

Non-householder not rec'd non-householder contribution was entitled to certificated HB for the period before she moved into her new home under the overlap provision in reg 14(5)(b)

JNBP/5/LS

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Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Jacqueline Mould

Social Security Appeal Tribunal: Potteries

Case No: 024/14

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal ("the SSAT") dated 7 May 1986 is erroneous in law and is set aside. In place of the said decision I give the decision that the SSAT should have given, namely that the decision of the adjudication officer issued on 15 October 1985 is revised so as to make the claimant entitled to qualifying supplementary benefit for the period 9 September 1985 to 15 September 1985 (both dates included) and hence entitled to a certificate for that period under regulation 9(1) of the Housing Benefit Regulations.
2. This is an appeal brought by the adjudication officer with my leave against the above-mentioned decision of the SSAT which, allowing the claimant's appeal against the decision of the local adjudication officer issued on 15 October 1985 to the effect that the claimant was not in receipt of qualifying supplementary benefit for housing benefit purposes until 30 September 1985, held that the claimant was entitled to qualifying supplementary benefit for the period 1 September 1985 to 15 September 1985 (both dates included) and was thus entitled to certificated housing benefit.
3. I heard the appeal at an oral hearing directed by me. The adjudication officer was represented by Mr J. Coggins of Counsel, instructed by the Solicitor's Office, Department of Health and Social Security. The claimant did not attend but was represented by Mr R. D. Prew of the National Association of Citizens Advice Bureaux, Tribunal Representation Unit, Wolverhampton. I am grateful to both representatives for their assistance at the hearing and to Mr Prew for his very helpful written submission after the hearing.
4. At the relevant time the claimant was a single parent aged 20 with a dependant child aged 3 months. She lived with the father of her child until they separated on 25 May 1985 and on that day went to live with her parents and remained there until 16 September 1985. While staying at her parents' home she acquired a tenancy of a council house and received the rent book on 9 September 1985. In a letter received on 23 September 1985 she requested a single payment for furniture and household equipment and on 4 October 1985 giro totalling £546.78 were issued to her. An earlier giro sent on 25 September 1985 had been returned on 27 September 1985 because having no bank account she could not cash it. She moved into the new house on 30 September 1985, presumably having been able to acquire essential items by that time in the knowledge that her claim for a single payment was going

to be met. In the meantime, on 16 September 1985, she had left her parents' home and stayed with the father of her child from then until she moved into the new house. She was not at any time in receipt of a non-householder's contribution.

5. The local adjudication officer considered that until the claimant moved into her new house on 30 September 1985 she did not "normally occupy it" and that until then it was therefore not her "home" as defined in regulation 2(1) of the Requirements Regulations which provides:-

"2.-(1) In these regulations, unless the context otherwise requires -

...

...

'the home' means the accommodation ... normally occupied by the assessment unit ... as their home ... "

She further considered that, until the new house became the claimant's home within the above definition, she had no home in respect of which she was responsible for housing expenditure and hence did not have the status of householder as defined in regulation 5(6) of the Requirements Regulations. From that it followed that the claimant was not entitled to "qualifying supplementary benefit" as defined in regulation 2(1) of the Housing Benefit Regulations and therefore could not be given a certificate under regulation 9(1) of these regulations for any period before 30 September 1985.

6. On the claimant's appeal to the SSAT it was argued on her behalf that she was assisted by regulation 14(5) of the Requirements Regulations despite the decision of a Tribunal of Commissioners which has since been reported as R(SB) 7/86. The case the subject of that decision was similar to the present case in all relevant respects except that, whereas in that case the claimant was in receipt of a non-householder's contribution under regulation 23 of the Requirements Regulations while living in her parents' home, the present claimant, who was under 21, was not entitled to such a contribution. The SSAT decided that regulation 14(5) applied in the claimant's favour and the meaning of that regulation and the effect of decision R(SB) 7/86 are the matters in dispute on the present appeal.

7. It is common ground that the claimant was not entitled to "qualifying supplementary benefit" for housing benefit purposes unless she was responsible for housing expenditure for the purposes of regulation 14 of the Requirements Regulations in respect of a home as defined in regulation 2(1), or within such different definition as the relevant context might require. It is not suggested that she was responsible for housing expenditure for such purposes while living in her parents' home. Her case is that she was responsible for housing expenditure in respect of her new house from 9 September 1985 and that it was her home as defined above from that date.

8. The Tribunal of Commissioners who decided R(SB) 7/85 approved (in their paragraph 5) earlier decisions to the effect that premises acquired by a person to be her home may be her home in the ordinary sense of the word before she moves in but that she is not, until she moves in, occupying them as her home in terms of the definition in regulation 2(1). They also expressed the opinion (in their paragraph 6) that in the context of supplementary benefits it is not possible for a claimant to have more than one "home" at a time save where the Requirements Regulations prescribe exceptions to the general rule. The only exception relevant to the present case is to be found in regulation 14(5) which, so far as material for the present purpose provides:-

" Housing Requirements

14.-(1) ...

...

(5) For the purposes of this Part of these regulations other than regulation 23 (non-householder's contribution) -

(a) ...

(b) where the assessment unit changes its home, "the home" shall include both the old and the new home -

(i) for a period of overlap not exceeding 4 weeks where the overlap of liability is unavoidable; or

(ii) ..."

It is clear that when the meaning of "the home" is being considered in the context of regulation 14(5)(b), the definition in regulation 2(1) cannot be applicable without a modification to allow for the possibility of a claimant being treated as having two homes within the modified definition at the same time.

9. However, on behalf of the adjudication officer it is argued that, although the definition in regulation 2(1) has to be modified so as to give effect to regulation 14(5)(b), the context of that regulation does not require it to be modified to the extent that would permit premises to be a "home" if they were premises that the claimant had never actually occupied. On that basis regulation 14(5)(b) could never apply until residence in new premises has begun and the present appeal would necessarily succeed because it is not suggested on behalf of the claimant that the regulation would be applicable in her case after she moved into her new house.

10. The adjudication officer relies on paragraphs 5 and 7 of R(SB) 7/86 in support of his above argument. I have already referred to paragraph 5. Paragraph 7(1) (there is no 7(2)) provides as follows:-

"7.(1) Until, with effect from 7 May 1984, the claimant had moved into the flat and was actually living there as her home, her home was in our judgment at the home of her parents, in respect of her residing at which she was being correctly assessed for the purposes of her supplementary allowance as having as a housing requirement "non-householder's contribution" under regulation 23 of the Requirements Regulations, to which we will refer further below. And we do not consider that it is in relevant context possible for premises to be "normally occupied as [a claimant's] home" (regulation 2(1)) if they are premises in which the claimant has never actually resided. We do not accept that the context of regulation 5 or the bearing upon that context of any other provision of the supplementary benefits legislation requires a different meaning to be given to "the home" from that defined in regulation 2(1). In particular, no such conclusion falls properly to be derived from a recognition, correct enough in itself, that provision is made, by regulations 10 and 14 respectively of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] as amended, for the award of single payments for essential furniture and household equipment for recently tenanted premises and for a single payment to be made in respect of a deposit on account of advance rent. So also as to regulation 14(5) of the Requirements Regulations, which - contrary to the normal rule - allows a person to be regarded as having 2 homes for a limited overlap of 4 weeks when "moving home". See

also decision R(SB) 11/83 as to the Requirements Regulations bearing upon an existing state of fact at material times when determining whether or not a claimant satisfies stipulated qualifying requirements."

It will be convenient if at this point I also set out paragraph 8 which provides:-

"8. We have given anxious consideration to the provisions of regulation 14(5), and in particular regulation 14(5)(b) of the Requirements Regulations (regulation 14(5) being that which provides for the limited overlap on changing home to which we have already briefly referred) because, upon a broad appraisal of the circumstances of the claimant relevant to her request for review and revision of the decision of the adjudication officer which had the effect of denying her any assistance for the liability running against her in respect of the flat before she moved into it as her home, the claimant was quite clearly "moving home" from her home with her parents to a home of her own. And, we will not conceal, we would have welcomed as the product of our exploration and evaluation of that provision our arrival at a conclusion in her favour, since that well accords with commonsense. However, in the event we find ourselves constrained to hold that regulation 14(5) affords her no practical assistance."

11. Mr Prew criticises the adjudication officer's submission on the ground that the adoption of his interpretation of the regulations would lead to results which do not accord with the intention of regulation 14(5)(b)(i) as it appears from the words used. I think that there is much force in that criticism but if I were satisfied that the adjudication officer was correct in saying that his interpretation is supported by R(SB) 7/86 I should have to accept it, as I am bound by the decision of a Tribunal of Commissioners. The only alternative would be to adjourn the present appeal and seek to have it transferred to a further Tribunal of Commissioners which I do not consider would be appropriate in the present case.

12. Mr Prew also argues that it is clear from paragraph 8 of R(SB) 7/86 that the Tribunal of Commissioners did not consider that regulation 14(5)(b)(i) could apply only after the claimant had actually changed home. I am not prepared to go so far as to say that that is clear from paragraph 8, read in conjunction with paragraph 7 but I do agree that there is no clear statement in R(SB) 7/86 supporting the adjudication officer's interpretation. As I am thus left in doubt as to the effect of that decision it seems to me to be legitimate and appropriate to look for assistance, as to the intentions of the Tribunal, from what they actually did. They went on to consider regulation 14(5)(b)(i) in some detail but did not reach any conclusion as to whether its terms were satisfied and then decided the case on a different point altogether. If they had been of the opinion that regulation 14(5)(b)(i) could never apply before residence in the new premises began it would have been quite unnecessary for them to consider the remaining terms of the regulation but in fact the only point which they regarded as fatal to the claimant's case was the point under regulation 14(2) to which I shall refer again later. Further support for the view that decision R(SB) 7/86 does not support the adjudication officer's interpretation is to be found in the dissenting Commissioner's reasons and conclusion. He said that he agreed with everything said in the majority decision with the sole exception of the conclusion that regulation 14(2) of the Requirements Regulations prevented the benevolent provisions of regulation 14(5) from applying to the case then under consideration and later said that he would have remitted the case to a differently constituted SSAT to determine whether the overlap of liability (for the purposes of regulation 14(5)(b)(i)) was unavoidable. Clearly he considered that that regulation could apply to the case he was considering and clearly he understood the majority to have taken the same view up to the point at which they considered regulation 14(2). In the circumstances my conclusion is that the adjudication officer's interpretation of regulation 14(5)(b)(i) is not supported by R(SB) 7/86 from which it follows that the SSAT were correct in going on to consider whether there was an unavoidable overlap of liability in respect of the claimant's 2 homes.

13. As regards the question of liability, I agree with Mr Prew's submission that the

claimant was under a legal obligation to her father as a contractual licensee. The Tribunal of Commissioners in R(SB) 7/86 did not say anything to suggest that the regulation called for a liability of any particular nature and I do not see any reason to take a different view. As to avoidability, I consider that the SSAT, on the evidence from the claimant and her father were entitled to take the view that there was an unavoidable overlap of liability. However, I consider that the SSAT erred in law in finding that the overlap was for the period 1 September 1985 to 15 September 1985. No liability in respect of the new house was established until 9 September 1985.

14. Finally I turn to the question of regulation 14(2). As interpreted by the Tribunal in R(SB) 7/86, that regulation precludes a claimant from simultaneously having a non-householder's contribution and any other housing requirement referred to in regulation 14(1). The present claimant had no non-householder's contribution and consequently was not caught by regulation 14(2) as interpreted by the Tribunal. There is thus a distinction between her case and R(SB) 7/86 but of course the distinction improves her position only to the extent that it removes what would otherwise be an impediment to her success assuming, that is, that R(SB) 7/86 was rightly decided on the point. As to that, I respectfully disagree with the conclusion of the Tribunal. I accept that a claimant cannot have a non-householder's contribution and at the same time a different housing requirement in respect of the same home but I can see no reason why a claimant, by force of regulation 14(2), should not have a non-householder's requirement in respect of one home and another housing requirement in respect of a new home to which she moves but subject of course to regulation 14(5)(b).

15. I have found the SSAT's decision erroneous in law in that made a finding of fact for which there was no evidence. I must therefore set their decision aside and in the circumstances it is expedient for me to give the decision that the SSAT should have given.

16. Accordingly, the adjudication officer's appeal succeeds only to the extent indicated in paragraph 15 above and my decision is as set forth in paragraph 1 above.

17. I am aware that in deciding an earlier appeal relating to regulation 14(5) I reached a different conclusion as to the effect of the regulation and of decision R(SB) 7/86.

(Signed) J N B Penny
Commissioner

Date: 15 March 1988