

Resources - late payments of maintenance not taken into a/c as resource following McCorquodale.

MJG/SH/31/MD

Commissioner's File: CSB/0994/1986

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Sheila Graves (Mrs)

Social Security Appeal Tribunal: Mansfield

Case No: 17/15

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 27 June 1986 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given namely that, in relation to the application for review (dated 24 January 1986), on behalf of the claimant, the earlier decision(s) of the adjudication officer awarding supplementary benefit to the claimant should be reviewed (for the maximum period of 12 months before application) so as not to take into account as a resource the weekly payments of £20 per week by the claimant's husband as payment of arrears of maintenance due to her by Court order: Social Security Act 1975, section 101, as amended by paragraph 7 of Schedule 5 to the Social Security Act 1986).

2. This is an appeal to the Commissioner by the claimant by a married woman, then aged 40, against the majority decision of the social security appeal tribunal dated 27 June 1986, which upheld a decision of the local adjudication officer issued on 24 February 1986. That decision in effect refused to review the claimant's earlier award of supplementary benefit, the refusal being on the ground that that earlier award properly included as a weekly resource of the claimant £20 per week paid to the claimant for her dependent son under an order of the County Court dated 16 November 1983 "until arrears of £3,455 are discharged".

3. The appeal was the subject of two oral hearings directed by me. The first was on 12 March 1987 at which the claimant was present and was represented by Mr G W Richardson a Welfare Rights Worker and the adjudication officer was represented by Mr E O F Stocker. After that hearing I gave a direction (on 22 April 1987) that my decision in the appeal would be deferred until the Court of Appeal had given judgment in the case of McCorquodale v. Chief Adjudication Officer. That was because the legal point in issue in the present case was identical to all intents and purposes with the issue to be considered by the Court of Appeal in the McCorquodale case.

4. The Court of Appeal gave judgment in the McCorquodale case on 26 April 1988 and

the appeal came before me again on my direction for oral hearing on 6 September 1988. At that hearing the claimant was not present but was again represented by Mr G W Richardson. The adjudication officer was represented by Mr N Butt of the Office of the Solicitor to the Department of Health and Social Security. I am indebted to Mr Richardson, Mr Stocker and Mr Butt for their assistance to me at the two hearings.

5. At the second hearing on 6 September 1988 it was conceded by Mr Butt on behalf of the adjudication officer that the original majority decision of the social security appeal tribunal could not stand in the light of the Court of Appeal's decision in the McCorquodale case. Both he and Mr Richardson were agreed that this was a case where I could properly exercise the power (in paragraph 7 of Schedule 5 to the Social Security Act 1986) myself to give the decision which the tribunal should have given. That decision is set out in paragraph 1 above and is given because all the arrears of maintenance (£3,455) had accrued due before the 12 months review period from 25 January 1985 to 24 January 1986, the subject of the present appeal. Therefore the £20 per week arrears should not have been taken into account as a resource for supplementary benefit purposes. The claimant's earlier award of supplementary benefit should therefore now be reviewed by the adjudication officer in the light of my decision on principle in paragraph 1 above and any extra payment of supplementary benefit should now be made as soon as possible to the claimant.

6. As both parties were agreed on the application of the McCorquodale case to this present appeal and to the form of order which I should make, there is in my view no need for me to give further reasons for decision than those given above.

(Signed) M.J. Goodman
Commissioner

Date: 20 September 1988