

CSB 676/1983
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Tenant

- home worker

JBM/SH

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: South London

Case No: 11/151

1. My decision is that the decision of the South London Supplementary Benefit Appeal Tribunal dated 3 March 1983 is erroneous in point of law. Accordingly I set it aside and remit the matter for decision by a differently constituted tribunal: rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No. 40.

2. This appeal to the Commissioner brought with my leave is against the unanimous decision of the appeal tribunal dated 3 March 1983 confirming the decision of the benefit officer issued on 13 January 1983 -

"Supplementary Allowance of £23.65 from the prescribed pay day, Saturday, in week commencing 3 1 83."

3. The facts and history of the matter are dealt with in paragraphs 1-6 inclusive of the submission dated 23 August 1983 of the benefit officer now concerned upon which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here.

4. The relevant statutory provisions and decisions of the Commissioner are referred to in paragraph 7 of the submission dated 23 August 1983. Nothing is to be gained by writing out those references afresh here. The claimant's grounds of appeal to me dated 27 July 1983 are stated as,

"My reasons remain the same as those given in my application for leave to appeal."

The claimant's application for leave to appeal dated 23 May 1983 sets out in detail his grounds. I would only add that the claimant in Part IV of his application for leave to appeal requested an oral hearing of his application. I did not accede to such request as I was satisfied that the matter could be dealt with without an oral hearing and I granted leave to appeal. I accept the reasons set out by the claimant in his application

for leave to appeal as showing that the decision of the appeal tribunal is erroneous in point of law. The appeal tribunal's findings of fact which are relevant to the question of whether or not separate households are maintained do not make it apparent why they arrived at their decision. The tribunal in the record of its proceedings setting out their findings of fact, states

"[The claimant] stated that he cooks his own food, has his own cooking equipment, and his own bedroom. He also said that he buys his own food as Miss W is a vegetarian, and even buys his own toilet rolls. The Supplementary Benefit Officer stated that the accommodation was a two-bed maisonette, which in his opinion did not lend itself to the maintenance of separate households."

These are not findings of fact but a record of what was given in evidence. The appeal tribunal have mixed evidence and finding of fact in such a way that it is unclear which evidence they accepted and which they rejected, and they did not give their reasons for so doing. In this they erred in law. The facts found do not provide a basis for the tribunal's reason for not treating the claimant as a subtenant, that is that they "considered that Commissioner's decision R(SB) 20/82 was relevant to the claimant's circumstances". The new tribunal should consider all the Commissioner's decisions to which they have been referred and all the statutory provisions mentioned in the submissions of the claimant and the supplementary benefit officer and should record their findings of fact and reasons for decision based on those. They should remember that it is not necessary for a claimant to have a written tenancy agreement for him to be a tenant. In their reasons the appeal tribunal said "it was felt that [the claimant] could not be taken as a partner to the tenancy agreement". They appear there to be relying on the words "... in particular as ... part to the lease or tenancy agreement of the home" but they have failed to make any findings as to what constitutes the claimant's home.

5. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No. 40 provides as follows:-

"10-(8) On an appeal from a decision of a tribunal the Commissioner may -

(a) hold that decision is erroneous in point of law and -

(i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given;

or

(ii) refer the case to another tribunal with directions for its determination;

or

(b) hold that the decision is not erroneous in point of law."

In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the matter shall pay particular attention to all the matters to which I have referred above, and in particular should make proper findings of fact on which to make a reasoned decision.

6. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 21 December 1983

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Region: London South