

CSB 802/1983

When a boarder is
a householder

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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Isabelle Anderson

Supplementary Benefit Appeal Tribunal: Manchester

Case No: 14/656

1. This is a claimant's appeal in point of law, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 8 June 1983 which confirmed a decision of the benefit officer issued on 14 April 1983. The appeal is supported by the benefit officer now concerned.

2. At the time relevant to this appeal the claimant was aged 18, unmarried and unemployed. On 2 March 1983 she claimed supplementary benefit. A supplementary allowance was awarded to her. It was assessed upon the basis that the claimant was a householder. The claimant challenged this, claiming that she was, in fact, a boarder. She requested a review. On 14 April 1983 the benefit officer refused to review his original decision. Against that refusal the claimant appealed to the appeal tribunal. Her appeal was disallowed. She now appeals to the Commissioner. The case turns solely upon -

- (a) the nature of the accommodation in which the claimant was living at the relevant time; and
- (b) the terms upon which she was so living.

3. At the material time regulation 9(9) of the Supplementary Benefit (Requirements) Regulations 1980 provided as follows:

"(9) In this regulation -

- (b) "boarder" means a person, not being a person to whom any of paragraphs 1 to 9 of Schedule 2 applies, who -
 - (i) pays a charge which is inclusive of his accommodation and at least some cooked or prepared meals which are both prepared and consumed in the accommodation or in associated premises, or

(ii) is living in a hotel, guest-house, hostel or lodging-house, or in some similar establishment, or

(iii) is a refugee as defined in regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 who is living in a special centre for the reception of refugees prior to settlement in the community,

but excluding any person whose accommodation and meals (if any) are provided by a close relative or other than on a commercial basis."

(The effect of the foregoing is now to be found in regulation 9(13) and (14)(a) of the Supplementary Benefit (Requirements) Regulations 1983.)

4. The claimant's contention throughout has been that she was living in a hostel. "Hostel" is nowhere defined in the Regulations. I am satisfied that it is not intended to be a term of art. It is an everyday word to which the determining authorities must give its everyday meaning. Etymologically it is closely associated with "hotel" and "hostelry". In modern usage, however, it tends to import that the relevant occupants are drawn from a particular class of persons; e.g. the students of a non-residential college or the single men of modest means for whom the Salvation Army caters. It also imports a degree of control over the conduct of the occupants which goes beyond what would be expected in a block of bed-sitters let out on the open market; e.g. "No visitors after 11.00 pm" or "No alcohol on the premises".

5. The claimant occupied a bed-sitter in a building to which I shall refer as "L House". There were before the appeal tribunal -

- (a) a detailed printed brochure which explains the objects of and the conditions of residence in L House; and
- (b) a copy of the licence agreement pursuant to which the residents (including the claimant) enjoyed their right of occupancy.

In my view, a single perusal of those documents suffices to put it beyond peradventure that L House is a hostel. Since, however, the appeal tribunal reached a contrary conclusion, I quote below from those documents. My quotations are illustrative, but not exhaustive, of the pointers to L House's being a hostel.

6. From the brochure:

"[L House] offers short stay (3 months) supportive accommodation for homeless women who are on probation, or on bail, women who

may be homeless upon discharge from prison, or women who have some link with the Probation Service and who may need a 'breathing space' due to other sorts of accommodation problems, e.g. battered wife, prisoner's wife, or a woman with a baby waiting for her entitlement to Local Authority housing to be sorted out. All referrals must have a supporting Probation Officer who is expected to work very closely with the women and the staff to ensure that the three month stay is as positive and constructive as possible."

"The project is managed by a local sub-committee of NACRO Community Enterprises Limited, in conjunction with the Housing Association. Members of the management committee include a JP (the Chairman), a company secretary, a member of an area health authority, and a solicitor. Close co-operation is maintained between the project and the Greater Manchester Probation and After-Care Service, and the service is represented on the Management Committee. The project is funded by the Home Office and the Department of the Environment."

"The staff have a very good link with a local GP who not only sees the individual women, and provides support and information for the staff, but also gives talks on subjects like 'general health and nutrition', 'contraception', 'ante-natal care', and similar topics to the residents as a group".

"The women cater for themselves, each bedsit unit will have its own cooking facilities. The rules are minimal and each resident has her own room key. Rent is paid weekly. The four and a half staff are non-resident but share a sleeping-in rota to maintain twenty-four hour cover."

"The staff work very closely with the women, helping them (in conjunction with the referring officer) to find permanent accommodation, employment, and access to training. The staff also offer the emotional support and guidance often needed by women who are going through a crisis point in their lives. Emphasis is placed on helping the women develop a good standard of health and personal hygiene and other basic life skills."

7. From the licence agreement:

"This letter explains the basis on which Nacro has granted permission for you to stay here. The accommodation is offered to you for up to a 3 month period. You will be provided with a furnished room, with facilities for cooking your own meals, which you are expected to keep clean and tidy. You will also be entitled to use the communal parts of the house, i.e. television lounge and bathrooms, which you will be expected, along with the others, to keep clean and tidy. You will also

be expected to take part in some of the house activities, including a weekly house meeting. You will be provided with a front door key and a key to your own room. A spare key is kept by the project staff as they will need to go into your room to ensure that everything is in order - this will be done in such a way as is reasonably possible to respect your privacy During your stay with us, you will not have exclusive use of the room, as it may prove necessary for you to change rooms if the circumstances within the house demand it."

8. It is clear from the relevant form LT 235 that the appeal tribunal approached its task conscientiously. It seems equally clear, however, that it failed to grapple adequately with the question of whether L House was or was not a hostel. The only references to "hostel" are in the chairman's note of evidence - and these are confined to pointing out that both the brochure and the licence agreement use the word "house" and never use the word "hostel". That is altogether too superficial an approach. It is the substance which matters - not the label. Many students' hostels have names which end with the word "Hall". Many hotels have names which end with the word "House". In the instant case, NACRO preferred "house" to "hostel" because -

- (a) the former term imports a more informal and more caring ambience; and
- (b) it has been found that applicants for jobs are prejudiced if they describe themselves as living in a hostel.

9. The appeal tribunal's decision was to confirm that the claimant should be classified as a householder. Its reasons were set out thus:

"The tribunal came to the conclusion that Commissioner's Decision 13/82 paras 9/10/11 applied in this case provided that the noun 'leaseholder' be paraphrased to read 'licensee'. Thus the three paragraphs referred to indicated to the tribunal that the licensees of L House must be regarded as 'householders'.

Each pays a weekly 'rent' and occupies a 'bed sitter' and has no meals provided by the staff who maintains the house, and each person has her own key to her room plus a key to the main door of the house."

10. In R(SB) 13/82 the issue was between householder and non-householder. The possibility of boarder did not arise and was not canvassed. In paragraph 11 the Commissioner said:

"Considerable attention has been given in this case to whether or not the four friends living at 13 Clifton Park Road are living as members of one household. They may well have been doing so originally, but, at the time the claimant made his

claim for supplementary allowance, 13 Clifton Park Road had become divided into several different households. Since the claimant acquired his lease, he has his own separate household and he cannot, at least in the absence of the most unusual circumstances, be a member simultaneously of any other household."

11. Since R(SB) 13/82 was decided there has been a number of Commissioners' decisions which have sought to throw further light upon the (somewhat arcane) distinctions between householders, non-householders and boarders. I need not go into those here. It is manifest, however, that one cannot be a householder unless there is an identifiable "household" of which one is the head or representative. In my view, the claimant, whilst occupying her bed-sitter in L House, cannot possibly be regarded as having been running her own household. The conditions under which and the circumstances in which she occupied her bed-sitter were, I have no doubt, admirably tailored to her needs at the time. But they were wholly inimical to the concept of a householder - a concept which imports a considerable degree of independence and freedom of action. Her ultimate independence and freedom of action were the aim of both the staff and the claimant. In the meantime, however, the watchwords were support and guidance - with such measure of supervision as was necessary to render them effective.

12. It follows that I find that the appeal tribunal erred in law in one or more of these respects:

- (a) It failed to give any, or any adequate, consideration to the question of whether the claimant had a household of her own.
- (b) It failed to give adequate consideration to the question of whether the claimant was a boarder.
- (c) In respect of the issue referred to in (b) above, it misdirected itself in attaching significance to the fact that the word "hostel" did not feature in the name of L House.

The appeal tribunal's decision must be set aside.

13. It is manifestly expedient that I should myself give the decision which the appeal tribunal should have given. That decision must, of course, relate to the position as it stood on 8 June 1983 (the date of the appeal tribunal's decision). I cannot take cognisance of anything which has happened thereafter. That is for the benefit officer, applying his rights of review and revision.

14. I mention one further matter. In this case the claimant has been ably represented by the Manchester Law Centre. That Centre also represents the claimant in case on Commissioner's File No CSB/811/1983. That claimant was also a resident in L House. Her appeal to the

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appeal tribunal was heard, and disallowed, on the same day as was the like appeal of the claimant in the case now before me. Her application for leave to appeal to the Commissioner was granted by me one day after I granted such leave to the present claimant. Since then, however, no further steps have been taken upon behalf of the claimant in case CSB/811/1983. I do not know whether that claimant still wishes her appeal to proceed. If she does, then notice of appeal should be lodged on her behalf as soon as possible, along with an application for extension of the time for lodging such notice. I have directed that file No CSB/811/1983 should, for the meantime, be kept with the file relevant to this appeal. If and when the time should come for the benefit officer to make his submissions to me in respect of case CSB/811/1983, I shall be content if he merely states that he repeats and relies upon the submissions which he made to me in the instant appeal.

15. My decision is as follows:

- (1) The claimant's appeal to the Commissioner is allowed.
- (2) The decision of the appeal tribunal dated 8 June 1983 is erroneous in law and is set aside.
- (3) The claimant's appeal to the appeal tribunal is allowed.
- (4) The original decision of the benefit officer in respect of the claim for supplementary benefit made by the claimant on 2 March 1983 falls to be reviewed because the same was based on a mistake as to the law, alternatively was based on a mistake as to a material fact or facts.
- (5) The said original decision is revised so as to provide that the claimant's supplementary allowance should be assessed upon the basis that the claimant is, and at all material times has been, a boarder.

(Signed) J Mitchell
Commissioner

Date: 12 January 1984

Commissioner's File: C.S.B. 802/1983
C SBO File; 918/83
Region: North Western