

CSB 479/1981

RFMH/RPM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSION

Co-hab

Name: Jean Carol Sullivan (Mrs)

- failure to apply

Supplementary Benefit Appeal Tribunal: Hereford

criteria properly.

Case No: 3/49

ORAL HEARING

1. My decision is that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 8 May 1981 was erroneous in point of law and is set aside. In exercise of the power conferred by rule 10(8)(a)(i) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 /S.I. 1980 No 1605 as amended by S.I. 1982 No 40/ I decide that the claimant and Mr G are not to be treated as "living together as husband and wife" within the terms of paragraph 3(1)(b) of Schedule 1 to the Supplementary Benefits Act 1976, as amended by the Social Security Act 1980, for the purpose of assessing the claimant's requirements and resources.

2. This appeal was the subject of an oral hearing before me on 14 October 1982. The claimant was represented by Ms J Allbeson of the Child Poverty Action Group. The supplementary benefit officer was represented by Miss L Shuker of the Solicitor's Office, the Department of Health and Social Security.

3. The claimant is divorced and has two dependent children of the marriage aged 16 and 14. At the material time she lived with the children in a local authority house. In August 1978 she met Mr G who was separated from his wife. He owned his house where he lived alone.

4. From June 1979 Mr G visited the claimant Monday to Friday for a few minutes at lunch time and for an hour or two in the evenings. He stayed with her from Saturday afternoon until Sunday morning and again from Sunday afternoon to evening. Mr G prepared and ate his own meals at his home and slept there every night except Saturday and occasionally Friday. He also cleaned his own house and did his own laundry.

5. On 8 September 1980 the claimant was interviewed in connection with an allegation that she was living as husband and wife with Mr G. She withdrew her claim for a supplementary allowance.

6. On 19 February 1981 she made a repeat claim for a supplementary allowance and was visited on 26 February 1981. She stated that her

circumstances were still the same as when she was previously interviewed. She stated however that Mr G had started divorce proceedings against his wife but that he was still living in his own house.

7. The supplementary benefit officer decided that they were living together as husband and wife within the meaning of the relevant statutory provisions and that their requirements and resources should be aggregated. Accordingly he decided that the claimant was not entitled to a supplementary allowance.

8. The claimant appealed to the supplementary benefit appeal tribunal. The question at issue was whether the claimant and Mr G were living together as husband and wife within the meaning of the relevant statutory provisions and in consequence whether or not they were caught by the relevant provisions. The tribunal however in a majority decision confirmed the supplementary benefit officer's decision. The findings of the tribunal on question of fact read as follows:-

"Mr G has his own house, and this is currently up for sale.

Mr G stays at the appellant's house most Fridays and Saturdays and calls to see her each week day for two to three hours. The appellant has known Mr G for 2 years. Mr G gives the appellant £10 to £20 a week to help her run her household".

The reasons given for the tribunal's decision are as follows:-

"It was considered that there was a living together situation. The relationship between Mr G and the appellant is a stable one and has lasted for some two years. The financial contribution from Mr G and the fact that most of their free time is spent together were in the opinion of the Tribunal majority strong indications of a living together situation. It was therefore felt that the requirements and resources of Mr G and the appellant should be aggregated together under paragraph 3(1)(a) of Schedule 1 to the Supplementary Benefits Act 1976 as amended by the 1980 Act.

The Tribunal minority felt that a living together situation did not exist because Mr G still had his own house".

9. The claimant applied to the Commissioner for leave to appeal on a question of law and this was granted on 4 March 1982.

10. There have been certain recent decisions of the High Court bearing on the meaning of the expression "living together as husband and wife" as used in paragraph 3(1) of Schedule 1 to the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980. In Crake v The Supplementary Benefits Commission and Butterworth v The Supplementary Benefits Commission [1982] 1 AUL E R 498, [1980/SB 38, Mr Justice Woolfe said with reference to the criteria to be considered in determining whether or not a man or a woman were living together as husband and wife as follows:

".. there is a Supplementary Benefits handbook which sets out guidance to claimants, and that, very conveniently, has paragraphs

dealing with the problem as to when couples should be treated as living together as husband and wife. At page 17 [now page 27 of DHSS publication] it sets out no doubt what the Tribunal were referring to as criteria. They are an admirable signpost to help a Tribunal or indeed the Commission to come to a decision whether in fact the parties should be regarded as being within the words 'living together as husband and wife'."

11. In Decision R(SB) 17/81 the Commissioner approved the criteria to be applied and has set out exactly what the particular handbook referred to said as follows:-

- "(a) Members of the same household. The man must be living in the same household as the woman and will usually have no other home where he normally lives. This implies that the couple live together wholly, apart from absences necessary for the man's employment, visits to relatives etc.
- (b) Stability. Living together as husband and wife clearly implies more than an occasional or very brief association. When a couple first live together, it may be clear from the start that the relationship is similar to that of husband and wife, eg the woman has taken the man's name and has borne his child, but in cases where the nature of the relationship is doubtful the Commission will be prepared to continue the woman's benefit for a short time in order to avoid discouraging the formation of a stable relationship.
- (c) Financial Support. In most husband and wife relationships one would expect to find financial support of one party by the other, or sharing of household expenses, but the absence of any such arrangement is not conclusive.
- (d) Sexual Relationship. A sexual relationship is a normal and important part of a marriage and therefore of living together as husband and wife. But its absence does not necessarily prove that a couple are not living as husband and wife, nor does its presence prove that they are. The Commissioner's officers are instructed not to question claimants upon the physical aspects of their relationship, though claimants may choose to make statements about it.
- (e) Children. When a couple are caring for a child or children of their union, there is a strong presumption that they are living as husband and wife.
- (f) Public Acknowledgement. Whether the couple have represented themselves to other parties as husband and wife is relevant, but many couples living together do not wish to pretend that they are actually married, and the fact that they retain their identity publicly as unmarried persons does not mean they cannot be regarded as living together as husband and wife."

12. The facts of a case are for decision by a tribunal based on the evidence before them. In the present case the tribunal found as a fact that Mr G owned his own house where he normally lived and carried out his own household duties. In Decision R(SB) 17/81 the Commissioner said at paragraph 11:-

"First, it is axiomatic that the man and woman concerned must be living in the same household. This requirement is not spelt out specifically in Decision R(G) 3/71, but only, in my judgment, because it is self evident."

13. The tribunal failed to apply the first of the criteria correctly.

14. In respect of the remaining criteria the tribunal failed to deal with the points adequately. They decided that the relationship was a stable one and concluded that the financial contributions by Mr G and the fact that he and the claimant spent most of their free time together constituted a "living together situation". The tribunal erred in law in that they failed to consider the 3 other criteria above mentioned and applied the first criteria incorrectly. The dissenting member came to the right conclusion that the evidence did not support a living together situation. Having considered the findings of the tribunal, I do not see how the majority decision can be supported by the evidence given. Accordingly the decision of the tribunal was erroneous in point of law and I set it aside. I decide for the reasons given that the claimant and Mr G were not living together as husband and wife within the statutory definition.

15. Under the terms of regulation 4(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980 S.I. 1980 No 1643 it is of course open to the supplementary benefit officer to review and revise the decision if he is satisfied that there has been a relevant change of circumstances since the determination was made. No doubt the supplementary benefit officer will exercise these powers should the situation demand it.

16. The claimant's appeal is allowed.

(Signed) R F M Heggs
Commissioner

Date: 17 November 1982

Commissioner's File: C.S.B. 479/1981
C SBO File: 588/81