

Single payments — reg 10A(1) (x reg 10(1)(a)) —
— meaning of "tenant" — didn't mean person had to be
in actual occupation for the purposes of this reg — approves
CSSB/486/1987 — disagrees with CSB/244/1987.
TQC/2/LM Commissioner's File: CSB/898/1987

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION
OF LAW

DECISION OF A TRIBUNAL OF SOCIAL SECURITY COMMISSIONERS

[ORAL HEARING]

1. Our decision is that the decision of the social security appeal tribunal dated 2 March 1987 is erroneous in law. We set it aside and direct that the case be reheard by a differently constituted tribunal.
2. This is one of two appeals (the other being CSB/1025/87) turning on the meaning to be attached to the words, in regulation 10A(1) of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528], "... where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant ... of an unfurnished or partly furnished home ...". In CSB/244/87 the Commissioner decided that, having regard to the definition of "tenant" in regulation 2(1) of the Single Payments Regulations, the words in question required that the claimant or his partner must actually have occupied the home within the 28 days in order to get the benefit of the provision. However the Commissioner in CSSB/486/87 saw the matter differently. In his view the element of occupation was not to be imported from the definition of "tenant" in regulation 2 because the context required otherwise. Because of this conflict the Chief Commissioner directed that both appeals be determined by a Tribunal of Commissioners. We held an oral hearing on 24 May 1988. The claimant in this case did not attend but was represented by Mr J. Clements, Acting Senior Welfare Rights Officer of the Benefits Advice Shop, City of Sheffield. The adjudication officer was represented by Mr N. Storey of the Solicitor's Office, Department of Health and Social Security. We are grateful to them for their assistance.
3. The case arises in this way. The claimant and her husband were the joint tenants and occupiers of local authority accommodation. She, the claimant, moved out because of her husband's conduct. He remained in the house until, according to the claimant, he sold up everything in it and went abroad. She moved back and being then in receipt of a supplementary allowance made a claim for a single payment under the Single Payments Regulations in respect of various items of miscellaneous furniture and household equipment. An adjudication officer decided that she was not entitled to the payment because none of the items was on the list of so-called essential items in regulation 9 of the Regulations and, in the adjudication officer's view, the claimant did not satisfy the conditions of regulation 10A (miscellaneous furniture and household equipment needs) because she did not satisfy the 28 days rule to which we have already referred. Nor, because the claim was for miscellaneous furniture and household equipment needs under regulation 10A could she get a payment under regulation 30 because the opening words of that regulation expressly rule out claims in respect of such items. The claimant appealed but the tribunal upheld the adjudication officer's decision.

4. Regulation 10A(1) provides, so far as relevant, as follows -

"10A.-(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies) where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home, notwithstanding that he is not yet in actual occupation of that new home, and one or more of the following applies -

- (a) [not relevant]
- (b) [not relevant]
- (c) [not relevant]
- (d) [not relevant]
- (e) [not relevant]"

Mr Clements contended that by the time the claimant moved back to the matrimonial home, which she said was on 21 October 1986, the joint tenancy had been surrendered or at least had, by reason of the circumstances, come to an end, and that she had a new tenancy of the house of which she had formerly been joint tenant. And as the claim for the single payment was made on 4 November 1986 she satisfied the 28 days rule. However there appears to be no evidence of when, if ever, the joint tenancy had been surrendered or had otherwise ceased and, if the words in question in regulation 10A(1) had the meaning given to them in CSSB/486/87 and did not require actual occupation, this claimant's case could fail. Thus Mr Clements found himself supporting the decision in CSB/244/87. In that case the Commissioner said (paragraph 9) -

"9. One of the qualifying conditions is that the claimant has within the 28 days immediately preceding the date of his claim become the tenant of an unfurnished home the tribunal in the instant case found that the claimant did not satisfy this condition. They found as a fact that the date of the claim was 1 September 1986. They made no finding as to the date when the claimant became the tenant of her new home. The tribunal's conclusion was that the date of the claim was more than 28 days after she had become the tenant of an unfurnished flat. It seems to me that the members of the tribunal ignored the definition of "tenant" provided for in regulation 2 of the Supplementary Benefit (Single Payments) Regulations. The definition is as follows:-

"'tenant' means a person other than one to whom regulation 9 or 23 of the Supplementary Benefit (Requirements) Regulations 1983 applies, and who occupies his home under a tenancy, licence or other agreement giving him a right to occupy that home, a tenancy shall be construed accordingly."

This definition gives a special meaning to the word "tenant" for the purpose of regulations and I am satisfied that to come within it a person must actually occupy home in addition to having a right to occupy that home, he must be in actual possession. The members of the tribunal found that the claimant moved from board and lodging accommodation to the flat on 5 August. There was no finding that she took possession of it at an earlier date. If she occupied the flat from 5 August then she just escaped the time bar. The decision of the tribunal was erroneous in point of law for the reasons which I have given. The differently constituted tribunal to whom the case is referred for determination must deal with the qualifying condition relating to time in regulation 10A(1) with the definition of "tenant" contained in regulation 2 in mind. If they find that the claimant is not barred by time then it will be necessary to

material time she and her husband were not a "married couple" within the meaning of that provision in that they were not members of the same household - see the definition of "married couple" in section 34(1) of the Supplementary Benefits Act 1976.

(Signed) D Reith
Commissioner

(Signed) A T Hoolahan
Commissioner

(Signed) R A Sanders
Commissioner

Date: 26 September 1988

deal with the other qualifying conditions contained in paragraph (1) and further to deal with the exclusions contained in paragraph (2). It will not in my view be necessary for the tribunal to consider the claim under regulation 30."

That was considered by the Commissioner in CSSB/486/87 who said (paragraph 6) -

"6. With respect to the Commissioner concerned however I am unable to accept his view upon this matter. The 28 day rule in regulation 10A(1) includes the specific provision that the period of 28 days will begin to run from the date when the person concerned became the tenant "notwithstanding that he is not yet in actual occupation of that new home". The words just quoted are not referred to by the Commissioner in CSB/244/87 in paragraph 9. They are quite explicit in their terms and in my view they exclude the element of occupation by a tenant which the Commissioner imports from the definition in regulation 2. Regulation 2 is of course an interpretation regulation and regulation 2(1) contains the important preliminary qualification: "... unless the context otherwise requires", which is applicable to all the succeeding definitions including the definition of "tenant". In my judgment the context does so otherwise require in regulation 10A(1). Accordingly I do not consider that the tribunal erred in law in their finding regarding the date when the claimant's partner became the tenant of their home."

We entirely agree with that view of the matter. The Commissioner in the other case did not unfortunately have the words "notwithstanding that he is not yet in actual occupation" drawn to his attention and his decision should in our view not be followed.

5. The tribunal in the present case found as a fact that "throughout [the claimant] was the joint tenant of the former matrimonial home" and in the reasons for their decision they said "Even if she thought her name had been taken off the rent book it had not ...". However they do not explain why they came to that conclusion and do not appear to have considered whether, in view of the facts that the claimant went to live elsewhere and that her husband in effect as it seems abandoned the home and went abroad, the joint tenancy had come to an end and, if so, when that happened. That, as Mr Storey agreed, was an error of law on the part of the tribunal and we therefore allow the claimant's appeal and set aside the tribunal's decision. The new tribunal must find all the necessary facts with regard to the joint tenancy and whether it was surrendered or otherwise terminated and then deal with the 28 days rule in regulation 10A(1) on the basis that CSSB/486/87 correctly decides how that rule is to be applied. In conclusion we would mention, because it arose at the hearing before us, that regulation 10A(2)(c) does not rule out the claimant in this case because at the