

*Named Couple
Co-habitants - 2 separate households*

DGR/CDB

Commissioner's File: CSB/967/1984
C A O File: AO 9411/84
Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Mary Elaine Murphy (Mrs)
Social Security Appeal Tribunal: Maidstone
Case No: 14/330

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 15 June 1984 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 referred to below.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 15 June 1984.

3. At the time of her claim to supplementary benefit the claimant was estranged from her husband. However, the latter continued to live in the same house as her together with her children. The claim to supplementary benefit was refused on the grounds that the claimant was one of a married couple, that any claim to supplementary benefit had therefore to be made by her husband, and that as he was in full-time employment there was necessarily no entitlement.

4. In due course, the claimant appealed to the tribunal who in the event upheld the benefit officer. They made the following findings of fact:

"[The claimant] attended the hearing with her sister. [The claimant] is estranged from her husband although they both live in the same household. [The claimant] has three dependent and one non-dependent children. [The claimant] was visited on 26 March 1984 in response to her claim for supplementary benefit. There is a Court Order for maintenance. [The claimant's] husband will not leave the household and does not eat at home. [The claimant] states that she sleeps on the sofa and [the claimant's husband] has the matrimonial bedroom. [The claimant] uses child benefit, maintenance and housekeeping from her non-dependent son to buy food."

The tribunal gave as the reasons for their decision the following:

"The tribunal examined the facts and circumstances before them and agreed that the adjudication officer's decision is correct in accordance with the Act and regulations. The tribunal had regard to regulation 1A of the Aggregation Regulations and paragraph 3(1) of Schedule 1 to the Supplementary Benefits Act which provides that where two persons are a married couple their requirements and resources shall be aggregated and treated as those of such one of them as satisfied prescribed conditions. Section 34(1) of the Act defines a married couple as a man and woman who are married to each other and are members of the same household."

5. Now, it is not in dispute that the claimant is married. Accordingly, the issue is whether or not she and her husband are members of the same household. If they are, then they are a married couple within the statutory definition, and in those circumstances they must be treated as belonging to the same assessment unit with the result that there is no entitlement to supplementary benefit. Accordingly, the crucial question is whether or not they are members of the same household.

6. It is clear from the findings of the tribunal that the tribunal used the word 'household' when they really meant 'house'. Nevertheless, by implication the tribunal reached the conclusion that the claimant and her husband were members of the same household. However, they have not explained why they reached that conclusion. Their findings of fact do not inevitably lead to that conclusion. Some explanation was called for, and in its absence the claimant has been left in the dark as to why she failed. In those circumstances the tribunal were in breach of regulation 19(2)(b) of the Adjudication Regulations 1984, and it follows from this that I must set aside their decision as being erroneous in point of law. I direct that the appeal be reheard by a differently constituted tribunal who will consider whether or not the claimant and her husband are members of the same household and will give adequate reasons for their conclusion. They will, of course, also have to make appropriate findings of fact on which to base their conclusion.

8. My decision is as set out in paragraph 1.

Signed: D.G. Rice
Commissioner

Date: 12 April 1985