

Cohabitation

MJG/SH/5/MD

Commissioner's File: CSB/1181/1985

C A O File: AO 2946/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Hilda Irene Atherley (Mrs)

Social Security Appeal Tribunal: Wood Green

Case No: 06/09/12

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 10 May 1985 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination to a differently constituted tribunal: Supplementary Benefits Act 1976, section 2(1) and the Social Security (Adjudication) Regulations 1984 [SI 1984 No. 451] as amended], regulations 19 and 27.

2. This is an appeal to the Commissioner by the claimant a widow aged 45 at the material time living in a local authority property with her dependent daughter Dawn and non-dependent daughters Tracey and Angela. A Mr A was also living at that address and the appeal is from the unanimous decision of the local tribunal that the claimant was not entitled to a supplementary allowance because she was living with Mr A as his wife.

3. The appeal is supported by the adjudication officer now concerned, in a written submission of October 1985, on 2 grounds:

- (i) that the tribunal failed to make adequate findings of fact and give adequate reasons for decision in accordance with regulation 19(2)(b) of the above cited Adjudication Regulations
- (ii) that the tribunal failed to consider and advert to regulation 1A of the Supplementary Benefit (Aggregation) Regulations 1981 [SI 1981 No. 1524, as inserted by SI 1983 No. 1004 and SI 1984 No. 938]

Those submissions are echoed in written submissions dated 11 June 1985 by the claimant's representative.

4. Taking each of those grounds of appeal in turn I consider that the original tribunal did not explain precisely why they rejected the claimant's contentions (which were detailed) as to why she was not living with Mr A as his wife though equally it seems to me that the tribunal took very considerable care with this case and were conscientious in completion of their record of Form AT3. Nevertheless, of course, a claimant is entitled to know what are the findings of the tribunal in relation to each of the 6 criteria laid down in reported Commissioner's decision R(SB)17/81 and the new tribunal that rehears this case will need to

do that, as the original tribunal did not completely do that.

5. Unfortunately, the original tribunal did not consider the impact of the new 'equal treatment' regulation, now to be found as regulation 1A of the above-cited Aggregation Regulations, but merely assumed that, because Mr A was working and that the claimant was not, that she was not entitled to supplementary benefit. That may not necessarily be the position and, if the new tribunal finds that the claimant and Mr A were living together as husband and wife, the tribunal should go through the relevant parts of regulation 1A of the Aggregation Regulations and make enquiries as to them. They should then make appropriate findings of fact and give reasons for decision related to regulation 1A.

(Signed) M.J. Goodman
Commissioner

Date: 12th March 1986