

JJS/3/LS

Commissioner's File: CSB/0463/1986

C A O File: AO 2380/SB/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

IDENTIFIABLE DECISION

NOT TO BE SENT OUT OF

THE DEPARTMENT.

1. My decision is that the decision of the social security appeal tribunal in each of the cases below was erroneous in point of law and accordingly I set each decision aside. I direct that in each case the matter be reheard by a differently constituted tribunal in accordance with my directions.

2. The facts in these two appeals are closely aligned and the central issue for determination in each is identical. I shall refer to the claimant in CSB/0463/1986 as the first claimant and the claimant in CSB/0462/1986 as the second claimant.

3. On 21 October 1985 the Chesterfield social security appeal tribunal dismissed the appeals of both claimants and confirmed decisions of adjudication officers that they should receive supplementary allowance at the rate applicable to the normal requirements of a joint householder. Leave to appeal to the Commissioner in each case was given by the chairman of the tribunal.

4. I have before me a written submission prepared by Banner Jones & Hawkins of Chesterfield, the solicitors for both claimants, on analysis, it would appear that the points taken therein are argument in support of the claimants challenge to the finding by the tribunal that neither was a householder for the purposes of the table of the normal requirements of relevant persons and householders contained in paragraph 2(3) of Schedule 1 to the Supplementary Benefit Act 1976. The central issue for determination is the appeals is into which category each of the claimants fall for the purpose of establishing his normal requirements.

5. The first claimant is a single man who has been in receipt of supplementary benefit since 2 September 1984. From 15 October of that year he rented a room, of which he had the sole right of occupation at that time, and he shared the other facilities in the house, in which the room was, with two other tenants. On 3 December 1984 the second claimant moved into the house and from then on he and the first claimant shared the room and, also, shared the other facilities in the house with the two other tenants. After the second claimant came to the house the first claimant's rent remained the same and the second claimant was separately assessed for rent by the landlord and paid at the rate of £17 a week. Apart from the occupation of the room the claimants shared no living arrangements; they had separate and independent arrangements for buying and storing food, indeed they followed separate diets because one is a vegetarian and the other eats normally. They paid separately for the gas and electricity, the cost of which was assessed by the landlord. The first claimant had received supplementary allowance at the rate

applicable to a householder from 15 October to 2 December 1984. The adjudication officer decided that the first claimant was no longer a householder because he considered he was sharing responsibility for household expenditure with another member of the same household, namely the second claimant, and he allowed the first claimant the normal requirements of a joint householder. Likewise the second claimant was allowed the normal requirements of a joint householder.

6. Both claimants appealed to the tribunal and each was represented by Mr Jones of Banner, Jones and Hawkins at the hearing of their appeals. The appeal of the first claimant was taken first. It was submitted on his behalf that there was no item of expenditure for which responsibility was shared, although the fuel bills were shared the responsibility for them was not shared, there was no one with major control over the expenditure and no one was delegated authority. It was submitted that the sharing of expenditure is not the same as the sharing of responsibility for the purpose of the regulations, and there was nothing to suggest that a person without exclusive possession cannot be a householder for the purpose of the regulations. It was contended that the only advantage to the first claimant of the second claimant's arrival was the sharing of the fuel cost but it was submitted that the sharing of cost in this respect did not diminish the responsibility of the first claimant. The tribunal decided that the first claimant was entitled to supplementary allowance at the rate of £25.25 for his pay-day in the week commencing 3 December 1984, thereby confirming the adjudication officer's decision, and in doing so said as follows:

"The claimant's accommodation of which he seeks to be accorded the status of a householder must be a 'home' or a 'household' within the ordinary meaning of these words. What [the first claimant] occupies cannot be as he occupies it on terms that he shares it physically with someone else who cannot be treated as a member of [the first claimant's] household, viz, [the second claimant] who pays for such shared accommodation directly to the landlord and has equal rights to such sharing. The claimant is not the sole occupant of any part of the building."

7. At the hearing of the second claimant's appeal Mr Jones adopted his earlier argument and put forward one additional submission, namely that the concept of a "home" or a "household" should be considered in wider terms than that of merely whether or not there was some accommodation element that was exclusive to a claimant. He submitted that the words should be construed to embrace social and behavioural attitudes and requirements. He pointed out that the claimants did not share the same way of life and to the fact that one was a vegetarian while the other was not. The tribunal in giving its decision adopted the reasons which it had given in the appeal of the first claimant and in addition stated that in respect of the wider construction that Mr Jones sought to place on "home" or "household" the tribunal were mindful that in most households different social interests and habits are pursued and observed by the members of it.

8. In the written submission before me it is argued, on behalf of the claimants, that the adjudication officer found that both claimants were responsible for housing expenditure (namely the fuel bills) and that in part the expenditure was not shared, it is further contended that on the evidence the responsibility for the fuel bills was not shared and that the claimants were each separately responsible for a quarter of the fuel bills. It is submitted that the sharing of the fuel bills does not imply a joint household. It is contended that the tribunal found in effect that the definition of "household" is the same as the definition of "home" and that the physical sharing of accommodation necessarily implies that the parties were of the same household, and it is said that this is a departure from the meaning of the regulation.

9. A "householder" is a person who satisfies the conditions which are prescribed in regulation 5(6) of the Supplementary Benefit (Requirements) Regulations which are as follows:

- "5.-(6) For the purposes of the table a householder is a single claimant who -
- (a) is responsible for housing expenditure of, 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 if absent is absent only -
 - (i) otherwise than as a student on normal vacation; and
 - (ii) for a period which has not yet continued for more than 13 weeks."

Regulation 5(7) provides that a person is to be treated as responsible for housing expenditure if under regulation 14(3)(a) he is treated as responsible for housing expenditure (including housing benefit expenditure) and so far as it is relevant regulation 14(3) is as follows:

"14.-(3) Except in relation to the item specified in paragraph (1)(e) (non-householder's contribution) an amount shall be applicable under this Part of the regulation only where a member of the assessment unit is responsible for the expenditure to which the amount relates and -

- (a) a person shall be treated as responsible for expenditure -
 - (i) for which he is liable, other than to a person who is a member of the same household;
 -
 - (iv) which he in practice shares with one or more other members of the household, not being close relatives of his, at least one of whom either is responsible under one of the preceding heads of this sub-paragraph or has an equivalent responsibility for housing benefit expenditure and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as sharing responsibility;
 -
- (b) where responsibility for expenditure is shared, the amount so applicable shall be calculated by reference to the appropriate proportion of that expenditure."

10. It seems to me that the tribunal went wrong when they considered the question of what a "home" or "household". The argument of the two claimants was that there were two separate and distinct households, both accommodated in the room which they shared, the first claimant's household and the second claimant's household. The tribunal, when dealing with the case of the first claimant, found that he could not be accorded the status of a "householder" because the accommodation was not a home or household within the ordinary meaning of the words, as the first claimant shared it physically with the second claimant who could not be treated as a member of the first claimant's household because he paid for it direct to the landlord and had equal rights in the sharing of the room. The first claimant was not the sole occupant of any part of the building. The fact that the room was shared physically by the two claimants would not, because of that fact simpliciter,

mean that neither was a household. There does not have to be a master of household and other inmates, the household can consist of a single person who is the householder. It is possible for a person to maintain his own household while having sole right of occupation to part of a room only. It is a question of fact in each case which turns on the evidence concerning the domestic establishment maintained; the test is sociality, not structure. In the present case the tribunal found that each claimant paid directly to the landlord in respect of his occupation of the room. The evidence was that each was separately liable. I have borne in mind the definition of rent in regulation 2 of the Housing Benefits Regulations 1985 which includes "payments in respect of a licence or permission to occupy a dwelling". I have also reminded myself of the definition of rent contained in regulation 2 of the Supplementary Benefit (Requirements) Regulations which is as follows:

"'Rent' includes corresponding payments in respect of a licence or permission to occupy the home and 'let' and 'letting' and 'tenancy' shall be correspondingly construed;"

the payments made by each of the claimants were rent within those meanings, and each was severably responsible for his own housing expenditure or, in any event, it would be open to a tribunal to find that they were so responsible under the provisions of regulation 5(6). Regulation 14(3)(a)(i) rules out a person who shares responsibility with another member of the same household; but in the instant case the payments were made to the landlord of the premises, who is not a member of the same household, and it cannot be said that either claimant is a member of the other's household nor could either claimant be said to be a joint householder, as envisaged by regulation 6(2), because again responsibility is not shared with another member of the same household, as each of the claimants is a householder in his own right with his own household. Such was the position if the evidence of the claimants is accepted.

11. The tribunal decided the matter on the basis that each claimant paid for his housing expenditure and consequently neither could be said to be a member of the other's household, therefore the accommodation for which each sought to be accorded the status of a householder was not a "home" or a "householder" within the ordinary meaning of these words. It seems to me that the tribunal were in error by equating the words with a structure, a building or part of a building. This aspect was dealt with by the Commissioner in R(SB) 4/83 at paragraph 19 when he said:

19. I have already observed that the legislature has furnished no definition of either "household" or "member of the same household". Neither of these terms has any technical meaning in general usage nor is either a term of art in the general law of the land. The terms fall, accordingly, to be given their normal, everyday meaning; and their application by the determining authorities is primarily a matter of fact. (See, for example, *Cozens v Brutus* [1973] A.C. 854, per Lord Reid at p 861.) In these circumstances it is undesirable that I should here attempt my own definitions - and I do not do so. It is a matter of common-sense and common experience. I say this, however: a person who has, and lives in, his own separate home cannot reasonably be regarded as being a member of someone else's household. In the case under appeal, Mrs P. clearly had a home of her own. She had the exclusive occupation of two rooms, which she herself had furnished. She bore her own costs in respect of lighting and heating. She brought and cooked her own food and provided for herself such other household goods as she required. All this is quite incompatible with her having been, at the same time, a member of the claimant's household. Had Mrs P.'s resources been such as to entitle her to a supplementary pension, she would have been entitled to have had her normal and additional requirements assessed upon the basis that she was a "householder" within the meaning of regulation 5(2) of the Requirements Regulations.

What was said by the Commissioner is correct, in the case before him the claimant had exclusive occupation of two rooms, but it does not seem to me that the accommodation which a claimant occupies must be a whole room, there is no reason why a person cannot maintain his home or his household within part of a room. The fundamental point is the circumstances of the claimant, whether he has a domestic establishment of his own. There is a definition of "the home" for the purpose of the Supplementary Benefit (Requirements) Regulations, contained in regulation 2(1), which refers to accommodation normally occupied by the assessment unit and any other members of the same household as their home. There is no reason why a person should not occupy accommodation on the basis that he shares it physically with someone else who is not a member of his household. In my judgment the dwelling place of a claimant must be his fixed place of residence, but it does not have to be of any specific size or structure provided it is a place where he dwells as his fixed abode. The issue therefore was whether the two claimants maintained different households in the one room. I am reinforced in this view by the definition of "dwelling" contained in section 28(4) of the Social Security and Housing Benefits Act 1982 which is as follows:

"dwelling' means any residential accommodation, whether or not consisting of the whole or part of a building and whether or not comprising separate and self-contained premises"

12. The tribunal to whom these cases are remitted will have to consider whether each of the claimants falls within regulation 5(6), and in doing so it will be necessary to consider whether each is responsible for housing expenditure in respect of a home or a household; and whether the accommodation which they occupy constitutes two different households. It will also be necessary to consider whether responsibility is shared by one with another, such circumstance being relevant to regulation 6(2).

(Signed) J J Skinner
Commissioner

Date: 26 November 1986