

DGR/JW

SUPPLEMENTARY BENEFIT ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Original Decision Case No:

Decision C.S.B. 30/81

1. For the reasons set out below, the decision of the supplementary benefit appeal tribunal, given on 14 January 1981, was erroneous in point of law, and accordingly I set it aside.

2. In November 1980, the claimant applied for extra help with heating on two grounds, namely (a) that she suffered from osteo-arthrits and (b) that her flat was cold and difficult to heat. After an unfavourable decision from the benefit officer, she appealed to the appeal tribunal, who accepted that her home was difficult to heat adequately, and made an award of £1.40 per week under paragraph 2(a) of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 (S.I. 1980/1299). However, although in their findings of fact they accepted that the claimant suffered from arthritis, they did not even purport to consider whether a further award should be made under paragraph 1 of that schedule. Accordingly the claimant applied to the Commissioner for leave to appeal on a question of law from the tribunal's decision and on 6 March 1981 I gave that leave. I now consider the appeal itself.

3. The additional requirements specified in Schedule 3 (Part 1) are as follows:

"1.- (1) Person for whom extra warmth needs to be provided -

(a) because he suffers from chronic ill health, due for example to bronchitis, rheumatism, arthritis or anaemia; or

(b) because of restricted mobility due to some physical reason, for example, general frailty;

(2) ...

(3) ...

Decision C.S.B. 30/81

2. Person who is a householder where, having regard in particular to whether the rooms are draughty or damp or exceptionally large -

(a) the home is difficult to heat adequately;

(b)

Now, although in fairness to the tribunal, they found as a fact that, notwithstanding that she was suffering from arthritis, the claimant was nevertheless mobile, they seem to have failed to notice the word "or" between (a) and (b) of paragraph 1(1). It is enough for the claimant to receive an award if he or she establishes chronic ill health, due, for example, to arthritis, and it is not necessary for the claimant also to establish restricted mobility. Accordingly, the tribunal should have considered the claimant's entitlement under paragraph 1(1)(a), and as far as I can see should have made an award accordingly. However, their mere failure to consider the matter properly, or at all, inevitably renders their decision erroneous in point of law, and it must be set aside.

4. I should also say that if they had properly considered an award under paragraph 1(1)(a) in addition to an award under paragraph 2(a) and had made an award accordingly, under regulation 12(2)(d) the amount so awarded would have been £3.40 instead of £1.40.

5. The decision of the tribunal is erroneous in point of law, and it must be set aside. Accordingly this appeal succeeds.

6. The appeal should now be reheard by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 11 November 1981

Commissioner's File: CSB 37/1981
CSBO File: SBO 43/81

DGR/BR

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision CSB 37/81

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 17 March 1981 is erroneous in point of law, and accordingly I set it aside.
2. On 10 June 1981 I gave leave to the Supplement Officer to appeal against the decision of the Supplementary Benefit Appeal Tribunal of 17 March 1981. I now have to consider the appeal itself.
3. The facts of this case are simple and straightforward. On 4 February 1981 the claimant made a claim to family income supplement in which he stated that, although he normally worked 37½ hours a week, his employer was now operating a 3 day week, which resulted in his only working 22½ hours each week. On the two days, on which he was not working, he received more than 50% of the wages applicable to those days.
4. In the light of the evidence the benefit officer disallowed the claim, on the ground that the claimant, although normally engaged in full-time remunerative work, was not at the relevant time so engaged. Thereupon the claimant appealed to the Supplementary Benefit Appeal Tribunal, who by a majority allowed the appeal. The reasons for the majority decision read as follows:-

"Mr Brady was normally in full-time work and was engaged in full-time work for not less than 30 hours per week in that on the days when he was paid 50% of his wages but did not attend at his normal work place he was undertaking activities in the course of remunerative work."

The dissenting member expressed the following view:

"The Dissident Member considered that it was wholly unreasonable and contrary to the meaning of the wording to Regulation 5(1) of the FIS (General) Regulations 1980 to include the days when Mr Brady was laid off work on half pay as days when he was engaged in remunerative work and would have confirmed the Supplement Officer's Decision".

5. The effect of Section 1 of the Family Income Supplements Act 1970, in so far as it relates to the present case, is that where a family consists of a man, his wife and their children it is a pre-requisite of entitlement that the man must be engaged, and normally engaged, in remunerative full-time work. It is to be noted that there are two conditions, namely that he must be both engaged and normally engaged in remunerative full-time work. The circumstances in which a person is to be treated as being or as not being engaged and normally engaged in remunerative full-time work are set out in regulation 5 of the Family Income Supplements (General) Regulations 1980 (S.I. 1980 No 1437). This regulation reads as follows:

- "(1) A person shall be treated as being engaged in remunerative full-time work only if he undertakes activities in the course of remunerative work for not less than the minimum weekly hours during -
- (a) the week of claim, or
 - (b) either of the two weeks immediately preceding the week of claim, or
 - (c) the week immediately following the week of claim.
- (2) A person shall be treated as being normally engaged in remunerative full-time work if he is normally engaged in such work for not less than the minimum weekly hours but not otherwise.
- (3) For the purposes of this regulation -
- 'minimum weekly hours' shall mean 30 hours a week
- 'week' shall mean a period of 7 days beginning with midnight between Saturday and Sunday;
- 'week of claim' shall mean the week which includes the date on which a claim is made."

6. Now, in the present case it is not in dispute that the claimant normally worked 37½ hours a week and clearly he satisfied the requirement of being "normally engaged" in remunerative full-time work. However, the crucial issue is whether or not he was from the date of claim to the date of the decision of the tribunal "engaged in remunerative full-time work". To satisfy this condition he has to show that he undertook "activities in the course of remunerative work" for not less than 30 hours during the weeks set out in regulation 5(1). On the facts it is quite clear that the claimant did not work the minimum weekly hours during any of the relevant weeks.

7. However, the claimant contends that he should be treated as having worked more than the minimum hours because on the two days on which he did not work he received more than 50% of his wages for those days. He adds that he cannot claim unemployment benefit or supplementary benefit for those days and that in consequence he ought to be entitled to family income supplement.

8. However, I am not concerned with the merits of the case, but only with the application of the relevant statutory provisions. He can only satisfy such provisions if he can establish that during the two days, on which he does not work, he should, nevertheless, by virtue of the payment that he receives be regarded as undertaking "activities in the course of remunerative work", and he succeeded in persuading the majority of the tribunal that by reason of the payment received he qualified for family income supplement.

9. The Supplement Officer in his submissions to the Commissioner has contended that a claimant who works for an employer can only be regarded as undertaking activities in the course of remunerative work during those periods when he is actually attending for work at his employer's place of business or is engaged elsewhere on work which his employer has instructed him to carry out. He further submits that it is a matter for consideration whether a claimant is also engaged in such activities during any period throughout which he is required to be available if called out by his employer and for which he is remunerated in return for this obligation. However, the expression "activities in the course of remunerative employment" cannot, it is submitted, extend to periods during which a person is not required to perform any duties on his employer's behalf, is not required by his employer to be on call and is free to undertake whatever other activities he wishes. I agree with those submissions, save that I express no view whatsoever, since it is unnecessary for the purposes of my decision, as to whether being on call and remunerated accordingly constitutes "activities in the course of remunerative employment". The fact that the claimant is in receipt of more than 50% of his wages for the days on which does not work in itself has no bearing on the matter I have to decide.

10. It follows from what has been said above that the dissenting member was correct, and that the decision of the Supplementary Benefit Appeal Tribunal is erroneous in point of law and must be set aside.

11. I allow this appeal, and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 2 December 1981

Commissioner's File: CSB 246/1981
C SBO File: SO 2005/FIS/81