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Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. My decision is that the claimant was not entitled to have his normal requirements for the purposes of supplementary benefit assessed on the basis that he was a joint-householder during the period 1 March 1984 to 1 April 1984 (both dates included). I dismiss the claimant's appeal accordingly.
2. I held an oral hearing of this appeal at which the claimant was represented by Mrs. T. Morris a Solicitor and the adjudication officer was represented by Mrs. G. Huka of the Solicitor's Office, DHSS, and I am grateful to them both for their submissions.
3. The claimant is a university graduate who suffered the misfortune of schizophrenia and was admitted to hospital for treatment. He had ceased to live at his parent's home and had no home of his own. While he was in hospital he received the hospital pocket-money rate of supplementary benefit. It is part of the medical treatment for schizophrenia that those who suffer from it should be encouraged to establish their own homes as independent adults, and this was the course followed in the case of the claimant. He progressed while at the hospital to the rehabilitation unit, and then on 1 March 1984 obtained jointly with another young man the tenancy of an unfurnished flat. He made an application for a single payment for furnishings for that flat on 6 March 1984 but of course the actual money took some time to come through to him. On 29 March 1984 he contacted the DHSS local Office to report that he was changing his address and an appointment was made to see him on 2 April 1984. At the interview he stated that he was moving to the new flat on that day. This he did. Supplementary benefit on the joint householder basis was paid to him commencing 2 April 1984 and (as revised) a certificate for housing benefit purposes from the same date was issued. Were the claimant to succeed in antedating the joint householder basis he would similarly succeed in antedating the certificate for housing benefit purposes and obtain assistance with the rent. The social security appeal tribunal on 2 January 1985 dismissed the claimant's appeal. Whether the tribunal made any error of law in not finding any such

antedating is the issue before me.

4. The material provisions which it is necessary to set out are the following ones in the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399]. Regulation 5(6) of those Regulations as originally in force applies in the circumstances of this case (the amendments are in fact immaterial) and ran as follows:-

"5.-(6) For the purposes of the table a householder is a single claimant who -

- (a) is responsible for housing expenditure or, 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 6 of the same Regulations is as follows:-

"6.-(1) Subject to paragraphs (2) and (3), the weekly amount of the normal requirements of a single claimant who is not a householder and of a dependant (not being a partner) shall be determined in accordance with Schedule 1, paragraph 1 or 2 of that Schedule applying in the case of a single claimant and paragraph 3 in that of a dependant.

(2) Subject to paragraph (3), where a person to whom paragraph (1) applies is a claimant who satisfies the condition of paragraph (6) of Regulation 5 except that, contrary to sub-paragraph (b) of that paragraph, he shares responsibility for, or control of, the expenditure there referred to with another member of the same household, the weekly amount of his normal requirements applicable under paragraph 1 or 2 of Schedule 1 shall be increased by the difference between that amount and the corresponding rate (long-term or ordinary as the case may be) for householders divided by the number of persons in the household satisfying the condition of regulation 5(6)(c) who share responsibility or control.

(3) Paragraph (2) shall not apply to any person to whom regulation 9 (normal requirements of boarders) or regulation 10 and Schedule 3 (normal requirements in special cases) applies".

The expression "the home" appearing in regulation 5(b)(c) is defined in regulation 2(1) of the same Regulations (materially before a later amendment) as follows:-

"the home" means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft;".

5. It will be appreciated that regulation 6(2) cannot apply to a person where any of the provisions mentioned in regulation 6(3) applies to that person and I shall come to this point

later. The point however argued at the oral hearing before me was whether regulation 6(2) applied without reference to regulation 6(3). As will be perceived, regulation 5(6) sets out a number of criteria to be satisfied if a person is to be a householder. (These are the "prescribed conditions" in the definition of "householder" in the primary legislation, that is paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976). The claimant in the present case did not at any material time satisfy regulation 5(6)(b). However, regulation 6(2) introduces a separate rate of normal requirements in the case of (in short) a joint householder who does not fall within regulation 5(6) only because he has not satisfied regulation 5(6)(b). Regulation 6(2) cannot apply where a person is outside regulation 5(6) for some other reason than through not satisfying regulation 5(6)(b), and that is the material point for the purposes of the present case.

6. It is settled that although regulation 5(6)(a) does not in turn refer to "the home" (although regulation 5(6)(c) does) nevertheless "the concept of "home"" has to be read into regulation 5(6)(a), and that even before the amendment of regulation 5(6) which I have not set out which made the point clear - see the Decision of a Tribunal of Commissioners CSB/909/1985 at paragraph 3. In short, the housing expenditure referred to in regulation 5(6)(a) must be housing expenditure on or in respect of the home, and so also must household expenditure referred to in regulation 5(6)(a). This construction necessarily therefore requires it to be ascertained when the flat in question became occupied by the claimant as his home - see the above Decision at paragraph 5. It is common ground that the claimant did occupy the flat as his home from 2 April 1984 onwards; was there any error of law in the tribunal determining he did not so occupy before that date?

7. Mrs. Morris argued that the claimant did not as his home occupy his parents home nor the rehabilitation unit at the hospital and that if the new flat was not his home then this would involve treating the claimant as homeless. This she submitted was untenable. I accept as a relevant consideration that at the material time (and this was not controverted) the claimant had no other home. He was anxious to move into the new flat but could not do so until it had in it the bare essentials for living there, bed, bedding, cooker and so forth; the inference I think is clear that he intended the flat to be his home from the moment he and his friend acquired the tenancy and such an intention was certainly considered relevant by Russell LJ in Herbert v. Byrne [1964] 1 WLR 519 at 527-8. While the claimant slept at the hospital he moved into the flat a bed (but without bedding) very shortly after acquiring the tenancy and then towards the end of March 1984 when the single payment came through he bought other essential household items (notably a cooker and bedding) over a period of some days and which went into the flat also over a period of some days. I accept what he told me that he went frequently to the flat during the period. In the Decision of the Tribunal of Commissioners to which I have referred it is said at paragraph 7(1) -

"And we do not consider that it is in relevant context possible for premises to be "normally occupied as [a claimant's] home" ... if they are premises in which the claimant has never actually resided".

The sense of "home" is that of personal occupation - Langford Property Co Ltd. v. Tuerman [1949] 1 K.B. 29 at 34 per Tucker LJ. In Herbert v. Byrne above, Russell LJ at p.527 linked the intention of making a place "the only home in the near future" with the tenant moving in to that place. I am with respect to the Tribunal of Commissioners who apparently treated "reside" as a synonym with "occupy as a home" unwilling to rely on that synonym, for three reasons. Firstly because that is not the word which the definition uses; secondly because the criterion of "reside" may not in all circumstances lead to the right answer in accordance with what is, after all, the only definition which has to be applied, and thirdly because I do not myself find the different word any easier to apply than the words in the definition. This said however, I am not satisfied that the tribunal erred in law in holding that the claimant did not occupy the new flat as his home before 2 April 1984. I do not think that the point turns solely upon when the claimant first slept in the new flat as if that alone was

conclusive regardless of the other facts. However, I do not think that on the facts of this case the claimant did occupy the new flat as his home until he moved in.

8. I have had in mind also regulation 14(4) (absence from home) and regulation 14(5) (change of home and overlap) in the Requirements Regulations, but they do not in my judgment assist on the point as to when the claimant first occupied the new flat as his home.

9. There is however another point in the case, and that turns on regulation 6(3). This point occurred to me after the oral hearing and I have had the advantage of the parties' written submissions upon it. Regulation 6(3) refers to regulation 10 and Schedule 3, which modify normal requirements of claimants in special cases. One of those cases is where a person is a "patient" - paragraph 2 of Schedule 3 (materially paragraph 2(c)). Both parties have accepted and it appears to me to be clear that the claimant was indeed a patient at the hospital down to 1 April 1984. I accordingly hold that regulation 6(2) could have no operation in relation to him before 2 April 1984. For this reason also therefore the appeal fails.

10. My decision is as in paragraph 1.

(Signed) Leonard Bromley
Chief Commissioner

Date: 5.6.86