

SUPPLEMENTARY BENEFITS ACT 1976

*domestic assistance*APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Linda Francis Scotson

Supplementary Benefit Appeal Tribunal: Bexhill & Hastings

Case No: 3/141

1. My decision is that the decision of the Bexhill and Hastings supplementary benefit appeal tribunal dated 28 March 1984 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal.
2. This is an appeal by the adjudication officer with the leave of the Commissioner against the unanimous decision of the appeal tribunal reversing the decision of the benefit (now adjudication) officer issued on 23 November 1983 "refusal of an additional requirement for domestic assistance".
3. The adjudication officer requested an oral hearing to which request I acceded. Accordingly on 11 June 1985 I held an oral hearing. The claimant was not present. The adjudication officer was represented by Mrs L Conlan of the Solicitor's Office, Department of Health and Social Security. The claimant was represented by Mr M Rowland of Counsel. To both of them I am indebted.
4. The facts and history of the matter are dealt with in paragraphs 1 to 4 inclusive of the submission dated 12 December 1984 of the adjudication officer now concerned on which the claimant's representatives have had the opportunity to comment. Nothing is to be gained by my setting out those matters afresh here.
5. The relevant statutory provisions are set out at paragraph 5 of the submission dated 12 December 1984 of the adjudication officer now concerned. No useful purpose would be served by my setting out those references afresh here.
6. I need not set out the helpful submissions made before me by both Mrs Conlan and Mr Rowland save to state that they both submitted that the tribunal had erred in law and that the case should be referred back to a differently constituted appeal tribunal. There were however three areas of disagreement, first as to the meaning of domestic assistance referred to in paragraph 15 of Part II of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983; secondly as to what the appeal tribunal found on the facts and thirdly as to the definition of "charge" also contained in paragraph 15 referred to immediately above.
7. In my judgment the appeal tribunal erred in law in that they failed to make findings of fact and give reasons as to what charge was made, whether it was made for the assistance with domestic tasks, whether the assistance was essential because of heavy family responsibilities, whether the assistance was provided by the local authority, what was the charge for that assistance and whether a contribution was payable. All these matters arise from a consideration of paragraph 15 of Part II of Schedule 4 to the Requirements Regulations 1983 and the appeal tribunal failed to consider the exact wording

of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision. The provisions of paragraph 15 are fully set out in paragraph 7 of the submission dated 12 December 1984 of the adjudication officer now concerned and I do not need to set out those provisions here again. I turn therefore to the question of the meaning of "assistance with the ordinary domestic tasks of the assessment unit;" found in paragraph 15(a) of Part II. In this context I refer to the letter from the Medical Director of The Institutes of the Achievement of Human Potential dated 1 August 1983 and "Doran's program 7 day/per week" set out in the case paper at pages 5 and 6 respectively. It is clear from Doran's program that the therapy is intensive and is 7 days a week. The tribunal failed to decide exactly who was doing what within the household so far as the Community Service Volunteers were concerned. The examples given of "ordinary domestic tasks" in paragraph 15(a) are "cleaning and cooking" and as the words "assistance with the ordinary domestic tasks" are given no special definition it is a matter of the every day meaning of those words. I do not think they can extend to cover intensive therapy. I am supported in this view by the definitions helpfully provided at the hearing from the shorter Oxford English dictionary 3rd edition. I was referred to paragraph 8 of decision R(SB)39/83 where the Commissioner states "the minding of a child was assistance with an ordinary domestic task." I do not think that this extends to intensive therapy but is limited to such tasks as feeding a child and ensuring that the child comes to no harm. I do not think that paragraph 15(a) as a question of law applies here in respect of the provision of intensive therapy.

8. I turn therefore to the question of "charge" in paragraph 15(a) in the context of paragraph 15 generally. I have again been referred to the definitions in the Oxford English dictionary. The word must here have its ordinary English meaning bearing in mind the intention of Parliament in the context of this supplementary benefit provision. Where residential assistance is needed I do not think that the receipt or otherwise of attendance allowance is a relevant consideration in respect of the meaning of the word "charge". What I have to consider is the meaning of "charge" within the context of paragraph 15. Different wording ie. "the actual cost" is used in paragraph 10 of Part II of Schedule 4 but I do not find that of assistance as is indicated above what I have to consider is the meaning of "charge" within the context of paragraph 15. I do not see that in a supplementary benefit context any distinction should be made between cash and kind. In my view a "charge" is not limited to payments in cash. I do not think it right to find in this context that there is a difference particularly in the context of residential assistance between specific costs being made and a position where the person rendering assistance is given either in addition to a cash payment or in lieu thereof full board. I find support for this view from paragraphs 13 and 14 of the unreported decision of the Commissioner on Commissioner's File: CSB/201/1983. I regard the Commissioner's statement at paragraph 14 "a cash value must clearly be placed on any consideration in kind which forms the whole or part of the charge made" as a correct statement of the law applicable here.

9. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred to above and they shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision. It was accepted both by Mrs Conlan and Mr Rowland that sub-paragraph 11(3) of the submission dated 12 December 1984 of the adjudication officer now concerned is a correct statement of the law as to provision by a local authority in respect of

paragraph 15(c) and I refer the appeal tribunal to that sub-paragraph.
I would also add that all issues of fact are at large before the new tribunal.

10. Accordingly the adjudication officer's appeal (as is conceded on behalf of the claimant) is allowed.

(Signed) J.B. Morcom
Commissioner

Date: 23rd July 1985.