

Person in para 9A. Sched 2. Reg. 10(1)
does not have to mean "retired person"
(Can include a person whose resources & reg. are assessed)

CSSB 137/82

Claimant: Bhajan Ginda

This decision attempts to chart a route through the Supplementary Benefit (Requirements) Regulations 1980 and to draw attention to the unsatisfactory wording of regulation 10(1). Those who bravely accompany the author across this swamp need perhaps go no further than paragraph 9.

J. G. Mitchell
Commissioner

JGmi/PK

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION
OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Bhajan Ginda

Supplementary Benefit Appeal Tribunal: Glasgow

Case No: 09/680

1. The decision of the supplementary benefit appeal tribunal dated 27 May 1982 is erroneous in law and is set aside.
2. This is an appeal by the claimant to the Commissioner, with leave, from the decision of a supplementary benefit appeal tribunal in Glasgow. The appeal was dealt with at an oral hearing at which the claimant, who attended, was represented by Mr. H. R. McGregor of Strathclyde Social Work Department and the supplementary benefit officer was represented by Mr. Roberts of the Solicitor's Office of the Department of Health and Social Security.
3. The issue in this case is whether in the assessment of the claimant's requirements for the purposes of entitlement to supplementary allowance the requirements of the woman with whom he is living, M.... D.... should be disregarded. Certain relevant facts affecting this case are in dispute and have yet to be established. What is apparently not in dispute is that M.... D.... entered this country in 1975 as the claimant's fiancée. She could not marry him however as he was at that time already married. M.... D.... was allowed to overstay an initial limited leave period. In 1981 the claimant was in prison and M.... D.... was looking after his children. She was granted leave to remain in this country from 9 September 1981 to 3 March 1982 and received benefit under the Supplementary Benefit (Urgent Cases) Regulations 1981 ("the Urgent Cases Regulations") whilst caring for the claimant's children. On the claimant's release from prison on 5 March 1982 he claimed supplementary benefit for himself, M.... D...., 4 children of his previous marriage, and one child of his association with M.... D.... In the assessment of his claim, regulation 10 of, and paragraph 9A of Schedule 2 to, the Supplementary Benefit (Requirements) Regulations 1980, as amended were applied to modify the assessment of his requirements so as, in effect, to exclude the requirements of M.... D.... I shall refer to these regulations as in force at the relevant time as "the Requirements Regulations". The decision of the supplementary benefit officer in this case was upheld by the supplementary benefit appeal tribunal. The tribunal also held that the Urgent Cases Regulations were inapplicable.
4. In terms of section 1 of the Supplementary Benefits Act 1976 a
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whose resources are insufficient to meet his requirements is entitled to supplementary benefit. Under section 1(2) where the requirements and resources of any person fall to be aggregated with those of another person that other person only is to be entitled to supplementary benefit. Under paragraph 1 of Schedule 1 to the Act the amount of any supplementary benefit is to be the amount by which a person's resources fall short of his requirements. Normal requirements form the first category of such requirements. The normal requirements of a "relevant person" are taken to be the appropriate weekly amount specified in the table set out in paragraph 2(3) of the Schedule, a "relevant person" being "a person whose requirements include those of another person" by virtue of aggregation provisions. Under paragraph 3 the requirements and resources of an unmarried couple are aggregated and treated as those of the man. Paragraph 2(4) of the Schedule provides that the table may have effect with modifications prescribed by Regulations.

5. Regulation 4 of the Requirements Regulations details normal requirements and provides that the amount of a person's normal requirements is to be determined in accordance with the table and with regulations 5 to 7 but subject where applicable to the modifications of those provisions made by regulations 8 to 10. Regulation 5 alters the provisions of the table relative to the ordinary rate for the normal requirements of all relevant persons. Regulations 8 to 10 contain modifications of normal requirements in various cases. Regulation 10 contains the following provisions:-

"10.-(1) In the case of a person to whom any paragraph in column (1) of Schedule 2 applies, the provision relating to him shown in the corresponding paragraph in column (2) of that Schedule shall have effect with respect to the weekly amounts for normal requirements specified in those provisions further modified as shown in the corresponding paragraph in column (3) of that Schedule.

(2) Paragraphs 1 to 4 of the table, regulation 9 and paragraphs 1 to 3 of Schedule 1 (amounts for normal requirements) may be further modified as may be reasonable where the circumstances are analogous to those for which Schedule 2 makes provision or relate to a member of the assessment unit, or to a permutation of members, for whom provision is not made in that Schedule:

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(4A) For the purposes of paragraph 9A of Schedule 2 a person shall be treated as present with limited leave, or without leave, to enter or remain in the United Kingdom if --

(a) he is a person, who has a limited leave (as defined in section 33(1) of the Immigration Act 1971); to enter or remain in the United Kingdom which

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was given in accordance with any provision of immigration rules (as defined in section 33(1) of that Act) which refers to there being, or to there needing to be, no recourse to public funds, or to there being no charge on public funds, during that limited leave; or

- (b) having only a limited leave to enter or remain in the United Kingdom he has remained beyond the time limited by the leave; or
- (c) he is the subject of a deportation order, that is to say an order within section 5(1) of the Immigration Act 1971 requiring him to leave and prohibiting him from entering the United Kingdom; or
- (d) he is an illegal entrant (as defined in section 33(1) of the Immigration Act 1971) who is not given leave under that Act to enter or remain in the United Kingdom."

6. Schedule 2 to the Requirements Regulations sets out the modification of normal requirements in special cases under regulation 10 relative to various categories of person defined in column (1) of the Schedule. Column (2) of the Schedule is headed "Provisions modified" and column (3) of the Schedule is headed "Modified amount". Paragraph 9A of the Schedule which is headed "Persons from abroad" contains the following provisions:-

<p>"9A. Person (further defined in regulation 10(4A) who is present with limited leave, or without leave to enter, or remain in the United Kingdom -</p> <ul style="list-style-type: none">(a) if one of a married or unmarried couple the other of whom is not also present (with limited leave or without leave);(b) in any other case.	<p>9A. (a) Paragraphs 1 and 2 of the table;</p> <p>(b) paragraphs 1 to 4 of the table and 1 to 3 of Schedule 1.</p>	<p>9A. (a) The ordinary rate for householders if the member of the couple mentioned in sub-paragraph (a) in column (1) as not also so present satisfies the conditions of sub-paragraphs (a) to (c) of regulation 5(2) (meaning of householder) and otherwise the ordinary rate for non-householders;</p> <p>(b) nil."</p>
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The result of the foregoing statutory provisions, ignoring further material subtleties, is that the weekly amount payable in respect of normal requirements of a person coming within the provisions of regulation 10 of and Schedule 2 to the Requirements Regulations are ascertained by reference to the table in Schedule 1 to the Act

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(as modified by regulations 5 to 7 of the Requirements Regulations) and as further modified by column (3) of Schedule 2 to the Regulations. The argument of the supplementary benefit officer which was upheld by the tribunal in this case is that M.... D.... was a person present with limited leave to remain in the United Kingdom within the meaning of paragraph 9A(a) and regulation 10 and that accordingly the assessment of the amount payable to the claimant in respect of normal requirements fell to be modified as provided in column (3) of paragraph 9A(a). Mr. Roberts on behalf of the supplementary benefit officer candidly recognised that as a result of the wording of the statutory provisions there were certain difficulties in this contention. He therefore submitted in the alternative that if M.... D.... was not a person to whom these provisions could apply and the tribunal had erred in holding that she was, then the provisions of regulation 10(2) quoted above so far as referring to a "member of the assessment unit for whom provision is not made in Schedule [2]" would fall to be taken into account in any reconsideration of the claimant's case before another tribunal.

8. The first and principal difficulty in seeking to apply paragraph 9A(a) to M.... D.... lies in the wording of the general provisions of regulation 10(1) quoted above. Regulation 10(1) refers to the case of "a person to whom any paragraph in column (1) of Schedule 2 applies," and then refers to "the provision relating to him shown in the corresponding paragraph in column (2)". There is of course no difficulty in construing "him" as including "her". The difficulty then is that the reference in column (2), which is to paragraphs 1 and 2 of the table, does not directly relate to the same person since the person there referred to is a "relevant person", i.e. in this case the claimant rather than M.... D..... It is therefore clearly arguable that a "person" for the purposes of paragraph 9A can mean only a "relevant person".

9. The category of person in column (1) of paragraph 9A is however general and not expressed as restricted to relevant persons (unlike certain other paragraphs of the Schedule). It was argued by Mr. Roberts that where a provision in column (2) of Schedule 2 awards a sum in respect of normal requirements only to a "relevant person" that, having regard to the definition of a relevant person, is a provision which for the purposes of regulation 10(1) "relates" not only to the relevant person but also, if indirectly, to any person whose requirements and resources are aggregated. A similar difficulty arises in the application of the wording of regulation 10(1) to sundry other paragraphs of the Schedule, such as for instance paragraph 10 which refers in column (1) to where either (but not both) of a relevant person and his partner is a person affected by a trade dispute. That paragraph evinces an even more obvious intent to modify the provisions of the table in the case of persons some of whom are not relevant persons. The wording of regulation 10(1) is undoubtedly unsatisfactory but I have come to the conclusion after some consideration that the words "relating to him" in regulation 10(1) can and should be given the rather extended construction contended for by Mr. Roberts. I therefore hold that the provisions of paragraph 9A(a) of Schedule 2 are capable of being applied to M.... D.... in the present case so as to affect the assessment of the claimant's entitlement to benefit.

10. It remains however to consider whether it is shown that M.... D.... was a person whose circumstances came within the scope of paragraph 9A as defined by regulation 10(4A). The tribunal made a finding in fact to the effect that M.... D.... had been granted leave to remain in this country from 9 September 1981 to 3 March 1982 provided she did not enter into employment or have recourse to public funds and that she had "overstayed" in the United Kingdom. Upon the face of it these were findings which would have justified a conclusion that M.... D.... was a person affected by paragraph 9A as defined by regulation 10(4A) and in particular the provisions of regulation 10(4A)(b). The terms of M.... D....'s leave to remain in the United Kingdom were however not vouched and were disputed by the claimant, and in these circumstances the tribunal were not in my opinion entitled to make a finding of fact upon the terms of leave simply in reliance upon a narrative of alleged facts supplied by the supplementary benefit officer which had no documentary support from the appropriate Immigration Authority. Furthermore although the tribunal may have inferred from the relative dates that by the date of the claimant's claim for supplementary benefit M.... D.... had remained beyond the period of limited leave granted in September 1981, evidence was given to the tribunal that the period of limited leave due to expire on 3 March 1982 had been extended as a result of a further application to the Home Office in February 1982 and the supplementary benefit officer in his written submission in this appeal accepts that this was the case. The tribunal were not in my opinion entitled to make a finding that M.... D.... had overstayed her limited leave period when the evidence presented to it, which was apparently not challenged, was to the opposite effect. In these circumstances the tribunal erred in law in making these purported findings and their decision must be set aside upon that ground.

11. It was argued on behalf of the claimant that on the assumption that paragraph 9A was correctly found to apply to M.... D.... so as to affect the claimant's entitlement to supplementary benefit, the tribunal erred by giving no reasons why the Urgent Cases Regulations could not be applied and were in any event wrong to hold these Regulations inapplicable. Reference was made to regulations 21 and 24 of the Urgent Cases Regulations. Mr. Roberts on behalf of the supplementary benefit officer conceded that the tribunal had failed to give adequate reasons for holding the Urgent Cases Regulations inapplicable but nevertheless maintained that they had in fact no application in the circumstances. He referred in addition to regulation 6(1)(g) of those Regulations.

12. In my opinion it is clear that the Urgent Cases Regulations have no application in the present circumstances. Nevertheless as the matter was raised before the tribunal they ought to have explained their reasons for reaching this conclusion and their failure to do so represents an error in law having regard to their obligations under rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended.

13. Regulation 21(1) of the Urgent Cases Regulations commences with the following words:-

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"This regulation shall apply to a claimant to whom regulation 10(4A) of the Requirements Regulations (person from abroad) applies to whom one of the following applies:-

....."

There follows an enumeration of circumstances in which an amount of benefit determined in accordance with regulation 5 is to be payable. Regulation 5 applies, with modifications, the ordinary rules of assessment of requirements and resources. A "claimant" for the purposes of regulation 21 is, in terms of regulation 2(1), a claimant for supplementary benefit. The short answer to the attempt to invoke the Urgent Cases Regulations in the present appeal is that regulation 21 applies to a claimant. M.... D...., who may be a person to whom regulation 10(4A) applies, is not the claimant and the present claimant is not a person to whom regulation 10(4A) applies.

14. Regulation 24 ("discretionary amounts") similarly applies to a "claimant". M.... D.... is not the claimant. Furthermore regulation 24 is subject to the prior provisions of Part I of the Urgent Cases Regulations and in particular regulations 3 and 5 under which it is clear that the present claimant would be unable to demonstrate requirements exceeding those deemed to be satisfied by the assessment of benefit already made. In particular under regulation 3(1)(a) and regulation 5(2) any requirements of M.... D.... would fall to be disregarded. Furthermore, given the circumstances of the couple, only the present claimant could establish any entitlement to supplementary benefit including benefit in urgent cases payable in accordance with regulations made under section 4 of the Supplementary Benefits Act 1976. See section 1(2) of the Act. In the result therefore the tribunal reached the right conclusion as to the inapplicability of the Urgent Cases Regulations although they fail to give any reasons for their conclusion.

15. As mentioned above the decision of the tribunal falls to be set aside as erroneous in law. It is an essential pre-requisite of any valid determination of the claimant's appeal that there be a finding in fact, based upon proper evidence, as to the status of M.... D.... in this country subsequent to 3 March 1982. In the absence of a valid finding upon that matter I have no alternative but to refer the claimant's case for determination afresh by a different tribunal. It will be for the supplementary benefit officer in preparation for the rehearing to obtain a proper statement from an authorised officer of the Immigration Department of the Home Office as to M.... D....'s status after 3 March 1982 and in particular the terms of any limited leave applicable in her case. It will then be for the tribunal dealing with the case, while accepting in accordance with this decision that paragraph 9A of Schedule 2 to the Requirements Regulations can be applied to M.... D...., to decide whether upon the facts found it is to be applied to her as a person coming within the definitions contained in regulation 10(4A). In the event of the tribunal deciding that M.... D....'s status was such that she did not come within the definitions contained in regulation 10(4A) the tribunal will require to consider the possible application to the circumstances of this case of the provisions of regulation 10(2) although

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in this event the material provisions of regulation 10(2) will not be those relied on by Mr. Roberts but will be those empowering modification as may be reasonable "when the circumstances are analogous to those for which Schedule 2 makes provision". As the possible application of the Urgent Cases Regulations has been eliminated by me in the present decision it will be unnecessary for the tribunal to reconsider that matter.

16. The appeal of the claimant is allowed.

(signed) J. G. Mitchell
Commissioner
Date: 31st May, 1983

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