

CSB 930/1983

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SUPPLEMENTARY BENEFITS ACT 1976

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

2 properties
temporary
absence

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Said Mahmood

Supplementary Benefit Appeal Tribunal: Rochdale

Case No: 15/128

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 16 May 1983 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal brought by the claimant with my leave against the decision of the supplementary benefit appeal tribunal of 16 May 1983. The facts are simple and not in dispute. The claimant, who was in receipt of supplementary benefit by reason of his unemployment, was at the relevant time the owner of a house at 60 Cornwall Street, Werneth, Oldham. Because this house was to be modernised, he and his family obtained temporary accommodation at 37 Chester Street, Werneth, Oldham, for which he had to pay £20 per week by way of rent. On 4 February 1983 the benefit officer decided that the sum, to which the claimant was entitled in respect of housing requirements, was £4.17, this figure being made up of (i) the weekly equivalent of the annual, general and sewerage rates payable on 60 Cornwall Street, (ii) the weekly equivalent of £85.80 per annum allowable to cover the cost of maintenance and insurance of the property, and (iii) the weekly equivalent of £3 per annum, which was the ground rent payable in respect of 60 Cornwall Street.

3. On 17 March 1983 the claimant appealed against this decision, but the tribunal unanimously upheld the benefit officer. The tribunal made the following findings of fact:

"The removal to 37 Chester Street was temporary only, 60 Cornwall Street being normally occupied by the appellant and his family."

They gave as the reasons for their decision the following:

"The tribunal considered that 60 Cornwall Street was the home normally occupied by the assessment unit in accordance with regulation 2(1) of the Requirements Regulations. Housing costs should continue to be paid in respect of such premises in accordance with regulation 14(4)(a) because they were not absent for more than one year."

A payment cannot be made under regulation 30 of the Single Payments Regulations since the payment under such regulations would not be the only means of avoiding serious damage or risk to health."

4. "The home" is defined in regulation 2(1) as meaning "the accommodation, with any 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". It is to be stressed that this definition comprises property which is normally occupied, and this is eminently a matter of fact. The evidence before the tribunal in the present case showed that 60 Cornwall Street had to be modernised, and during this process the claimant and his family lived on a temporary basis at 37 Chester Street. Quite clearly the property normally occupied was 60 Cornwall Street. Moreover, in no sense could it be said that 37 Chester Street fell within the definition of "premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately". The claimant in his appeal to me contends that he is entitled to housing requirements in respect of both 60 Cornwall Street and 37 Chester Street. However, these are 2 independent premises, and as explained in paragraphs 8 and 19 of Decision R(SB)30/83 the concept of "the home" does not extend to comprise a plurality of units of accommodation in different locations. Admittedly, provision is made in regulation 20(4) for housing requirements to be allowed in respect of 2 homes where the assessment unit is changing its home. However, this does not arise here, and clearly that regulation has no application.

5. The fact that throughout the relevant period the claimant and his family were absent from 60 Cornwall Street did not have the effect of disentitling him to housing requirements in respect of that property. For regulation 14(4)(a) expressly preserved his entitlement. The relevant regulation provides as follows:-

"(4) Notwithstanding that all members of the assessment unit are absent from the home, amounts may be applicable under this part of these regulations -

(a) if the absence has not exceeded and, in the opinion of the benefit officer is unlikely to exceed, a period substantially more than one year and in the circumstances it is reasonable that the assessment unit should retain the accommodation."

The time spent at 37 Chester Street was only 25 weeks, and the need to have 60 Cornwall Street thoroughly renovated, including the roof removed, rendered it reasonable that the assessment unit should retain that accommodation. Accordingly, when the tribunal reached the conclusion that 60 Cornwall Street was the home normally occupied by the assessment unit and that housing costs should continue to be paid in respect of those premises in accordance with regulation 14(1)(a), their decision was in no way contrary to the evidence or otherwise open to objection. The benefit officer now concerned has in his submissions suggested that the reasons they gave were inadequate and that their decision should be set aside on this ground. I am not so satisfied. I think that they expressed the position as clearly as was necessary, but in any event, if I had come to the contrary view, I would not have referred this matter back to the tribunal, but would have myself given the decision that the tribunal themselves should have given, which would have been exactly the same as that arrived at by the tribunal, albeit with more elaborate reasoning.

6. For completeness, I should say that the tribunal purported to deal with a claim for a single payment under regulation 30 of the Supplementary Benefit (Single Payments) Regulations 1981. However, no such claim had been accepted by the Secretary of State as properly made or subsequently determined by a benefit officer, and accordingly, as was explained in the Tribunal of Commissioners' Decision R(SB)42/83 (paragraphs 8-11), the tribunal had no authority to initiate a claim, having only an appellate jurisdiction. Although, technically speaking, they erred in point of law in entertaining the claim at all, in practice nothing turns on the point, in that they rejected the claim anyway.

7. I dismiss this appeal.

Signed D G Rice
Commissioner

Date: 10 January 1984

Commissioner's File: CSB/930/1983
C SBO File: 1066/83
Region: North Western