

RFMH/BW

*Additional requirement
- private domestic
help. v. local authority
help*

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: Bucks

Case No: A4/166

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 23 March 1982 is erroneous in point of law and is set aside. I direct that the matter be reheard by a differently constituted tribunal.

2. On 3 August 1982 I gave leave to the claimant to appeal on a point of law against the decision of the tribunal of 23 March 1982. I now have to consider the appeal itself.

3. The claimant, aged 53 at the relevant time, lived in local authority accommodation. She had been in receipt of invalidity benefit for several years and was receiving supplementary benefit because of her ill-health. She requested an additional requirement to be awarded to pay for private domestic help, whom she employed to carry out the household duties which she was unable to perform. However on 3 February 1982 the benefit officer refused to award the additional requirement on the ground that the claimant did not satisfy the statutory provisions conferring entitlement. On 24 February 1982 the claimant appealed to the tribunal against that decision.

4. In her grounds of appeal to the tribunal she stated she had been incapable of work for 20 years and suffered from a hiatus hernia, sciatica, frequent dizzy spells and water retention. She stated that the local authority had provided her with "home helps" for 15 years but after August 1981 the home helps failed to attend at 9 00 am as required in order to light a fire, but arrived at irregular hours, often not before the afternoon. The claimant submitted in support of her claim a letter from her vicar in which he confirmed that the local authority home help organisers were not willing to provide "home help" at 9 00 am on a regular basis.

5. In his written observations on the appeal the benefit officer stated that the claimant's own doctor confirmed that efficient local authority help was available without the claimant resorting to private help. He submitted that in the circumstances of the

case an additional requirement for domestic assistance could not properly be paid because the conditions of regulations 13 and paragraph 14 of Part II of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 ("the Requirements Regulations") were not satisfied.

6. At the hearing of the appeal on 23 March 1982 the claimant was represented by her vicar. There appears to have been no notes of evidence taken at the hearing but it appears that as a result of the facts submitted by the vicar the presenting officer requested an adjournment which was refused. In the event the tribunal dismissed the appeal and the tribunal made the following findings of fact;

"The claimant was represented by a friend the vicar. The claimant's doctor has confirmed that there is sufficient local authority domestic help available. The local authority have stated that they cannot provide a home help at the times the appellant requests which is 9 00 am in the morning to make up the coal fire. The presenting officer requested an adjournment to enable the supplementary benefit officer to consider the new facts brought out at the hearing."

The reasons for their decision read as follows:

"The tribunal consider that a need for private domestic help has not been established, no help has ever been provided on a Saturday or Sunday.

They consider that the service provided by the local authority was adequate for her needs in view of the fact that no help is provided at the weekend."

7. The claimant now appeals on a point of law against that decision to the Commissioner.

8. Rule 7(2) of a Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 provides that every tribunal shall record a statement of the reasons for their determination and of their findings on material questions of fact. It is of course a fundamental principle that if a tribunal gives inadequate reasons for its decision, that is an error of law whether or not the actual decision is correct. In my judgment, the tribunal in this case did not fully comply with rule 7(2). I should put on record at this stage that the benefit officer now concerned supports the appeal in so far as it is an appeal on the ground that the tribunal have not given adequate reasons for their decision.

9. Regulation 13 and paragraph 14 of Part II to Schedule 3 to the Requirements Regulations 1980 require findings of fact in respect of 3 points in order to determine whether an additional requirement for domestic assistance is established. Firstly it is necessary to establish whether a charge was made for the assistance with ordinary domestic tasks. In her grounds of appeal

to the tribunal the claimant specifically stated that she paid £1.25 per hour for private domestic help as opposed to £1.65 per hour the local authority paid home helps and that her total weekly outlay was £7.50. The tribunal recorded no findings in respect of this aspect of the case. Secondly the tribunal were required to find as a fact whether such assistance was essential because the claimant was unable to carry out those tasks by reason of her ill-health. Again the tribunal failed to record any findings on this point. Thirdly the tribunal were required to record a finding as to whether the assistance was not provided by the local authority or by a close relative who incurred only minimal expenses. The tribunal interpreted this to mean that because the local authority organised a service of "home helps" that automatically barred the claimant from entitlement to an additional requirement for private domestic assistance irrespective of the fact that the local authority helpers were only available at times which did not fulfil the claimant's reasonable needs. It is for a tribunal to establish as a question of fact whether the local authority help actually available, provides the domestic assistance essential to a claimant in the particular circumstances of the case. In the present case the tribunal should have considered whether it was reasonable for the claimant to require domestic assistance at 9 00 am each morning in order to light a fire in view of her ill-health or whether the local authority help available at irregular hours was sufficient to meet the claimant's needs. In my judgment the tribunal misapplied the provisions of paragraph 14(c) of Part II to Schedule 3 to the Requirement Regulations 1980 and their decision is erroneous in point of law. Furthermore the tribunal failed to comply with the statutory requirements of Rule 7(2) of the above mentioned Appeal Rules 1980 and their decision is erroneous in law on this point also. Accordingly the decision must be set aside and I direct that the matter be reheard by a differently constituted tribunal.

10. The new tribunal should record the exact date of claim and record findings of fact on each aspect of paragraph 14 of Schedule 3 to the Requirement Regulations 1980. In her grounds of appeal to the Commissioner the claimant contends that there was no evidence to support the findings that she required no domestic help on a Saturday or Sunday. No doubt the new tribunal will consider all the evidence afresh in determining the amount of domestic help essential to the claimant to meet her particular needs.

11. The claimant's appeal is allowed.

(Signed) R F M Heggs
Commissioner

Date: 24 January 1984

Commissioner's File: C.S.B. 629/1982
C SBO File: 613/82
Region: London North