

DGR/SH/28

Commissioner's File: CSB/950/1987

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976
 APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION
 OF LAW
 DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Cleveland

Case No: 43/11

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 12 March 1987 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 12 March 1987.
3. The question for determination by the tribunal was whether there had been an overpayment of supplementary benefit to the extent of £2,007.11, and if so, whether that sum was recoverable from the claimant pursuant to section 20 of the Supplementary Benefits Act 1976. In the event, the tribunal, confirming the decision of the adjudication officer, answered both questions adversely to the claimant.

The first issue that the tribunal had to resolve was whether or not, during the period when he resided at the house of his sister and brother-in-law, the claimant was a boarder. The relevant provision was regulation 9(13) of the Supplementary Benefit (Requirements) Regulations (now no longer operative), which at the relevant time read as follows:-

- "9. (13) Subject to paragraph 14, in this regulation 'boarder' means a person, not being a person to whom any of paragraphs 1 to 9 of Schedule 3 applies, who -
- (a) 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
 - (b) is living in a hotel, guest house, hostel or lodging house, or in some similar establishment, or
 - (c) is a refugee ...".

5. It is not in dispute that in addition to accommodation the claimant was provided with

Food to enable him to cook his breakfast. However, he received no cooked meals, and though the food which he used for his breakfast could be said to have been prepared, it was not a prepared meal. In my judgment, for there to be a meal the food has to be cooked or prepared, so as to be ready for eating without further action. Food which requires to be cooked or otherwise prepared is not a meal. In the present instance, it is clear that the claimant was not provided with cooked or prepared food, and accordingly he does not fall within paragraph (a). Furthermore, it is clear on the evidence that the claimant's sister and her husband were not running a hotel, guest house, hostel or lodging house. Theirs was a purely private residence, and they did not take in any lodgers - and manifestly the claimant does not fall within paragraph (b). It has never been contended that he is a refugee within paragraph (c). Accordingly, it follows that the tribunal had no option but to find that the claimant was not a boarder.

6. It then fell to the tribunal to decide whether the claimant was a householder. This they failed to do. But without determining whether the claimant was a householder it was impossible to ascertain the extent of his entitlement to supplementary benefit, and whether or not there had been an overpayment. Only when this issue had been resolved was it open to the tribunal to determine whether or not the relevant sum was recoverable pursuant to section 20. Clearly, the tribunal did not carry out all the necessary steps, and accordingly they were not entitled to reach the conclusion they did.

7. It follows that I must set aside their decision and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

Date: 11 July 1988