

E6 JUN 1983

Two houses

RFMH/EA

— One home.

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Yusuf Fakir Memoniat

716/1981

Supplementary Benefit Appeal Tribunal: Leicester and District

Case No: 7/51

ORAL HEARING

1. My decision is that the decision of the supplementary benefit appeal tribunal ("the appeal tribunal") dated 21 July 1981 was erroneous in point of law and is set aside. In exercise of the power conferred by rule 10(8)(a)(i) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (as amended) I decide that the value of the claimant's capital resources as calculated in accordance with the Supplementary Benefit (Resources) Regulations 1980 do not exceed £2,000. Accordingly the claimant is entitled to supplementary benefit.
2. This is an appeal by the claimant, from a decision of the appeal tribunal dated 21 July 1981 which upheld a decision of the benefit officer issued on 28 April 1981.
3. I held an oral hearing of this appeal. The claimant was represented by Miss L Sanders from the Leicester Rights Centre. 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 them both for their helpful submissions.
4. The claimant is a married man, aged about 65, who came to this country from Malawi in 1977. He lived on his savings until April 1980 when he made a claim for supplementary benefit. At that time the claimant was the owner of 2 adjoining terraced properties at 5 and 7 Halstead Street, Leicester. The claimant, his wife, his non-dependant son aged 29, his daughter-in-law and their 2 children occupied 5 Halstead Street. The claimant's 2 younger non-dependant sons, aged 26 and 21, occupied 7 Halstead Street.
5. When the claimant first claimed and received supplementary benefit, a valuation was obtained of 7 Halstead Street. The value of that property was treated as a capital resource and an income taken into account under paragraph 20 of Schedule 1 to the Supplementary Benefits Act 1976 prior to its amendment on 24 November 1980. That paragraph provided that the capital resources taken into account

together with any income derived from them were to be treated as equivalent to a weekly income of 25p for each complete £50 in excess of the value of the capital resource over £1,200. On 24 November 1980 however, as the claimant's capital resources exceeded £2,000, the claimant was informed that he was no longer entitled to supplementary benefit. The benefit officer decided that the value of 7 Halstead Street was £4,000 from which he deducted in accordance with the regulations 10% as the possible selling expenses making a net total of £3,600. In addition the claimant had £352.15 savings in his bank. Accordingly the benefit officer calculated that the claimant's total capital resources amounted to £3,952.15.

6. The claimant appealed to the appeal tribunal against the decision to withdraw benefit but on 21 July 1981 the appeal tribunal upheld the benefit officer's decision. The relevant findings on a question of fact by the tribunal are recorded as follows:-

"..[the claimant] had said that although he owned 2 terraced houses there was only one household. They lived as one family and food was prepared in one kitchen and they ate all their meals together with one member of the family doing most of the shopping and the preparing of meals. The supplementary benefits officer had decided that No 7 Halstead Street was not occupied by any member of assessment unit and therefore it could not be regarded as appellant's 'home'. The value after deduction of 10% for selling expenses was regarded as £3,600, this together with savings of £352.15 gave total capital of £3,952.15".

The reasons for the tribunal's decision were recorded as follows:-

"The tribunal did not consider that No 7 Halstead Street is the appellant's home as defined in regulation 2 of the Supplementary Benefit Resources Regulations and therefore the value did not fall to be disregarded under regulation 6 of the Supplementary Benefit Resources Regulations. It was further considered that 7 Halstead Street was not 'the home' as no member of the assessment unit lived in the house and it was considered that it formed a separate household".

7. The claimant now appeals to the Commissioner, with leave, on the ground that the appeal tribunal erred in failing to give adequate reasons for their decision and that the inadequate nature of the reasons suggests they did not properly consider the meaning of home, in particular, the meaning of "other members of the same household". I should put on record that the benefit officer now concerned supports the appeal.

8. The Regulations relevant to this appeal are the Supplementary Benefit (Resources) Regulations 1980 /S.I. 1980 No 1300/ of which regulations 2(1), 6(1)(a) and 7 are apposite;

regulation 7 provides as follows:

"... where the value of a claimant's capital resources (including those of a partner or dependent) as calculated in

accordance with these regulations exceeds £2,000, the claimant shall not be entitled to supplementary pension or allowance."

regulation 6(1)(a) provides as follows:

"6.-(1) In calculating a claimant's capital resources there shall be disregarded -

(a) the value of -

(i) the home,"

regulation 2(1) defines "home" as meaning:

"the accommodation, with any attached 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;"

The question at issue is whether 7 Halstead Street is the claimant's "home" within the meaning of regulation 2(1) and its value to be disregarded in assessing the claimant's capital resources.

9. The appeal tribunal chairman's note of evidence, of which I am entitled to take note, records that as the claimant in 1977 could not afford to purchase a large single house to accommodate all his family he purchased 2 small terraced houses, which were separated by a passageway at ground floor level. Miss Shuker stressed that regulation 6(1)(a)(i) referred to "the home" which was not synonymous with "a house". The word "home" was defined in regulation 2(1) as meaning accommodation. It was well established that several households could exist in one house and conversely she argued one household could exist in 2 houses. The fact that there were 2 separate houses did not automatically exclude them being considered one home within the definition of regulation 2(1) even as in this case, the properties were separately assessed for general rates purposes. I accept this submission and I would only add that whether 2 properties constitute one home is a question of fact depending on the proximity of the properties and the financial and domestic arrangements of the families concerned. The word "accommodation" should be given its everyday meaning and interpreted realistically in the light of the facts found by the appeal tribunal.

10. Miss Shuker then went on to argue that the definition of "home" includes accommodation occupied not only by the claimant's assessment unit but also "any other members of the same household as their home". Miss Sanders did not dispute that the claimant's 2 younger non-dependant sons who occupied 7 Halstead Street did not form part of the claimant's assessment unit but she strongly maintained that they were members of the claimant's household. The appeal tribunal found as fact that although the claimant owned 2 terraced houses there was only one household. The occupants of both properties lived as one family and

food was prepared in one kitchen and they ate all their meals together with one member of the family doing most of the shopping and preparing the meals. Miss Shuker rightly submitted that the facts as found supported a decision to the effect that both properties formed part of the claimant's "home" within the definition of regulation 2(1). In their reasons for their decision the appeal tribunal recorded "... 7 Halstead Street was not "the home" as no member of the assessment unit lived in the house .." Clearly the appeal tribunal erred in law in restricting the interpretation of "home" to occupants of the claimant's assessment unit and not taking into consideration the statutory definition which includes in addition "members of the same household".

11. Miss Shuker submitted that if the 2 houses formed a single "home" the question for decision was whether the claimant was the householder. Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980 provides as follows:

"For the purposes of the table a householder is a person other than a partner, who -

- (a) under Part IV of the 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 householder 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."

12. The appeal tribunal's chairman's note of evidence records that all bills in respect of the property were in the claimant's name. I accept that he was responsible and controlled the household expenditure and satisfied all the conditions in regulation 5(2) as "householder of both the properties". Accordingly both properties form a single "home" and 7 Halstead Street is to be disregarded in calculating the claimant's capital resources as specified in regulation 6(1)(a)(i).

13. Finally, Miss Sanders made the salient point that in finding that 7 Halstead Street formed a separate household the appeal tribunal failed to indicate the basis of their valuation of the property. Regulation 5 of the Supplementary Benefit (Resources) Regulations 1980 provides that in the case of land it should be assessed at its current market value less 10%. In the present case the appeal tribunal recorded a net value of £3,600 but failed to show whether this valuation was on the basis of vacant possession. Miss Sanders stressed that having decided that 7 Halstead Street formed a separate household, its valuation should have reflected the tenure of the occupants.

I agree. The matter is not now material in view of my decision but nevertheless the appeal tribunal erred in law in not specifying the basis of their valuation in view of their findings of fact and their decision.

14. The claimant's appeal is allowed and he is therefore entitled to supplementary benefit from 24 November 1980.

(Signed) R F M Heggs
Commissioner

Date: 2 June 1983

Commissioner's File: C.S.B. 716/1981
C SBO File: 874/81

Dear Jan

Sorry for the delay in sending you this

It took till about August/Sept till Alvin got his affairs. They took it back till April 80 + pd out £6,660. (The delay was caused by someone at HEO level wondering what he'd lived on for the last 3 yrs. & made leaked this to me so I sent a heavy letter re his mounting debts; family shos. etc.)

Yours - Lynne