

CSB 612/1981

RFMH/ME

*Housholder*

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF  
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: **Lilian Allen (Mrs)**

Supplementary Benefit Appeal Tribunal: Shoreditch

Case No: 03/368

ORAL HEARING

1. In this case the claimant made application for leave to appeal to the Commissioner against a decision of the appeal tribunal dated 24 June 1981, which decision confirmed (save for a minor variation) a benefit officer's review and revision of a decision issued by him on 19 May 1981. I held an oral hearing of the application. The claimant did not herself appear but was represented by Mr J Douglas, Solicitor, of the Child Poverty Action Group. The benefit officer was represented by Miss L Shuker, of the Solicitor's Office of the Department of Health and Social Security. I am indebted to both Mr Douglas and Miss Shuker for the clarity and economy with which they presented their respective cases.
2. At the outset of the hearing I invited Mr Douglas and Miss Shuker to consent, upon behalf of the claimant and the benefit officer respectively, to my determining the questions of law arising on the application as though they arose on the appeal and as though the application were an appeal (cf rule 10(7) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980). Each gave such consent. I proceed, accordingly, to set out my decision in respect of the appeal.
3. The claimant is a widow, now aged about 80. At the material time she was in receipt of a supplementary pension. She lived in the house of her daughter. The only other occupant of the house was a grand-daughter. It appears that both the daughter and the grand-daughter were "attending college" - but I know no details about this. The terms upon and the circumstances in which the claimant shared the house with her daughter are crucial to this appeal. I set them out as they appeared to the appeal tribunal at the time when it made its decision.
4. The following passages are from the written submission prepared by the benefit officer for the purposes of the appeal tribunal hearing:  
  
"The appellant claims to pay her daughter £10 per week as rent of her room and this may shortly increase to £15. She does have a rent book. The Supplementary Benefit Officer decided that the

appellant's supplementary pension should be calculated on the basis that she is a person other than a householder because the responsibility for housing costs for the whole house is the daughter's. The appellant pays her an amount each week in respect of the room she occupies, which is used only as a bedroom. The appellant shares the facilities and living room with her daughter and grand-daughter. Her laundry and cleaning is done by her daughter. The appellant has no separate gas or electricity meters for her room but pays a small contribution towards each bill as it arrives. The appellant keeps some of her food in a cupboard in her room; the rest is kept in the family refrigerator in the shared kitchen. Meals are often taken alone but not invariably."

5. The chairman's note of evidence reads as follows:

"The claimant's representative described the circumstances in which she lived. She occupies a single room and has use of kitchen and bathroom. She pays £10 a week for rent with additional contributions for electricity and paraffin. She has not paid rent for the last five weeks. A note was presented stating that £1.10 was now being paid at the launderette."

6. On the relevant form LT235 the findings on material questions of fact were laconically recorded:

"Appellant has to pay £1.10 weekly for laundry. Details of the Appellant's outgoings were given to the tribunal."

I am prepared to accept, however, that this is a case in which it can be implied that the tribunal regarded as true the matters recorded in the chairman's note of evidence.

7. The unanimous decision of the appeal tribunal was recorded thus:

"To revise the Supplementary Benefit Officer's Decision by awarding a further 65p for laundry under the Supplementary Benefit (Requirements) Regulations 1980 Schedule 3 Paragraph 17."

The tribunal's reasons were set out thus:

"The Tribunal have considered very carefully the submissions made on the claimant's behalf. It is recognised by both parties that the £10 rent previously granted was made under the Supplementary Benefits Act 1976 and since 24th November 1980 the requirements of the Social Security Act 1980 have to be satisfied. The Tribunal have concluded the claimant occupying a single room in her daughter's household cannot be classified under regulation 5(2) as responsible of household expenditure nor to have major control over it. Consideration of the claimant's needs have been given under regulation 23 as to whether the amount of the non-householder's contribution could be increased, but this required the resources of the household as a whole to be considered. In this respect no evidence was offered to suggest that hardship

might occur. The only other item to which the Tribunal could consider was the question of laundry addition. Evidence was presented that the claimant was having to spend a total of £1.10 weekly at the launderette and the Tribunal have revised the decision to take account of this."

8. It is obvious that the appeal tribunal sought conscientiously to grapple with the complex provisions of what was at the time relatively novel legislation. It seems clear, moreover, that it did not receive from the benefit officer the degree of assistance which could now be expected. Miss Shuker very frankly conceded that in the early months of the "new" supplementary benefit system the Department's officers put a very wide construction upon the phrase "member of the same household"; and it is within my own knowledge that many appeal tribunals tended to follow suit. Since then, however, a number of Commissioners' decisions have drawn attention to the need to construe "member of the same household" in the light of certain other important provisions in the Supplementary Benefit (Requirements) Regulations 1980.

9. The starting point is regulation 5(2), which provides as follows:

"(2) For the purposes of the table ie the table of the normal requirements of relevant persons and householders in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976, as amended a householder is a person, other than a partner, who -

- (a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of those regulations other than regulation 23 (non-householder's contribution) relates 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 whose absence is for a period which has not yet continued for more than 13 weeks."

10. Regulation 23 of the said Regulations (non-householder's contribution) "... applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of subparagraph (a) of paragraph (2) of regulation 5 (meaning of householder)." - regulation 23(2) of the Requirements Regulations.

11. One of the items specified in Part IV of the Requirements Regulations is, of course, rent, and rent is very widely defined:

" '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" - regulation 2(1).

So far as material to this appeal "the home" means -

"the accommodation .... normally occupied by the assessment unit and any other members of the same household as their home ...." regulation 2(1).

12. It will by now be apparent that in cases of this type the first task for the determining authorities is to isolate and identify the several "households" which are contained in the relevant premises. I appreciate that a degree of circularity is involved in such examination. If the claimant has a household of his (or her) own, he cannot reasonably be regarded as being a member of some other household. On the other hand, if he is a member of some other household, he cannot reasonably be regarded as having a household of his own. The circle must, however, be broken into somewhere - and this can best be done by taking a common-sense view of the overall situation. I repeat here what I said in paragraph 10 of decision on Commissioner's File C.S.B. 382/1981:

"As the benefit officer now concerned has observed, the term 'household' is nowhere defined in the Requirements Regulation. (For that matter, it is not, I think, defined anywhere else in the supplementary benefit legislation.) In my view it is not a term of art. It falls to be given its everyday, ordinary meaning. **By** and large, members of the same household do not occupy the relevant home upon terms which are intended to be enforceable at law. If a father tells his adult daughter that she can stay at home for so long as she gives her mother £4.00 a week towards her keep, that does not normally give the daughter a contractual licence to occupy the home; and if she fails to pay that sum, the father cannot normally get judgment against his daughter in the local County Court. His remedy is to tell her to find somewhere else to live. Boarders might be thought to be on the borderline; but they (so long as they are not 'close relatives') are put into a category of their own - regulation 9(9)(b) of the Requirements Regulations."

13. I have quoted (somewhat extensively) from decision on Commissioner's File C.S.B. 382/1981 because a copy of that decision may not be readily available to the claimant or to the appeal tribunal to which I am referring this case for rehearing. I need not quote from Decision R(SB) 13/82 or from decision on Commissioner's File C.S.B. 238/1981 (to be reported as Decision R(SB) 4/83), since no problems of availability there arise. Further guidance as to the meanings of "household" and "member of the same household" will, however, be found in paragraphs 10 and 11 of the former decision and in paragraphs 14 to 19 of the latter decision.

14. I return to the case in hand. I am irresistibly driven to the conclusion that the appeal tribunal never brought its mind to bear upon the fundamental question of how many households subsisted in the premises owned by the claimant's daughter. Miss Shuker, quite properly, invited me to have regard to the words "occupying a single room in her daughter's household" where they appear in the record of the tribunal's reasons. I cannot treat those words, however, as indicating anything more than the unquestioning acceptance of the assumption which underlies the written

submission of the local benefit officer, namely that there was only one household to be considered. Both the local benefit officer and the appeal tribunal concentrated upon the question whether the claimant was the person responsible for or having major control over the expenditure of the daughter's household - to which question, of course, there could be only one realistic answer. As I have explained in paragraphs 9 to 12 above, however, there was a vital question to be answered before this secondary question even arose.

15. Even if I am wrong in the conclusion which I have expressed in the second sentence of paragraph 14 above, the appeal tribunal's decision is vulnerable upon the score that it does not adequately set out the process of reasoning by which it was found that the claimant and her daughter were members of the same household. The words "occupying a single room in her daughter's household" cannot possibly be regarded as explaining that finding; they beg the question. Nothing else upon the relevant form LT 235 bears upon that question at all.

16. It follows that the decision of the appeal tribunal is erroneous in law and must be set aside. What to do next? Is it expedient that I myself should now give the decision which the appeal tribunal should have given? My initial reaction was that it was so expedient; and that I should rule that the claimant's requirements should be calculated upon the basis that she was, for the purposes of normal and additional requirements, a householder and, for the purposes of housing requirements, a person who derived her entitlement from regulation 14(2)(a) of the Requirements Regulations (cf paragraph 17 of the aforesaid decision to be reported as R(SB) 4/83).

17. Upon reflection, however, I have decided that this is not a case in which I can safely or properly decide the substantive issue upon the basis of the evidence which appears from the record of the proceedings before the appeal tribunal. As Miss Shuker justifiably observed, it is something of a borderline case. It involves a mother/daughter relationship. The circumstances are such that it would be in no way exceptional if the claimant and her daughter did live in the same household. It is, however, equally possible that the claimant and her daughter made arrangements which afforded the claimant the dignity and privacy attendant upon having a "home" of her own. There are matters into which further enquiry must be made before a confident decision can be made as to the side of the borderline upon which the case falls. For example, it is by no means clear (from the papers) who cooks the claimant's meals; nor why "meals are often taken alone but not invariably". Is the arrangement really a bona fide, "arms length" transaction; or is it merely a facade behind which the resources of what is, in truth, a single household may be enhanced at the expense of the supplementary benefit fund? Such questions can only be answered by a tribunal which -

- (a) has the crucial issue clearly in mind; and
- (b) has the advantage of seeing and hearing the claimant and any other material witnesses.

18. In these circumstances the less I say about the merits of the case the better. I must, however, advert to one other aspect of the evidence - the fact that, by the date of the appeal tribunal hearing, the claimant's rent had fallen 5 weeks into arrears. This must, of course, be probed and considered. I trust, however, that it will not be regarded as of itself indicating that this was not a bona fide arrangement between the claimant and her daughter. It may well be that, in consequence of the benefit officer's decision, the claimant simply did not have the resources to pay the rent; and that the claimant's daughter scrupled to avail herself of rights which might have been enforceable in the County Court.

19. My decision is as follows:-

- (1) I grant the claimant's application for leave to appeal to the Commissioner and I treat the hearing of that application as the hearing of the appeal.
- (2) The claimant's appeal to the Commissioner is allowed.
- (3) **The** appeal tribunal's decision dated 24 June 1981 is erroneous in law and is set aside.
- (4) The case is referred to another appeal tribunal for determination in accordance with the principles set out in this decision.

20. For the avoidance of doubt I make it clear that it will be for the fresh appeal tribunal to examine and pronounce upon, not only the position as it obtained in May 1981, but also the position as it may have changed and developed between that time and the date of the fresh hearing (applying, of course, the facts and the law as they were from week to week). **This is because** the issue before the appeal tribunal is of a continuing nature: to what supplementary pension was the claimant entitled from week to week? Just as the first appeal tribunal was obliged to have regard to events which had transpired between the date of the benefit officer's decision and the date of the first appeal tribunal hearing so will the fresh tribunal be obliged to carry the matter down to the date of its own hearing. No other approach can be reconciled with the restrictions which are placed upon a benefit officer's power to review a decision of an appeal tribunal (see regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980). The situation is quite different from that which

obtains in respect of claims for "once and for all" payments (e.g. under the Single Payments Regulations or the Urgent Cases Regulations) where, in my view, the claimant's entitlement falls, even upon appeal, to be examined and assessed in the light of the facts and the law as they were at the date of the claim.

(Signed) **J Mitchell**  
Commissioner

Date: 29 November 1982

Commissioner's File: C.S.B. 612/1981  
C SBO File: 747/81