

749 / 1982

DGR/BOS

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: **Reading**

Case No: B2/115

[ORAL HEARING]

*Incorrect rent
rate figure
seen by claimant
Ex Gratia Payment*

1. My decision is that the decision of the supplementary benefit appeal tribunal given on 4 June 1982 was not erroneous in point of law, and accordingly this appeal fails.
2. Throughout the relevant period the claimant, then a 38 year old single parent with a dependent child aged 16, was the tenant of a local authority flat. On 3 November 1981 she claimed supplementary benefit. In a statement dated 12 November 1981 she signed a declaration, filled in by an officer of the Department, declaring that the rent of her flat was £34.49 per week, but that she was entitled to a rebate from the local authority amounting to £22.22 per week. As a result, the benefit officer determined the claimant's weekly housing requirements as being £12.27 i.e. £34.49 rent less the rebate of £22.22, and he awarded benefit from the week commencing 5 November 1981. However, on 4 December 1981 the claimant corrected what had previously been stated, pointing out that the rent and rebate were fortnightly, not weekly. On 29 January 1982 it was established that the rebate had been withdrawn retrospectively from 23 November 1981, and as the claimant had only continued to receive in respect of housing requirements the sum of £12.27 per week, this was not enough to make good the loss of the rebate, notwithstanding that her true rent was only £6.13 per week and not £12.27. The outcome of all this was that the claimant fell into arrears in respect of the rent payable by her to the local authority. One of the consequences of being in arrears is that the defaulter is unable to obtain a transfer to another local authority property in some other part of the country. I understand that the claimant in fact wishes to move but for the reason given is precluded from so doing.
3. In due course the benefit officer reviewed the whole determination to take account of the correct amount of rent payable. As regards the first two weeks, in respect of which there had been an overpayment of benefit and in respect of which the rebate had not been withdrawn, no action was taken by way of recovery pursuant to regulation 20 of the Supplementary Benefits Act 1976. Accordingly, as regards those two weeks the claimant derived a distinct advantage.

4. However, as regards the remainder of the period, which covered the 12 weeks commencing 19 November 1981 the revised determination showed arrears in respect of each week, as set out in Annex 1 appended to the benefit officer's submissions of 2 February 1983. The claimant was in due course paid these arrears amounting in all to £73.26. However, the claimant complained that, as she had only paid to the local authority £6.13, and not £12.27 in respect of rent, and had spent the residue in normal living (not realising that the total benefit paid to her included a sum of £12.27 per week in respect of housing requirements) when the error came to light she was, through no fault of her own, thrown into debt in respect of her rent. Although in due course she received arrears of supplementary benefit which took into account the correct rent payable and the withdrawal of rebate, she nevertheless suffered, inasmuch as she had lost the rebate from the local authority and the arrears of supplementary benefit did not make good such loss. Of course, all would have been well, had she passed over the entirety of the £12.27 to the local authority by way of rent, but by reason of the error she had only paid £6.13, and the residue, having been spent, was no longer available to her to make up the arrears in her rent.

5. Accordingly, she appealed against the benefit officer's decision to the supplementary benefit appeal tribunal. However, they upheld the benefit officer, and although sympathising with her stated that there was no legal way for the matter to be rectified. Thereupon the claimant sought leave from the Commissioner to appeal from that decision, and I gave the necessary leave on 17 September 1982. In view of the complicated arithmetical computations I directed that there be an oral hearing, and at that hearing the claimant appeared in person and the benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. I would say in passing that Miss Shuker was most helpful with the mathematical calculations.

6. A crucial feature of this case is that for the relevant period, i.e. from the week commencing 19 November 1981 to the week commencing 4 February 1982, there was in respect of each week an underpayment of supplementary benefit. Notwithstanding the fact that the original computation proceeded on the basis that the claimant had a weekly housing requirement of £12.27 when her rent was in fact half that sum, the effect of the withdrawal of the rebate was to render the requirement still inadequate. Accordingly, there was no overpayment in any week. There would, of course, have been so had the rebate not been withdrawn, but that was not the case. In those circumstances, there is, in my judgment, nothing wrong with the benefit officer's computation as set out in Annex 1 or in his revised determination awarding arrears of £73.26.

7. The claimant endeavoured to argue, at least in her written submissions, that there had in effect been an overpayment and that recovery pursuant to section 20 of the Supplementary Benefits Act 1976 was not open to the benefit officer. In any event, the tribunal had failed to consider this aspect of the case and to make appropriate findings and to explain

why on the facts recovery was permissible. However, I am satisfied that, for the reasons given above, the question of section 20 simply does not arise, and it necessarily follows that it was unnecessary for the tribunal to consider this particular provision.

8. It follows from what has been said above that the tribunal did not err in point of law, and accordingly this appeal must fail.

9. However, like the tribunal, I have very considerable sympathy with the claimant. Miss **Shuker** indicated that she had been instructed to say that, after my decision had been given, the Department would **have** regard to the possibility of an ex gratia payment. I welcome this approach, and although it is not a matter for me, but entirely for the Secretary of State, it may well be that he will consider this a suitable case for such a course of action.

(Signed) D G Rice
Commissioner

Date: 14 July 1983

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Region: London North