

CSSB 145/1983
Living together as husband & wife — people do
live tog. for mutual support who share household
expenses not nec. living tog. as H & W.

DR/JH

Commissioner' File: CSSB/145/83
C.A.O. File: SBO 1083/83
L.O: Edinburgh (North) I.L.O.
L.O. Ref.No: 1411/155694

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION
OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: Edinburgh

Case No: 08/132

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 13 May 1983 is erroneous in point of law; that the tribunal's said decision is therefore set aside; that the claimant and Miss B should not be regarded as living together as husband and wife from 7 March 1983; and that the claimant was not precluded from receiving supplementary benefit from 7 March 1983.

2. The claimant at the time under consideration was 40 years of age. He suffers from cerebral palsy. He is a single man who returned to this country in 1982 after residing many years in Canada. He was in receipt of supplementary benefit from 5 April 1982 to 6 March 1983. From 5 April 1982 to 27 September 1982 the claimant was resident in a flat in Edinburgh which was part of a sheltered housing scheme belonging to the Margaret Blackwood Housing Association. There was a full-time warden and some commercial amenities at the said housing scheme. After taking up residence in the said flat he became friendly with a Miss B (hereinafter referred to as "B") who also resided in a flat in the said sheltered housing scheme. B is in full-time employment but suffers from the effects of polio. On 28 September 1982 the claimant and B both gave up their said flats and moved into one flat in the said sheltered housing scheme, and they thereafter lived together in the said flat.

3. At a visit by an official of the Department of Health and Social Security on 10 November 1982 it was considered that a living together situation existed, but it was decided that supplementary benefit should continue in payment to the claimant for a period until the stability of the relationship was established or alternatively until the claimant found other accommodation. The claimant and B continued to reside in the said flat, and it was considered that the stability of the relationship was no longer

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in doubt. The supplementary benefit officer then decided to cease payment of supplementary benefit to the claimant from 7 March 1983 on the basis that he and B were living together as if they were husband and wife. The relevant statutory provisions in this connection are section 1(1), section 34(1) and paragraph 3(1) of Schedule 1 of the Supplementary Benefits Act 1976. The claimant appealed against the supplementary benefit officer's decision to a supplementary benefit appeal tribunal, but his appeal was disallowed on 13 May 1983. Thereafter the claimant applied for leave to appeal to a Commissioner on a question of law from the tribunal's said decision, and I granted the application. I am now concerned with the appeal.

4. The adjudication officer now concerned with the case contends in his written submission that the tribunal failed to make adequate findings of fact; that they failed to comply with rule 7(2)(b) of the Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980 (now replaced by regulation 19(2) of the Social Security (Adjudication) Regulations 1984); and that the case should therefore be remitted for consideration by another differently constituted tribunal. I am not prepared to agree to that submission. I am of course not entitled to reach conclusions on questions of fact. The only right of appeal from a tribunal is on questions of law. In my view, however, the tribunal in question made adequate findings on questions of fact, and they have made clear why, having regard to these facts, they reached the decision which they did. In this connection the adjudication officer points out that there are some notes written by the chairman which seem to be a mixture of findings of fact and reasons for the decision. The adjudication officer submits that if that is what they were, then they should have been properly recorded as such in the record of the hearing on form LT 235. The adjudication officer then submits that not having been so recorded these notes should not be regarded as constituting proper and acceptable findings of fact and reasons for decision. These notes, however, are not merely narrating the evidence which was led to the tribunal. They are clearly findings of fact reached by the tribunal and an explanation regarding why the tribunal reached their decision having regard to these facts. I quite accept that it would have been desirable for these findings and reasons to be contained in the form LT 235, but in the circumstances I consider that it is competent for me to have regard to what is contained in these said notes.

5. The facts as found by the tribunal seem to me to be as follows:-

- (1) It was the said housing association who made the necessary arrangements for the claimant and B to give up their flats and to move into one flat.
- (2) The claimant and B became joint tenants of the said flat and they shared the expenses of running the said flat equally.

(3)/

- (3) When the claimant and B moved into the same flat there was only one bedroom, and due to the said association's shortage of funds the bedroom was not divided until after the visiting officer had seen the flat in November 1982. Thereafter the bedroom was divided into 2 separate bedrooms each with its own door and window.
- (4) B prepares the main meals because the claimant is unable physically to do so.
- (5) The idea behind the said arrangement was that the claimant and B would be able to share expenses equally and should be able to give each other mutual support.

(6) The tribunal held that it was not suggested that there was a sexual relationship.

6. In the course of the record of the proceedings before the tribunal it is stated as follows:-

"The tribunal accept that [the claimant] and [B] have their own bedrooms with own doors and windows, however it is agreed that they offer each other mutual support and share on an equal basis all normal household expenses. [B] prepares main meals as [the claimant] cannot physically do so. However the tribunal must ask itself what is the difference if any between [the claimant], [B] and a married couple who find themselves in this very difficult situation and in fairness and natural justice to a married couple we could find no difference. ..."

Also, in the course of the notes mentioned above it is stated as follows:-

"We the Tribunal accept that there is NO husband & wife relationship, but we must ask ourselves What if there was & they had separate bedrooms for medical reasons Would they have been entitled to receive Separate Benefit? NO. Then why should this arrangement expect to receive a more favourable consideration. to give such separate benefits would be UNFAIR to a Married Couple in the same circumstances."

Of course the Tribunal could see and appreciate the real Social Benefit in the arrangement described to us, it is possible the Housing Association did not appreciate the possible consequences of the arrangement when they approved it and helped to make it all possible."

7. The tribunal which consisted of the chairman and one other member clearly gave very careful consideration to the case in question, but in my view their reasons for reaching their said decision were erroneous in point of law. Married couples may

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well find themselves living in a similar manner to that of the claimant and B e.g. when the husband has the misfortune to find himself suffering from a serious disability. There is, however, no justification in my opinion for deciding that the claimant should be denied supplementary benefit on the ground that he and B are living in a somewhat similar manner to certain married couples. The question at issue in this appeal is whether on the facts as found by the tribunal it was warranted for the tribunal to hold that the claimant and B should be regarded as living together as husband and wife. It was clearly considered by the housing association in question that it would be to the mutual benefit of the claimant and B to move into the same flat where they could become joint tenants, share the household expenses and provide mutual support to each other. That is the sort of situation which can arise with regard to two persons of the same sex or a brother and sister or friends of different sexes. Such a relationship does not amount to a husband and wife relationship within the meaning of the relevant statutory provisions relating to supplementary benefit. In my opinion applying the well settled criteria for deciding whether a man and a woman are living together as if they were husband and wife the facts as found by the tribunal in the present case did not in my opinion warrant their conclusion that the claimant and B were living together as if they were husband and wife thereby denying the claimant entitlement to supplementary benefit. In all the circumstances I have reached the conclusion set forth in paragraph 1 above.

8. The claimant's appeal is allowed.

(signed) Douglas Reith
Commissioner
Date: 2 April 1985

COMMISSIONERS DECISION
PERMANENT RECORD
COPIES NOT TO BE REMOVED

Appellant's Name: Ronald Sutherland

Commissioner's File: CSSB/145/83

I have decided to star this decision mainly because I thought it might be a decision which the other Commissioners might be interested to read. It does, however, emphasise that the Department of Health and Social Security should not deny entitlement to benefit just because a man and a woman are living together in the same accommodation and sharing expenses etc. - there must exist a real "husband and wife" relationship.

D. R.

Cohabitation - there must exist a
real "husband^{and} wife" relationship - couple
DR/JH shared flat for reasons of mutual support
- not cohabiting

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8. The claimant's appeal is allowed.

(signed) Douglas Reith
Commissioner
Date: 2 April 1985