

Adult in Sch 4 para 18(c) (adult = 18+)
Reg. Regs Means someone who has attained 18.

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Commissioner's File: CSB/783/1987

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. My decision is that the social security appeal tribunal erred in law in its decision given on 27 February 1987 that the claimant's daughter who was aged 16 at the date of claim was an "adult" member of the household so as to disentitle the claimant to a single payment for a washing machine under item 18(a) Part II Schedule 4 of the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399]. It is accepted that the claimant otherwise satisfies the requirements for a single payment for this item, and I accordingly give the decision which the tribunal should have given, namely that the claimant has established his entitlement to a washing machine. I allow the claimant's appeal accordingly.

2. I held an oral hearing of the appeal, which was not attended by the claimant or any representative on his behalf. At my request Mr. Guy Pritchard of counsel of the Free Representation Unit presented argument as an amicus curiae, and I am extremely grateful to him for doing so. Mr. N. Butt of the Solicitors Office DHSS presented submissions on behalf of the adjudication officer and I am grateful to him also.

3. The claimant lives in local authority accommodation with his wife and three children, the eldest of whom, a daughter Y, was, at the date of claim, aged 16 years; she was attending a college and taking a full-time course in business studies. The claimant was in receipt of a number of benefits including supplementary allowance, and he claimed single payments for various items, including the only one material for the appeal before me, a washing machine. The adjudication officer rejected his claim for the washing machine and that rejection was upheld by the social security appeal tribunal in the decision to which I have referred. The adjudication officer has made other criticisms of the decision of the tribunal but it is not necessary to go into them in the light of the view which I have formed on this appeal.

4 The material provision under the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No. 1528] is Regulation 9(i) as that regulation stood at the date of claim on 5 August 1986. (The provision was subsequently amended). The paragraph provides entitlement to a washing machine in the following terms:-

- "(i) a washing machine, only where the conditions of paragraph 18(a) of Schedule 4 to the Supplementary Benefits (Requirements) Regulations 1983 are satisfied but no additional requirement under that paragraph is appropriate because either -
- (i) there is no laundry or launderette which the assessment unit can reasonably be expected to use, or
 - (ii) where there is such a laundry or launderette it cannot be used for the assessment unit's laundry because the claimant or his partner is mentally or physically ill or disabled or because there is no public transport to it;"

Paragraph 18(a) referred to runs as follows (so far as material)

"18. Where -

- (a) the laundry of the assessment unit cannot be done at home because all adult members of the household are ill, disabled or infirm

Because of a reference which I shall make later I draw attention to paragraph 15 of Schedule 4 to the Requirements Regulations which prescribed a weekly amount when satisfied and was as follows:-

"15. Where -

- (a) a charge is made for assistance with the ordinary domestic tasks (for example, cleaning and cooking but excluding window cleaning and errands) of the assessment unit;
- (b) such assistance is essential because adult members of the assessment unit are unable to carry out all those tasks by reason of old age, ill-health, disability or heavy family responsibilities; and
- (c) the assistance is not provided by a local authority, nor by a close relative who incurs only minimal expenses."

I have not been referred to nor have I been able to find myself any other use of the word "adult" in the Requirements Regulations or the Single Payments Regulations.

5. Mr. Butt has accepted that on the medical evidence before me

dition (ii) in the item for a washing machine at paragraph 5.1) of the Single Payments Regulations is satisfied. There remains accordingly only the question of whether the conditions of paragraph 18(a) have been satisfied.

6. In the Supplementary Benefits Act 1976 -

"child" means a person under the age of 16;"

Section 1(1) of the Act provides so far as material as follows:-

"1.-(1) Subject to the provisions of this Act, every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit as follows -

....

(b) a supplementary allowance in any other case;

and to such benefit by way of a single payment to meet an exceptional need as may be determined under section 3 of this Act".

The present case falls within the last mentioned provision.

The effect however of section 1(1) is limited by (amongst other provisions) section 6(2) of the Act, which provides -

"(2) A person who has not attained the age of 19 and is receiving relevant education shall not be entitled to supplementary benefit except in prescribed circumstances."

The effect of this provision in the circumstances of the present case was to disentitle the claimant's eldest daughter although aged 16 from supplementary benefit. However her requirements and resources were aggregated with those of the claimant, under provisions to which it is not necessary for me to refer.

7. The argument has been that in the absence of a definition of "adult" the word bears a complementary meaning to the definition of "child", so that an adult is a person who is not a child. Two Commissioners have held in cases decided respectively in 1982 and 1985 that a person was an "adult" for the purpose of paragraph 18(a) when he or she attained the age of 16 years; see decisions R(SB)/16/83 and CSB/691/84. The latter decision (at paragraph 12) referred to the definition of "child" and said:-

".... in my view in the context of paragraph 18(a) it would not be unreasonable to expect a person aged 16 or over to be capable of undertaking laundry duties on behalf of the assessment unit."

The latter decision and reasoning was considered but not accepted in decision CSB/630/85, a case concerning paragraph 15 and where the matter was gone into in depth. This latter case was followed by another Commissioner in a later 1986 decision and applied to paragraph 18; that was decision CSB/1480/85. These

At two mentioned cases were then further followed by another Commissioner in decision CSB/1332/86, a decision given in 1987. These three later decisions held that the expression "adult members of the household" (paragraph 18) or "adult members of the assessment unit" (paragraph 15) all referred to persons who had attained the age of 18 years.

8. Although being an "adult" qualifies in the case of paragraph 18 members of "the household" and in paragraph 15 members of "the assessment unit" I do not see any material distinction to be drawn from that particular difference so far as the meaning of 'adult' is concerned. As I shall mention, the distinction within paragraph 18 itself between the assessment unit and the household is I think material, but by way of strengthening the construction which I adopt.

9. The first question is whether the Family Law Reform Act 1969 applies at all; this was set out in decision CSB/630/85 and I need not repeat it. I respectfully agree with the Commissioner in that case that the expression "adult" is a "similar expression" to the expression "full age" in section 1(2) of that Act. The question then arises as to whether in the Requirements Regulations a contrary intention is established to exclude the effect of the 1969 Act. (I pause to add that there is no contrary definition of "adult").

10. This is a more difficult point, although I think in the end the answer is clear that no such contrary intention is shown.

11. Mr. Pritchard submitted that the definition of "child" was for the purpose of being applied to the liability to maintain a spouse and children contained with ancillary provisions in sections 17 - 19 of the Supplementary Benefit Act 1976. Clearly this was a purpose, but it cannot I think be postulated that the definition of "child" has no effect for the purposes of the Requirements Regulations. Those regulations define an "assessment unit" as meaning the claimant, any partner and any "dependant" of the claimant - regulation 2(1). The definition of "dependant" brings in a "child" via the aggregation provisions of paragraph 3(2) of Schedule 1 to the Supplementary Benefits Act 1976; also the definition of "dependant" clearly applies to additional requirements and to paragraph 18(a) - per paragraph 11(2) of the Requirements Regulations. I do not therefore think that the force of the definition of "child" can be regarded as limited to the maintenance provisions in the 1976 Act.

12. It is in my judgment important to note that the provision for the relevant part of paragraph 18(a) is as to a certain state of affairs in fact, namely that the adults of the household cannot through infirmity do the laundry themselves; it is not based upon entitlement to supplementary benefit, nor do I discern any reason which the legislature might have had in mind for making it so dependant. What is identified is a factual situation, and to my mind the absence of a definition of "adult" points the more towards the general law provision and the certainty which it affords than the contrary. The requirement of whether adult members were ill to the required degree has to be applied by adjudication officers and social security appeal

tribunals throughout the country, and given the need for such application, it would in my view be expected that if Parliament had not intended the general reduction of age of majority for which it had legislated to apply then express provision would have been made. There was none.

13. I do not think that the matter is advanced by considerations such as most 16 year olds being capable of doing laundry or of the legislature perhaps thinking that those 16 year olds attending full-time education have enough to do and ought not to be expected to do the family laundry. As Mr. Butt rightly pointed out, it would be possible to have an adult member of the assessment unit who had reached the age of 18 still in fact continuing education and being under the age of 19 years. There may be anomalies whichever construction is adopted. I conclude however both that there is no legislative purpose in the application of paragraph 18(a) in introducing the element of entitlement to supplementary benefit.

14. Paragraph 18 differs (so far as this point is concerned) from paragraph 15 in that the reason for the non-doing of the laundry of the assessment unit has to be the illness etc. of the adult members of "the household". I accept Mr. Butt's submission that that is a wider category than the members of the "assessment unit" (to which paragraph 15 relates). Obviously there may be members of the household who are not members of the assessment unit. The point I think has significance, because given that the household may comprise both members of the assessment unit and also non-members of the assessment unit it is the less likely that it would import the criterion of entitlement to supplementary benefit.

15. There is I think a further point in that by Regulation 2(3) of the Requirements Regulations -

"A person shall be treated as being, or not being, a member of the same household as another person for the purposes of these regulations if he would be so treated for the purpose of regulations made under section 34(3)(a) of the Act."

The material regulations are the Supplementary Benefit (Aggregation) Regulations 1981 [SI 1981 No. 1524]. These provide elaborate provisions for determining whether a person is or is not to be treated as a member of the same household. Thus, under regulation 4 provision is made as to certain dependants who are not to be treated as members of the household, for example if they have been absent from Great Britain for a continuous period of more than 4 weeks or are in prison. Regulation 2 provides circumstances for which married couples are to be treated as being or not being, members of the same household; for example, a person temporarily in hospital does not cease to be a member of the household. For the operation of paragraph 18(a) it has first to be ascertained of whom the household consists, and that exercise does not turn on entitlement to supplementary benefit but on other detailed provisions. I would accordingly be surprised to find that the legislature applied to the group of persons thus ascertained (the members of the household) a descriptive limitation (adult) referable to entitlement to

Supplementary benefit, by implication and without express provision and without so far as I can see any legislative purpose. For this reason also I am confirmed in my view.

16. Mr. Pritchard drew attention to paragraph 12 in Schedule 4 to the Requirements Regulations which enabled an addition to be made to requirements in respect of -

"12. Person aged not less than 16 who is blind."

This, he said, could if Mr. Butt's arguments had been right have been more simply put by simply referring to an adult who is blind. Mr. Butt I think made a convincing answer by referring to the second column of the same item which referred to -

".. dependants aged not less than 18".

True, that was only a descriptive provision. However, there are throughout the Requirements Regulations various references to persons being aged over or not more than specified ages and I do not derive any assistance from paragraph 12.

17. Mr. Pritchard helpfully referred me to definitions of "child" in other Acts (including section 2 of the Child Benefit Act 1975). As he rightly observed however, the use of expressions such as "child" attracts different meanings according to the context.

18. My conclusion may in summary be put thus. The definition of "child" is material for (amongst other matters) the purpose of aggregation (paragraph 3(2) Schedule 1 Supplementary Benefits Act 1976) and for the purpose of a person whose resources are insufficient to meet his requirements being "entitled" (the word used) under section 1(1) of that Act. The definition is an integral part of entitlement but it does not in my judgment shed light on who is to be a relevant adult whose possible disability has to be considered under paragraph 18; once the household has been ascertained then the question is not one of entitlement but one of fact as to both age and disability and where as to age the general law applies.

19. I accordingly respectfully follow the later decisions to which I have referred above.

20. My decision is as in paragraph 1.

(Signed) Leonard Bromley
Chief Commissioner

Date: 10 June, 1988