

JNBP/GJH

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision CSB 10/82

1. My decision is:-

- (i) the decision of the Shoreditch supplementary benefit tribunal dated 17 April 1981 was erroneous in point of law; and
- (ii) the decision of the supplementary benefit officer issued on 9 July 1981 and the accompanying particulars of assessment are confirmed.

2. This is an appeal, brought by the supplementary benefit officer ("the SBO") with my leave from the decision of Shoreditch supplementary benefit appeal tribunal dated 17 August 1981. At the oral hearing before me the SBO was represented by Mr P Milledge of the Solicitors' Office, Department of Health and Social Security. The claimant did not attend the hearing, having previously stated that he did not intend to do so. I am grateful to Mr Milledge for his thorough and lucid presentation of the case.

3. The matters in issue in this case relate to the determination of the claimant's requirements as a step in the process of deciding whether he is entitled to supplementary benefit and, if so, the amount to which he is entitled. Such a determination has to be made in accordance with the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) and the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299] (as amended by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980 [S.I. 1980 No 1774] and the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1981 [S.I. 1981 No 1016]). For the present purpose it is unnecessary to refer to the terms of the Act but certain of the regulations require consideration in detail.

4. Part I of the regulations (regulations 1 to 3 contain general provisions; Part II (regulations 4 to 10 deal with "normal requirements"; Part III (regulations 11 to 13) deal with "additional requirements" and Part IV (regulations 14 to 23) deal with "housing requirements."

5. Regulation 4(1) explains that the category of normal requirements relates, broadly speaking, to items of expenditure on day to day living other than housing requirements. Regulation 5 (in conjunction with regulation 4(2) and the table in paragraph 2(3) of Schedule 1 to the Act) provides for the determination of the normal requirements of "relevant persons" and "householders". The expression "relevant person" is defined in regulation 2 but as there is no question of the claimant being a relevant person I need not refer to the definition. Whether or not the claimant is a "householder" has to be determined by reference to regulation 5(2) which is in the following terms:-

"5. - (1)

.....

- (2) For the purposes of the table 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 from the home is for a period which has not yet continued for more than 13 weeks."

6. The reference in regulation 5(2)(a) to Part IV of the regulations is to regulation 14(3). However, as other provisions of regulation 14 are relevant to the determination of housing requirements I think that it will be convenient to set out all the relevant parts of the regulation together. They are as follows:-

"Housing requirements

14. - (1) The items to which housing requirements relate are -

- (a) rent;
- (b) mortgage payments;
- (c) repairs and insurance;
- (d) interest on loans for repairs and improvements;
- (e) miscellaneous outgoings;
- (f) items applicable in special cases;
- (g) non-householder's contribution.

- (2) The housing requirements of a claimant, including the requirements of any partner or dependant of his, shall be -
- (a) except in a case to which paragraph 1(g) applies, the aggregate of any amounts which, in accordance with paragraphs (3) and (4), are applicable in

his case under regulations 15 to 20 subject to any restriction or reduction applicable under regulations 21 to 22;

- (b) in a case to which paragraph 1(g) applies, the amount applicable under regulation 23;

and where any one or more, but not all, members of an assessment unit are affected by a trade dispute those requirements shall be treated as those of the other members of the unit.

- (3) Except in relation to the item specified in paragraph 1(g) (non-householder's contribution) an amount shall be applicable under this Part of the regulations 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, in particular as owner-occupier or party to the lease or tenancy agreement of the home, other than to a person who is a member of the same household;
- (ii) which, because the person liable is not meeting it, he has to meet if he is to continue to live in the home and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as responsible.
- (iii) in relation to an amount applicable under paragraph (1) of regulation 17 by virtue of sub-paragraph (a) or (b) of that paragraph, where he is the person there specified (owner-occupying and rental purchasers);
- (iv) in relation to an amount applicable under regulation 20(2) (analogous expenditure), where it is reasonable in the circumstances;
- (v) 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 is responsible under one of the preceding heads of this sub-paragraph, and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as sharing responsibility.

so however that a claimant shall be treated as responsible for any expenditure for which

a dependant of his would otherwise be treated as responsible and that where different members of the household are responsible for expenditure on different items but one member only is responsible for any expenditure to which regulation 15 or 16 (rent and mortgage payments) relates or in respect of which any amount is applicable under regulation 17(1)(a) (maintenance and insurance for owner-occupiers), that member shall, so long as he satisfies the condition of regulation 5(2)(c) (meaning of householder), be treated also as the person responsible for expenditure on the other items;

(b) where responsibility for expenditure is shared the amount so applicable shall be calculated by reference to the appropriate proportion of that expenditure but not so as to reduce the aggregate amount applicable to the claimant under this Part of these regulations below the amount specified in regulation 23(1)(a) (non-householder's contribution).

(4) }
(5) } [these are irrelevant in the present case]
(6) } "

7. Regulation 6 deals with the normal requirements of persons other than relevant persons and householder (i.e. other than those dealt with by regulation 5). So far as relevant regulation 6 provides as follows:-

- "6. - (1) Subject to paragraphs (2) and (3), the weekly amount of the normal requirements of a person who is neither a relevant person (nor the partner of a relevant person) nor a person who satisfies the conditions of regulation 5(2) (meaning of householder) shall be determined in accordance with Schedule I.
- (2) Subject to paragraph (3) where a person to whom paragraph (1) applies is a claimant who satisfies the conditions of paragraph (2) 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 I 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(2)(c) who share responsibility or control.
- (3) [irrelevant in the present case]"

8. It is unnecessary for me to refer to the regulations in Part IV (additional requirements) because the assessment of requirements by the SBO included an additional amount in respect of heating and no issue arises in respect of it.

9. As regards housing requirements, I have set out the relevant provisions of regulation 14 above and the only other relevant regulation is regulation 23 which provides as follows:-

"23. - (1) There shall be applicable to a person to whom this regulation applies, in respect of his contribution to the housing expenses of the household of which he is a member -

(a) the weekly amount of £2.15; or

(b) where he establishes -

(i) that the amount is insufficient having regard to his actual contribution to the housing expenses of the household;

(ii) that, having regard to the resources of the household as a whole, hardship would otherwise occur; and

(iii) that his entry into the household was on the clear understanding that a contribution to the housing expenses in excess of that amount would be required;

such additional weekly amount as may be reasonable up to a maximum, in aggregate, of £4.60.

(2) This regulation applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder).

10. The claimant is a single man aged 63. At the relevant time he was in receipt of invalidity benefit and lived with his brother in a flat. The SBO decided that the claimant's supplementary allowance should be calculated on the basis that he was a person other than a householder because his responsibility for his share of the household expenses was responsibility to the brother, that is to say, to another person who was a member of the same household, so that under regulation 14(3) he could not be regarded as responsible for the household expenditure and hence was not a householder as defined in regulation 5(2). He therefore assessed the claimant's normal requirements in accordance with regulation 6(1) and assessed his housing requirements as the non-householder's contribution in accordance with regulation 14(2)(b) and regulation 23.

11. On the claimant's appeal the tribunal recorded its findings of fact as follows:-

"Appellant shares rent and household bills with his brother.

Appellant lived in the flat prior to brother with his sister: Household items belong to both and are replaced if needed jointly. The Tribunal do not accept the Department's decision that the Appellant is a non-householder just because the brother is the tenant."

The Tribunal's decision was:-

"To revise the Supplementary Benefit Officer's decision by treating the Appellant as a joint householder under the Supplementary Benefit (Requirements) Regulations 1980 Regulation 6(2)."

The Tribunal's reasons were:-

"The Tribunal are satisfied that the Appellant is a joint householder with his brother. Evidence shows clearly that he shares the responsibility for the household costs and has equal control with his brother. Regulation 6 of the Supplementary Benefit (Requirements) Regulations 1980 is satisfied."

12. The last sentence of the tribunal's findings of fact is in effect a finding that the brother was the tenant of the flat and that the claimant was not.

13. The tribunal considered that the claimant was a "joint householder" with his brother. The expression "joint householder" does not appear in the regulations but it is clear that what the tribunal meant by it was a person to whom regulation 6(2) applied. Regulation 6(2) applies only to persons who satisfy conditions (a) and (c) of paragraph 2 of regulation 5 but do not satisfy condition (b) because they "share such responsibility etc". The tribunal clearly considered that the claimant did "share such responsibility etc" and that that was enough to take him within regulation 6(2). They did not expressly deal with the question whether the claimant satisfied condition (a). They should have decided that question by reference to the provisions of regulation 14(3)(a). In view of their finding that the brother was the tenant and in view of the absence of any evidence indicating that the claimant had responsibility for any expenditure other than to his brother, a member of the same household, or that any of heads (ii) to (v) of sub-paragraph (a) of regulation 14(3) were applicable, the only conclusion that the tribunal could have reached if they had correctly understood the effect of regulation 14(3)(a) was that the claimant could not be treated as a "person responsible for expenditure" under Part IV of the regulations. It would have followed from that conclusion that the claimant did not satisfy condition (a) of paragraph (2) of regulation 5 and hence could not be assisted by regulation 6(2). I should mention that head (v) of sub-paragraph (a) of regulation 14(3) was added by the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1981 [S.I. 1981 No 1016] which came into operation on 27 July 1981, that is to say, between the date of the SBO's determination and the tribunal's decision. I have some doubts whether the tribunal should in the circumstances have considered head (v) but I

need not decide the point because it does not apply where persons are brothers and thus close relatives as defined in regulation 2.

14. Once it has been decided that condition (a) is not satisfied it becomes unnecessary to consider condition (b). However, it may be helpful to point out that, in cases where condition (b) does have to be considered, the words "such responsibility" must be read as relating to the kind of responsibility referred to in regulation 14(3)(a).

15. In reaching their conclusion that the claimant was a person to whom regulation 6(2) applied the tribunal erred in law in that they either failed to consider all the relevant provisions of regulations 5(2) and 14(3)(a) or applied those provisions incorrectly.

16. The SBO's decision was that the claimant was not entitled to Supplementary Allowance and was supported by particulars of assessment of his requirements and resources. The tribunal decision merely referred to the basis on which the SBO's decision should be revised (which I have found to be wrong) and did not go on to give a revised assessment. In my view, where a tribunal decision necessitates a revised assessment the decision is incomplete unless a revised assessment is provided. Apart from any other considerations the revision of the assessment can provide a useful check that all relevant matters have been dealt with.

17. Having held that the decision of the tribunal was erroneous in law I am empowered by rule 10(8)(a)(i) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] as substituted by rule 6(2) of the Supplementary Benefit on Family Income Supplements (Appeals) Amendment Rules 1982, if I am satisfied that it is expedient in the circumstances, to give the decision the tribunal should have given. As all necessary findings of fact have been made by the tribunal I am satisfied that it is expedient for me to give the decision which the tribunal should have given and I now proceed to do so.

18. As regards normal requirements, for the reasons given above the claimant was rightly treated by the SBO as a person other than a householder and was not a person to whom regulation 6(2) above applied. Accordingly his normal requirements were correctly determined by the SBO in accordance with regulation 6(1).

19. As regards additional requirements, as mentioned above the SBO's decision was unaffected by the tribunal decision and therefore stands.

20. As regards housing requirements, for the reasons given above the claimant is not to be treated as responsible for any expenditure on items of housing requirements (other than non-householder's contribution) and is therefore entitled only to non-householder's contribution as provided in regulation 23(1). As there was no evidence indicating that all, or indeed any, of the circumstances mentioned in paragraph (1)(b) of regulation 23 existed, the amount of the non-householder's contribution in the present case was correctly assessed by the SBO at £2.15 per week.

Decision CSB 10/82

21. For the foregoing reasons the SBO's appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 27 April 1982

Commissioner's File: C.S.B. 621/1981
C SBO File: S.B.O. 790/81

CSB 621/1981

JNBP/GJH

~~IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT~~

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: ~~[REDACTED]~~

SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL: Shoreditch

CASE NO: 3/190

ORAL HEARING

Decision CSB 10/82

R(SB) 20/82

1. My decision is:-

- (i) the decision of the Shoreditch supplementary benefit tribunal dated 17 April 1981 was erroneous in point of law; and
- (ii) the decision of the supplementary benefit officer issued on 9 July 1981 and the accompanying particulars of assessment are confirmed.

2. This is an appeal, brought by the supplementary benefit officer ("the SBO") with my leave from the decision of Shoreditch supplementary benefit appeal tribunal dated 17 August 1981. At the oral hearing before me the SBO was represented by Mr P Milledge of the Solicitors' Office, Department of Health and Social Security. The claimant did not attend the hearing, having previously stated that he did not intend to do so. I am grateful to Mr Milledge for his thorough and lucid presentation of the case.

3. The matters in issue in this case relate to the determination of the claimant's requirements as a step in the process of deciding whether he is entitled to supplementary benefit and, if so, the amount to which he is entitled. Such a determination has to be made in accordance with the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) and the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299] (as amended by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980 [S.I. 1980 No 1774] and the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1981 [S.I. 1981 No 1016]). For the present purpose it is unnecessary to refer to the terms of the Act but certain of the regulations require consideration in detail.

4. Part I of the regulations (regulations 1 to 3 contain general provisions; Part II (regulations 4 to 10 deal with "normal requirements"; Part III (regulations 11 to 13) deal with "additional requirements" and Part IV (regulations 14 to 23) deal with "housing requirements."

5. Regulation 4(1) explains that the category of normal requirements relates, broadly speaking, to items of expenditure on day to day living other than housing requirements. Regulation 5 (in conjunction with regulation 4(2) and the table in paragraph 2(3) of Schedule 1 to the Act) provides for the determination of the normal requirements of "relevant persons" and "householders". The expression "relevant person" is defined in regulation 2 but as there is no question of the claimant being a relevant person I need not refer to the definition. Whether or not the claimant is a "householder" has to be determined by reference to regulation 5(2) which is in the following terms:-

"5. - (1)

- (2) For the purposes of the table 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 from the home is for a period which has not yet continued for more than 13 weeks."

6. The reference in regulation 5(2)(a) to Part IV of the regulations is to regulation 14(3). However, as other provisions of regulation 14 are relevant to the determination of housing requirements I think that it will be convenient to set out all the relevant parts of the regulation together. They are as follows:-

"Housing requirements

14. - (1) The items to which housing requirements relate are -

- (a) rent;
- (b) mortgage payments;
- (c) repairs and insurance;
- (d) interest on loans for repairs and improvements;
- (e) miscellaneous outgoings;
- (f) items applicable in special cases;
- (g) non-householder's contribution.

(2) The housing requirements of a claimant, including the requirements of any partner or dependant of his, shall be -

- (a) except in a case to which paragraph 1(g) applies, the aggregate of any amounts which, in accordance with paragraphs (3) and (4), are applicable in

his case under regulations 15 to 20 subject to any restriction or reduction applicable under regulations 21 to 22;

- (b) in a case to which paragraph 1(g) applies, the amount applicable under regulation 23;

and where any one or more, but not all, members of an assessment unit are affected by a trade dispute those requirements shall be treated as those of the other members of the unit.

- (3) Except in relation to the item specified in paragraph 1(g) (non-householder's contribution) an amount shall be applicable under this Part of the regulations 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, in particular as owner-occupier or party to the lease or tenancy agreement of the home, other than to a person who is a member of the same household;
- (ii) which, because the person liable is not meeting it, he has to meet if he is to continue to live in the home and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as responsible.
- (iii) in relation to an amount applicable under paragraph (1) of regulation 17 by virtue of sub-paragraph (a) or (b) of that paragraph, where he is the person there specified (owner-occupying and rental purchasers);
- (iv) in relation to an amount applicable under regulation 20(2) (analogous expenditure), where it is reasonable in the circumstances;
- (v) 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 is responsible under one of the preceding heads of this sub-paragraph, and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as sharing responsibility.

so however that a claimant shall be treated as responsible for any expenditure for which

a dependant of his would otherwise be treated as responsible and that where different members of the household are responsible for expenditure on different items but one member only is responsible for any expenditure to which regulation 15 or 16 (rent and mortgage payments) relates or in respect of which any amount is applicable under regulation 17(1)(a) (maintenance and insurance for owner-occupiers), that member shall, so long as he satisfies the condition of regulation 5(2)(c) (meaning of householder), be treated also as the person responsible for expenditure on the other items;

- (b) where responsibility for expenditure is shared the amount so applicable shall be calculated by reference to the appropriate proportion of that expenditure but not so as to reduce the aggregate amount applicable to the claimant under this Part of these regulations below the amount specified in regulation 23(1)(a) (non-householder's contribution).

- (4) }
(5) } [these are irrelevant in the present case]
(6) } "

7. Regulation 6 deals with the normal requirements of persons other than relevant persons and householder (i.e. other than those dealt with by regulation 5). So far as relevant regulation 6 provides as follows:-

- "6. - (1) Subject to paragraphs (2) and (3), the weekly amount of the normal requirements of a person who is neither a relevant person (nor the partner of a relevant person) nor a person who satisfies the conditions of regulation 5(2) (meaning of householder) shall be determined in accordance with Schedule I.
- (2) Subject to paragraph (3) where a person to whom paragraph (1) applies is a claimant who satisfies the conditions of paragraph (2) 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 I 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(2)(c) who share responsibility or control.
- (3) [irrelevant in the present case]"

8. It is unnecessary for me to refer to the regulations in Part IV (additional requirements) because the assessment of requirements by the SBO included an additional amount in respect of heating and no issue arises in respect of it.

9. As regards housing requirements, I have set out the relevant provisions of regulation 14 above and the only other relevant regulation is regulation 23 which provides as follows:-

"23. - (1) There shall be applicable to a person to whom this regulation applies, in respect of his contribution to the housing expenses of the household of which he is a member -

(a) the weekly amount of £2.15; or

(b) where he establishes -

(i) that the amount is insufficient having regard to his actual contribution to the housing expenses of the household;

(ii) that, having regard to the resources of the household as a whole, hardship would otherwise occur; and

(iii) that his entry into the household was on the clear understanding that a contribution to the housing expenses in excess of that amount would be required;

such additional weekly amount as may be reasonable up to a maximum, in aggregate, of £4.60.

(2) This regulation applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder).

10. The claimant is a single man aged 63. At the relevant time he was in receipt of invalidity benefit and lived with his brother in a flat. The SBO decided that the claimant's supplementary allowance should be calculated on the basis that he was a person other than a householder because his responsibility for his share of the household expenses was responsibility to the brother, that is to say, to another person who was a member of the same household, so that under regulation 14(3) he could not be regarded as responsible for the household expenditure and hence was not a householder as defined in regulation 5(2). He therefore assessed the claimant's normal requirements in accordance with regulation 6(1) and assessed his housing requirements as the non-householder's contribution in accordance with regulation 14(2)(b) and regulation 23.

11. On the claimant's appeal the tribunal recorded its findings of fact as follows:-

"Appellant shares rent and household bills with his brother.

Appellant lived in the flat prior to brother with his sister; Household items belong to both and are replaced if needed jointly. The Tribunal do not accept the Department's decision that the Appellant is a non-householder just because the brother is the tenant."

The Tribunal's decision was:-

"To revise the Supplementary Benefit Officer's decision by treating the Appellant as a joint householder under the Supplementary Benefit (Requirements) Regulations 1980 Regulation 6(2)."

The Tribunal's reasons were:-

"The Tribunal are satisfied that the Appellant is a joint householder with his brother. Evidence shows clearly that he shares the responsibility for the household costs and has equal control with his brother. Regulation 6 of the Supplementary Benefit (Requirements) Regulations 1980 is satisfied."

12. The last sentence of the tribunal's findings of fact is in effect a finding that the brother was the tenant of the flat and that the claimant was not.

X 13. The tribunal considered that the claimant was a "joint householder" with his brother. The expression "joint householder" does not appear in the regulations but it is clear that what the tribunal meant by it was a person to whom regulation 6(2) applied. Regulation 6(2) applies only to persons who satisfy conditions (a) and (c) of paragraph 2 of regulation 5 but do not satisfy condition (b) because they "share such responsibility etc". The tribunal clearly considered that the claimant did "share such responsibility etc" and that that was enough to take him within regulation 6(2). They did not expressly deal with the question whether the claimant satisfied condition (a). They should have decided that question by reference to the provisions of regulation 14(3)(a). In view of their finding that the brother was the tenant and in view of the absence of any evidence indicating that the claimant had responsibility for any expenditure other than to his brother, a member of the same household, or that any of heads (ii) to (v) of sub-paragraph (a) of regulation 14(3) were applicable, the only conclusion that the tribunal could have reached if they had correctly understood the effect of regulation 14(3)(a) was that the claimant could not be treated as a "person responsible for expenditure" under Part IV of the regulations. It would have followed from that conclusion that the claimant did not satisfy condition (a) of paragraph (2) of regulation 5 and hence could not be assisted by regulation 6(2). I should mention that head (v) of sub-paragraph (a) of regulation 14(3) was added by the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1981 S.I. 1981 No 1016 which came into operation on 27 July 1981, that is to say, between the date of the SBO's determination and the tribunal's decision. I have some doubts whether the tribunal should in the circumstances have considered head (v) but I

need not decide the point because it does not apply where persons are brothers and thus close relatives as defined in regulation 2.

14. Once it has been decided that condition (a) is not satisfied it becomes unnecessary to consider condition (b). However, it may be helpful to point out that, in cases where condition (b) does have to be considered, the words "such responsibility" must be read as relating to the kind of responsibility referred to in regulation 14(3)(a).

15. In reaching their conclusion that the claimant was a person to whom regulation 6(2) applied the tribunal erred in law in that they either failed to consider all the relevant provisions of regulations 5(2) and 14(3)(a) or applied those provisions incorrectly.

16. The SBO's decision was that the claimant was not entitled to Supplementary Allowance and was supported by particulars of assessment of his requirements and resources. The tribunal decision merely referred to the basis on which the SBO's decision should be revised (which I have found to be wrong) and did not go on to give a revised assessment. In my view, where a tribunal decision necessitates a revised assessment the decision is incomplete unless a revised assessment is provided. Apart from any other considerations the revision of the assessment can provide a useful check that all relevant matters have been dealt with.

17. Having held that the decision of the tribunal was erroneous in law I am empowered by rule 10(8)(a)(1) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] as substituted by rule 6(2) of the Supplementary Benefit on Family Income Supplements (Appeals) Amendment Rules 1982, if I am satisfied that it is expedient in the circumstances, to give the decision the tribunal should have given. As all necessary findings of fact have been made by the tribunal I am satisfied that it is expedient for me to give the decision which the tribunal should have given and I now proceed to do so.

18. As regards normal requirements, for the reasons given above the claimant was rightly treated by the SBO as a person other than a householder and was not a person to whom regulation 6(2) above applied. Accordingly his normal requirements were correctly determined by the SBO in accordance with regulation 6(1).

19. As regards additional requirements, as mentioned above the SBO's decision was unaffected by the tribunal decision and therefore stands.

20. As regards housing requirements, for the reasons given above the claimant is not to be treated as responsible for any expenditure on items of housing requirements (other than non-householder's contribution) and is therefore entitled only to non-householder's contribution as provided in regulation 23(1). As there was no evidence indicating that all, or indeed any, of the circumstances mentioned in paragraph (1)(b) of regulation 23 existed, the amount of the non-householder's contribution in the present case was correctly assessed by the SBO at £2.15 per week.

Decision CSB 10/82

21. For the foregoing reasons the SBO's appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 27 April 1982

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