means were available to a person entitled to a supplementary pension or allowance (paragraph 9);
- 3 Regulation 30 is so widely drawn that "the only means" includes, among other resources, any money that is available for the purpose, except when otherwise provided. The majority of the Tribunal erred in law in not having regard to the claimant's savings (paragraphs 10 and 12)

The appeal was allowed

1. My decision is that the decision of the West London Supplementary Benefit Appeal Tribunal, dated 9 April 1981, is erroneous in law and is set aside.

2. This is an appeal by the supplementary benefit officer from the majority decision of the tribunal, the chairman dissenting. At the oral hearing before me, the benefit officer was represented by Mr R. A. Birch of the solicitor's office of the Department of Health and Social Security. The applicant did not attend and was not represented.

3. The applicant is a widow, aged 72. She lives in a 3 bedroomed house near a park. The tribunal found that she has a thyroid condition which makes her very sensitive to cold. I observe that, in the facts for the tribunal, it was stated that she was living in accommodation which is very damp and her health has suffered because of a history of gall bladder trouble. She had difficulty in meeting her heating bills which were very high. She could not

afford to install more economical equipment. She had been in receipt of supplementary benefit with an addition for heating since 4 October 1976, owing to her health and damp accommodation, the amount for heating addition having been increased from 24 November 1980, to £3.40 a week. She claimed a single payment to meet the cost of a coal bill of £24.40.

4. Under the Supplementary Benefit (Single Payments) Regulations 1980, provision is made for fuel costs in regulation 28. The claimant's case plainly did not come within that regulation and the tribunal dealt with the matter under regulation 30 of the said regulations. The tribunal were unanimous that there was a serious risk to the health of the claimant, which is not disputed by the benefit officer, and is an issue of fact. According to the evidence, the applicant had £380 in savings which she was not prepared to spend on coal because she was saving it to provide for her funeral expenses. The majority of the tribunal awarded a single payment of £24.40 under regulation 30 as they did not consider £380 was available for her, since her savings are earmarked for her funeral. The chairman was not satisfied that the claimant's case came within the regulations.

5. Regulation 30 of the said regulations is the only regulation in Part VIII and is headed "Discretionary Payments". It provides as follows—

"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."

6. The applicant was entitled to a pension or allowance and it was found that there was a serious risk to her health. Mr Birch submitted that the tribunal's decision was erroneous in law because the tribunal failed to take into account the capital available of £380 as another means to provide funds for the purchase of coal.

7. On examining regulation 30, it seems to me that the heading "Discretionary Payments" is misleading. The weight of the authorities is to the effect that marginal notes, printed at the side of sections of an Act of Parliament, which purport to summarise the effect of the sections, are not parts of the statute and so should not be considered. The headings prefixed to sections or sets of sections in some modern statutes are regarded as preambles to the sections (see generally Maxwell on the Interpretation of Statutes, 12 Edition, pp 9 to 12). By analogy, the like principles would apply to statutory instruments, although I have not found any authority on the point, possibly because it has never been suggested that headings prefixed to a regulation or sets of regulations are an aid to construction. In my opinion, entitlement under regulation 30 does not depend upon the exercise of a discretion in the legal sense of the word. Either a person satisfies the provisions, in which case a claimant is entitled to a single payment, or, if the provisions are not satisfied, there is not nevertheless an innate discretion to award a payment.

8. The conditions for entitlement to a single payment under regulation 30 are strictly defined. Firstly, a claimant entitled to a pension or allowance must bring himself within either (a) or (b) in order to qualify at all. An exceptional need must be shown. Then a single payment to meet that

exceptional need shall be made if, in the opinion of the benefit officer, or of the appeal tribunal on appeal (section 15(3)(c) of the Supplementary Benefits Act 1976 as amended) 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, (my underlinings). An opinion in terms of a statutory provision must be based on fact and positive rules of law, and not on a caprice or sentiment, and is more akin to reaching a decision on fact rather than exercising a discretion without facts or probabilities to support it.

9. Mr Birch submitted that “the only means” in the context means that the applicant cannot provide for the serious damage or serious risk from his own resources, which include available money, or by facilities from clubs or borrowing or by obtaining credit. In my opinion, other available means must be proved on a balance of probabilities, and not simply suggested as possible. For instance, in the case of clothing or footwear, it might be shown that an applicant is a member of a clothing club. Evidence as to borrowing or credit facilities would have to be compelling before it should be determined that such means are available to a person entitled to a supplementary pension or allowance.

10. Regulation 30 is subject to regulation 5 of the said regulations which, before it was amended with effect from 27 July 1981, was as follows—

“5. Where a claimant has any available capital which is in excess of £300, any single payment which would, but for this regulation, be payable shall be payable only to the extent that its amount, or where more than one single payment falls to be made on the same day their aggregate amount, exceeds the amount by which that capital exceeds that £300”.

Regulation 5, as amended, is as follows—

“5.—(1) Except in so far as paragraph (2) and regulations 16, 21 and 25 provide otherwise, where a claimant has any available capital which is in excess of £300, any single payment which would, but for this paragraph, be payable shall be payable only to the extent that its amount, or where more than one single payment falls to be made on the same day their aggregate amount, exceeds the amount by which that capital exceeds that £300.

(2) In the application of regulation 30—

- (a) in the determination of means, any available capital shall be taken into account;
- (b) if the means available to the claimant are insufficient to meet the cost of the item or services in question, any single payment payable under it shall be payable only to the extent that its amount exceeds the amount of the means available.”

The amendment appears to have been made in order to make it clear that the £300 does not mean £300 over and above the capital limit of £2,000 and, under regulation 30, that any means available must be taken into account. By regulation 6(2) of the Supplementary Benefit (Resources) Regulations 1980, capital resources of £2,000 or less, shall, except in so far as any provision of the Act or regulations made pursuant to it provides otherwise, be disregarded. Regulation 30 is so widely drawn that “the only means” includes, among other resources, any money that is available for the purpose, except when otherwise provided.

11. Thus, in this appeal, the evidence apparently indicated that the applicant had £380 available to meet the coal bill. The tribunal referred in their findings to the applicant's savings but made no finding of the amount, which is an issue of fact. Assuming that her savings were in excess of £300, that excess was available as a means to meet her need in terms of the unamended regulation 5 which was then operative. I would add that the chairman is to be commended for the excellent note of the evidence.

12. One cannot but sympathise with the applicant's wish to provide for her funeral. There are provisions in regulation 8 in Part III of the said regulations relating to funeral expenses and the cost is a matter in the future when that eventuality arises. The majority of the tribunal erred in law in not having regard to the applicant's savings. I set aside the decision of the tribunal. Her appeal must be reheard and it is desirable that the rehearing should be by a differently constituted tribunal.

13. The appeal is allowed.

(Signed) J. S. Watson  
Commissioner

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