

Req.

Meaning of ~~the~~
householder,
(Living in bed-sitter/getting
some board).

MJG/SH/3/MD

Commissioner's File: CSB/651/1985

C A O File: AO 2852/85

Region: South Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Debra Ann Matthews

Social Security Appeal Tribunal: Bristol

Case No: 3/65/08

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 27 February 1985 and I set that decision aside as being erroneous in law. I give the decision which the tribunal should have given, namely that the claimant's supplementary benefit in the week commencing 7 January 1985 (and thereafter so long as the circumstances remain the same as set out in my decision) should be assessed on the basis that she was a "householder". Supplementary Benefits Act 1976, section 2 and the Social Security (Adjudication) Regulations 1984 [SI. 1984 No. 451 as amended], regulation 27.

2. This is an appeal to the Commissioner by the claimant, a single woman aged 18 at the material time, against the unanimous decision of the local tribunal dated 27 February 1985 that the claimant was not entitled to be regarded as a "householder" when computing the amount of her supplementary allowance for the week commencing 7 January 1985 and thereafter. The fact that I have reversed the tribunal's decision does not imply any reflection on the tribunal, who took exemplary care in considering the case and in completing their record of decision on form AT3. The reversal is due solely to the complication of the legislation in this particular field. The tribunal found sufficient facts for me to be able to give a decision myself and not to have to remit the case for rehearing to a differently constituted tribunal (under regulation 27 of the above-cited Adjudication Regulations).

3. In helpful written submissions dated 21 August 1985 by the claimant's representative, there is (paragraph 2) a statement of the facts which I find to be accurate and which emerge from the papers before me, or were found by the local tribunal, or are not in contest. That is important because in this jurisdiction the Commissioner is a judge only of law and not of fact. That statement of facts reads as follows,

"The appellant, who is single, lived with her mother and step-father at 12, O- C- until the end of October 1984. About that time she left home because she continually clashed with her step-father. She moved into bed-sitting premises at 19, P- R- and claimed supplementary allowance from that address. While she was at P- R- her mother and step-father moved their home from 12, O-C- to 1, O- C-. Their former home was converted into bed and breakfast premises. The appellant, who had been the

only female tenant at P-R-, was effectively compelled to vacate those premises after the theft of some of her personal clothing by other tenants. She was adamant that she would not live with her step-father and sought other accommodation. In all she applied to 19 other premises, but none of her applications were successful. Her mother was most concerned about her well-being and persuaded her to take up one of the rooms at 12, O- C-. The appellant took up residence there on 7 January 1985; at that time there were 5 other lodgers at the address. The tribunal found as a fact that the arrangement was bona fide and that it was not a contrived tenancy. All the lodgers at 12, O- C- were liable to a weekly charge of £50 and this applied equally to the appellant. ...the premises at 12, O- C- are owned by the appellant's step-father and breakfast is provided by her mother. The weekly fee of £50 was in respect of an adequately furnished bed-sitting room (of which the claimant had exclusive occupation), breakfast, shared use of a kitchen, and a charge for heating and hot water. The appellant provided a number of items of furniture herself and did her own laundry in addition to making her own lunch and evening meals."

4. It is clear on those facts that the claimant could not be treated as a "boarder" within the meaning of regulation 9 of the above cited Requirements Regulations because regulation 9(14) (as then in force) excluded from the definition of "boarder" any person "whose accommodation and meals (if any) are provided by a close relative or other than on a commercial basis". Regulation 2 of the Requirements Regulations defines "close relative" as including "step-parent" and of course a "parent". Clearly the accommodation and meals provided at No. 12, O- C- came within that category, being either provided by the claimant's mother or by her step-father.

5. That does not however mean that, in appropriate circumstances, the claimant could not be regarded as a "householder" within the meaning of regulation 5(6) of the Requirements Regulations and thus be entitled to have housing requirements taken into account in the calculation of her supplementary benefit. Regulation 5(6) provides (so far as material) as follows,

"For the purposes of the table [in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 - see below] a householder is a single claimant who -

- (a) in respect of a home or, as the case may be, a household in Great Britain is responsible for housing expenditure or, if the household incurs no such expenditure, is the member of the household with major control over household expenditure;
- (b) does not share such responsibility or control with another member of the same household; and
- (c) is either not absent from the home or if absent is absent only -
 - (i) otherwise than as a student on normal vacation and
 - (ii) for a period which has not yet continued for more than 13 weeks."

6. The "table" referred to is a table of weekly amounts attributable to the various categories of person in Schedule 1 paragraph 2(3) to the Supplementary Benefits Act 1976. That paragraph itself contains its own definition of "householder" as meaning "a person who is not one of a married or unmarried couple but who satisfies prescribed conditions with respect to living accommodation". The "prescribed conditions" are of course those to be found in (*inter alia*) regulation 5(6) of the Requirements Regulations (cited above).

7. It is provided by regulation 5(7) of the Requirements Regulations that for the purpose of regulation 5(6) "a person is responsible for housing expenditure if...he is to be treated under sub-paragraph (a) of regulation 14(3) as responsible for expenditure but as if that sub-paragraph applied also to housing benefit expenditure". "Housing benefit expenditure" is defined by regulation 2(1) of the Requirements Regulations as meaning "expenditure of a kind for which housing benefit may be granted" and regulation 14(3) of the Requirements Regulations simply provides that "a person shall be treated as responsible for expenditure ...for which [she] is liable, other than to a person who is a member of the same household". Clearly the claimant's liabilities to her step-father, which the local tribunal have found to be genuine and not a sham, were "other than to a person who is a member of the same household", because the claimant was not living in the father's household or part of it.

8. The remaining question therefore is whether the facts show that the expenditure for which the claimant was liable to her father could constitute "housing benefit expenditure". Regulation 8(1) of the Housing Benefit Regulations 1982 [SI. 1982 No. 124] (as in force at the relevant time) provided as follows,

⌘ "Eligibility for rent allowance

- (a) (1) ...any of the following persons is eligible for a rent allowance in respect of a dwelling which he occupies as his home:
- (a) a person who is liable to make, otherwise than to a housing authority, payments otherwise than by way of rates, in respect of the dwelling;
 - (b) [not relevant]"

9. Clearly that provision applies not only to tenancies in the strict sense of the term but also to licences giving a claimant exclusive occupation eg of a bed-sitting room as here. That is reinforced by the definition of "rent" in regulation 2(1) of the Regulations as including "the following periodical sums payable in respect of a dwelling -

- (a) payments in respect of a licence or permission to occupy a dwelling,
- (b) payments for services performed or facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling, whether or not made under the same agreement as that under which the dwelling is occupied but only in each case where the right to occupation depends, or depended when the dwelling was first occupied by that occupier, upon agreement to make such payments"

10. Clearly, on the facts before me in this case, the claimant was liable to her step-father to make such payments in respect of the dwelling (in my judgment the word "dwelling", though not defined, includes the bed-sitting room etc that the claimant occupied). The result is by a somewhat tortuous trail of statutory reasoning the claimant is found to have been undoubtedly a "householder" within the meaning of regulation 5 of the Requirements Regulations. Her supplementary benefit from 7 January 1985 onwards for such time as the circumstances remain the same and the law remains unchanged (there may well have been subsequent relevant developments in the law) must be assessed accordingly.

(Signed) M.J. Goodman
Commissioner

Date: 17th January 1986