

JM/CG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

MC SAC/1981

Review dev

1. This is a claimant's appeal, brought by my leave, against a majority decision of the supplementary benefit appeal tribunal dated 25 June 1981 which confirmed a decision of the benefit officer issued on 30 March 1981.
2. The claimant requested an oral hearing of his appeal to the Commissioner. This I refused. With characteristic objectivity the benefit officer now concerned supports the claimant's appeal. An oral hearing would, accordingly, have served no useful purpose. By the same token, I can keep this decision relatively short.
3. At the material time the claimant was a single man, aged 64. It is not in dispute that he was at all material times entitled to a supplementary allowance. The sole issue is whether that allowance should have been calculated upon the basis that he was a householder or on the basis that he was a non-householder.
4. On 10 March 1981 the claimant went to live in the house of a Mr A, who was the owner thereof, who lived in part thereof and who was responsible for the rates in respect thereof. The claimant enjoyed the exclusive use of a bed-sitting room and a kitchenette. He shared the use of the bathroom. He bought and prepared all his own food. For this accommodation he paid Mr A £8.50 a week. These payments were recorded in a rent book.
5. Upon these facts the benefit officer decided that the claimant was not a householder. On page 1 of form LT 205 his decision is recorded thus:

"Supplementary allowance awarded at the rate of £21.70 weekly from the prescribed pay day (Monday) in week commencing 6 4 81 to and including the prescribed pay day in week commencing 28 9 81."

(I am puzzled by the wording of this decision. In the first place,

the reverse of form LP 205 indicates that £21.70 was paid to the claimant as from 16 March 1981. In the second place, I cannot see any aspect of this case which might bring it within any of the exceptions to the general rule that an award of supplementary allowance shall be for an indefinite period: see regulation 6 of the Supplementary Benefit (Determination of Questions) Regulations 1980 and unreported Decision C.S.B. 34/81, paragraphs 15 and 16). In arriving at the sum of £21.70 the benefit officer carried in the claimant's housing costs at only £2.15 - the sum which was at that time the minimum non-householder's contribution. The claimant appealed to the appeal tribunal. By a majority, the appeal tribunal confirmed the benefit officer's decision. It is clear that both the benefit officer and the majority of the appeal tribunal fell into error in construing and applying what was at the time relatively new and undoubtedly complex legislation.

6. Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980 provided as follows:

"(2) For the purposes of the table [i.e. the table of the normal requirements of relevant persons and householders in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act, as amended] a householder is a person, other than a partner, who -

- (a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of those regulations other than regulation 23 (non-householder's contribution) relates or, if the household incurs no such expenditure, is the member of the household with major control over household expenditure;
- (b) does not share such responsibility or control with another member of the same household; and
- (c) is either not absent from the home or whose absence is for a period which has not yet continued for more than 13 weeks."

7. Regulation 23 of the said regulations (non-householder's contribution) "..... applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder)."

8. One of the items specified in Part IV of the Requirements Regulations is, of course, rent; and rent is very widely defined:

"rent" includes corresponding payments in respect of a licence or permission to occupy the home and "let" and "letting" shall be correspondingly construed" - regulation 2(1).

So far as material to this appeal "the home" means "the accommodation normally occupied by the assessment unit ... - regulation 2(1).

9. The true analysis in this case is as follows:

- (a) The assessment unit was the claimant.
- (b) The claimant's home consisted of his bed-sitting room, his kitchenette and such parts of Mr A's house as were common to the claimant and Mr A.
- (c) The claimant was responsible for the "rent" of his home; and he did not share that responsibility with any other person.
- (d) Accordingly, the claimant was a householder.

10. The majority of the appeal tribunal failed to recognise that the claimant constituted a "household" of his own. It treated him as a member of Mr A's household. As the benefit officer now concerned has observed, the term "household" is nowhere defined in the Requirements Regulations. (For that matter, it is not, I think, defined anywhere else in the supplementary benefit legislation.) In my view it is not a term of art. It falls to be given its everyday, ordinary meaning. By and large, members of the same household do not occupy the relevant home upon terms which are intended to be enforceable at law. If a father tells his adult daughter that she can stay at home for so long as she gives her mother £4.00 a week towards her keep, that does not normally give the daughter a contractual licence to occupy the home; and if she fails to pay that sum, the father cannot normally get judgment against his daughter in the local County Court. His remedy is to tell her to find somewhere else to live. Boarders might be thought to be on the borderline; but they (so long as they are not "close relatives") are put into a category of their own - regulation 9(9)(b) of the Requirements Regulations. In any event, as I have demonstrated above, the claimant in this appeal had a home of his own - and that is quite incompatible with his having been at the same time a member of someone else's household. The dissenting member of the appeal tribunal got it right.

11. This is manifestly a case in which it is expedient that I myself should give the decision which the appeal tribunal should have given. Accordingly, my decision is as follows:

- (1) The claimant's appeal to the Commissioner is allowed.
- (2) The decision of the appeal tribunal dated 25 June 1981 is erroneous in law and is set aside.
- (3) The claimant's appeal to the appeal tribunal is allowed.
- (4) The claimant is entitled to supplementary allowance from the prescribed pay day in the week commencing 16 March 1981, calculated upon the basis that he was a householder. I leave to the benefit officer the assessment of the relevant weekly sum. In the event of there being any dispute in respect thereof, either party may restore this appeal before me for my further determination.

12. For the avoidance of doubt, I stress that my aforesaid decision is in no way intended to suggest that the claimant's entitlement to the weekly sum thrown up by paragraph 11(4) above has continued down to the date of this decision. I have no jurisdiction to make any such award. I can go no further than to give the decision which the appeal tribunal ought to have given. Manifestly the claimant's entitlement to the aforesaid weekly sum will be limited to that period after 16 March 1981 during which there was no change in the material circumstances upon which this decision is based. Any dispute as to when such circumstances changed, or as to the effect of such change, will be a matter for a further decision by the benefit officer - from which further decision, of course, the claimant will have the statutory rights of appeal.

(Signed) J Mitchell
Commissioner.

Date: 9 August 1982

Commissioner's File: C.S.B./382/1981
C SEO File: 461/81