

Goodman #
CSB 415/84

Aggregation: father on SB, claiming extra for children staying with him for holiday, normally living with mum.

* If they were fully integrated into his home and he was supporting them during that time, I see no reason why they should not be regarded as members of his household.

MJG/AG

SUPPLEMENTARY BENEFITS ACT 1976

'household' shd be given its normal, everyday meaning

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No: 5/52

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 2 February 1984 and I set that decision aside as erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451], regulation 27.

2. This is an appeal to the Commissioner by the claimant, a divorced man, aged 38. His ex-wife lives in another city and normally has living with her their 3 daughters of the former marriage, aged 15, 14 and 13 respectively. An order of the county court dated 2 September 1983 awarded joint custody of the 3 daughters to the claimant and his ex-wife. A letter to the local office by the claimant's solicitors notified that office of the court order, and also stated that, although the 3 daughters would be living with their mother, they would stay with the claimant at regular intervals during the year in the school holidays. The relevant period before the tribunal, when the daughters were in fact staying with their father was from 22 to 29 October 1983 inclusive. They had stayed with him for earlier periods (e.g. from 2-15 June and 16-21 August 1983) but those periods do not appear to be the subject of this appeal. The appeal concerns the claimant's claim for additional supplementary benefit during that period, on the footing that during that time the daughters' requirements should be aggregated with his and not with those of his ex-wife.

3. The tribunal noted as its findings of fact:-

"The claimant is living in temporary local authority accommodation with two bedrooms. He has a son aged 11, as member of his household. He is divorced and has been made joint custodian of his 3 daughters of the marriage who reside with, and are part of, the household of the claimant's

ex-wife/ ... /The claimant's ex-wife/ is designated as the person to receive the child benefit for the 3 daughters."

4. The tribunal then held that the claimant was not entitled to supplementary benefit in respect of the 3 daughters during the period in question giving as their reasons:-

"The tribunal is satisfied that the 3 daughters have to be treated as in Aggregation Regulations 3(2) with /the claimant's wife/ as the head of the assessment unit and cannot be treated as the responsibility of the appellant during holiday periods."

5. It is against that decision that the claimant appeals, and his appeal is supported by the adjudication officer now concerned, in a written submission dated 19 July 1984, on the footing that it cannot be ascertained from the tribunal's reasons for decision, whether it asked itself the right questions (see below) and by what route it arrived at its decision. The tribunal was therefore in breach of rule 7 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 /S.I. 1980 No. 1605/ (now regulation 19 of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451/]). I accept that submission on behalf of the adjudication officer. It is never sufficient for a tribunal merely to state its conclusion as has happened in this case, without giving reasons related to the wording of the appropriate section of the Act or appropriate regulation, as the case may be (see R(SB) 6/81). For that reason alone, I must set the tribunal's decision aside, as a failure to give adequate reasons is an error of law and I must remit the case, for rehearing and redetermination, to a differently constituted social security appeal tribunal.

6. That tribunal will of course have a complete power to deal with the case anew. I make no comments on the actual factual merits of the case as appeal to the Commissioner lies on a question of law and not on questions of fact. However, I should mention for the guidance of the new tribunal that, in connection with the claimant's appeal, the adjudication officer now concerned, in the written submission of 19 July 1984, has drawn attention to regulations 3(1) and (2) of the Supplementary Benefit (Aggregation) Regulations 1981 /S.I. 1981 No. 1524/ and pointed out that the critical question under regulation 3(2)(b) is whether or not when the 3 daughters were with the claimant during the holiday periods they could be described as members "of the same household" as the claimant. I accept the adjudication officer's submission that the specific circumstances listed in regulations 4 and 5 of the Aggregation Regulations are not exclusive, and that the question of whether or not the daughters were members of the same "household" as the claimant, while they were staying with him, is an overall question of fact. The term "household" is not defined in the Regulations, and needs to be given its normal everyday meaning (see R(SB)4/83, paragraphs 13 and 19).

7. I also accept the adjudication officer's submission that the fact that the claimant's ex-wife received child benefit for the 3 daughters is not by any means conclusive of the matter, since regulation 4(2)(d)(iii) of the Aggregation Regulations, relating to child benefit, applies only

when the daughters are not "living with" the claimant, which undoubtedly they were doing at the times they were staying with him. Whether they are also members of the claimant's "household" for that short period is a matter for the new tribunal to decide, but there is no legal reason why on the facts they should not be. In that connection, I accept the submission on behalf of the claimant that statements in decisions of the Courts and the Commissioners, relating to family income supplement, must be on the question of the meaning of the word "household" in the present context received with caution, since as the claimant's submission rightly states "a member of the same household" should be construed with regard to the essentially short-term nature of the supplementary benefit scheme, and in particular to the concept of the benefit week, as opposed to family income supplement, which is payable for a period of 52 weeks.

8. The decisions relating to family income supplement are R(FIS)3/83 and R(FIS)4/83 and the decision of the High Court in England v The Secretary of State for Social Services (15 April 1981), in which latter case it was said in the context of family income supplement, "By using the words 'household' instead of providing a requirement of 'living with', parliament intended that in appropriate circumstances, if a sufficient tie remained, children should still qualify even if away from home as long as the separation was temporary". However, that statement was given in a different context, that of family income supplement, and also of course on the question of whether or not children qualified for an addition to that supplement. The fact that the 3 daughters in the present case were only temporarily away from their mother, does not in law prevent them, for the time they were staying with the father, from being members of his "household". If they were fully integrated into his home and he was supporting them during that time, I see no reason why they should not be regarded as members of his "household" but I leave a decision on that point to the new tribunal.

(Signed) M J Goodman
Commissioner

Date: 28 September 1984

Commissioner's File: C.S.B. 415/1984
CSBO File: 493/84
Region: Wales and South West