

Tenant does not become householder until "occupies" home. "occupies" not same as "resides".

DGR/SH/16/MD

Commissioner's File: CSB/0997/1986

C A O File: AO 2877/SB/86

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: Brian Noonan

Social Security Appeal Tribunal: Sheffield

Case No: 10/17-07

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 7 November 1984 is not erroneous in point of law, and accordingly this appeal fails.
2. This is an appeal by the claimant, brought with the leave of the regional chairman granted on 31 July 1986, against the decision of the social security appeal tribunal of 7 November 1984. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was present, was represented by Dr. Paul Martinez, Senior Welfare Rights Officer to the City of Sheffield, whilst the adjudication officer appeared by Mr E O F Stocker. I am indebted to both of them for their submissions.
3. The relevant facts of this case would not appear to be in dispute. They are set out in "facts before the adjudication officer":-
 - "2. [The claimant] returned to Sheffield from Jersey at the end of 1983 and was residing with his mother at 27 Windy House Lane, Sheffield 2 as a member of her household. He acquired the tenancy of 93 Dyche Road, Sheffield 8 on 6 June 1984 and made a claim for supplementary benefit on forms BIPC from this address. He had previously requested single payments for household equipment - see attached copy of a letter.
 3. A visit was made to 93 Dyche Road on 25 June 1984 and it was found that [the claimant] was at that time preparing the house for habitation (ie stripping wallpaper etc) and was still eating and sleeping at his mother's house. On the day of the visit the house was completely devoid of furniture.
 4. A further visit was made to 93 Dyche Road on 6 August 1984 and [the claimant] stated that he had moved in on 7 July 1984 and had been sleeping there since that date.
 5. The claimant was assessed as a householder from the prescribed payday

Thursday in week commencing 2 July 1984...."

It is the claimant's contention that he should have been treated as a householder as from the date when he acquired the tenancy of 93 Dyche Road, namely 6 June 1984. The adjudication officer rejected the contention and he was upheld on appeal by the tribunal.

4. As stated above, the facts were apparently not in dispute but in any event the tribunal made the following positive findings:-

- "1. Receipt SB.
2. Assessed member of mum's household. 'Non-householder'.
3. 6 June acquired tenancy of Dyche Road.
4. Claimed SB (Form BI) from this address.
5. 25 June visit - observed devoid of furniture, dwelling was being prepared for habitation (redecorating).
6. Claimant was still eating and sleeping at mum's.
7. Claimant moved in 6 June started sleeping 7 July 1984.
8. Assessed as householder from pay day w/c Thursday 2 July."

The tribunal found as the reasons for their decision the following:-

"The tribunal observed claimant's misbelief householder rate would commence from date of tenancy. However for the purpose of Reqr Reg 5(6) tribunal accepted "home" to be mother's dwelling until 7 July when claimant began sleeping at Dyche Road.

...."

5. It is not in dispute that, if the claimant is to succeed in establishing that he was a householder, as defined in regulation 5(6) of the Supplementary Benefit (Requirements) Regulations 1983, as from the time when he obtained the tenancy, he has to show that from that date the new accommodation was his home within the definition contained in regulation 2(1). There "home" is defined as meaning:-

"The accommodation, with any garage, garden and outbuildings, normally occupied [my underlining] by the assessment unit and any other members of the same household as their home, being accommodation in Great Britain, and it includes any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft."

It is not in dispute that on any footing until 6 June 1984 the accommodation normally occupied by the claimant was the house belonging to his mother, and that he was a member of her household.

6. Dr. Martinez contended that "occupation" should not be equated with "residence"; it fell somewhat short of that. He did not attempt to define what constituted occupation - and in that I consider him to have been wise - but submitted that it was a matter which depended upon the facts of the individual case and was for determination by the tribunal. I agree with that analysis, and find support for the view that "occupation" and "residence" should not be treated in this context as synonymous from the unreported decision on Commissioner's file CSB/524/1985.

7. Dr. Martinez contended that the tribunal laid too great a stress on the fact that the claimant continued to sleep at his mother's house until 7 July 1984. They did not give proper weight to the fact that the claimant spent his days at the new premises decorating it and wallpapering it etc, and further observed, although the matter does not appear in the record of the proceedings, that the claimant during the day consumed sandwiches at 93 Dyche Road.

8. Now, although it is true to say that the tribunal identified the time when the claimant made 93 Dyche Road his home by reference to the date when he began sleeping there, it does not follow from this that this was the only matter on which the tribunal relied for their decision. It is clear from their findings that they took into account the following considerations, namely (1) that the claimant was "still eating" as well as sleeping at his mother's house and (2) that on 25 June the new accommodation, which was devoid of furniture, was being prepared for habitation - in other words, at that stage it was not fit for habitation. Moreover, the evidence before the tribunal, in the form of "facts before the adjudication officer", indicated that when a further visit was made to 93 Dyche Road on 6 August 1984, the claimant stated "that he had moved in on 7 July 1984". In other words, the claimant himself had acknowledged that his removal from his mother's house to the new accommodation took place on 7 July 1984. But whilst taking all these matters into account, the tribunal appear to have regarded the fact of the claimant's having started on 7 July 1987 to sleep at 93 Dyche Road as conclusive evidence that the move had from that date been effected, and 93 Dyche Road had become his home.

9. I do not see how it can be said that the tribunal erred in point of law. They could perhaps have set the matter out with greater clarity, but too high a standard is not to be expected. A careful reading of both the findings of the tribunal and the reasons for their decision satisfactorily reveals why the tribunal came to the conclusion they did, and the claimant has not been left in the dark. Moreover, if I had considered that there was a breach of regulation 19(2)(b), I would not have remitted the matter for reconsideration to the original or newly constituted tribunal, but would have substituted my own decision for that of the tribunal. For, in my judgment, no tribunal could have come to any other conclusion than that 93 Dyche Road became the claimant's home only from 7 July 1984. The position might have been different if the claimant had, immediately on acquiring the new tenancy, left his mother's house and resided with a friend whilst he was effecting the redecorating etc. Having cut off all links with his previous home, he might then be regarded as having established sufficient connection with the new accommodation as to have assumed occupation of it. For in those circumstances it would be something of an affront to the everyday use of language to say that his home was the accommodation of his friend where he was staying. However, such was not the case in the present instance.

10. Accordingly I dismiss this appeal.

(Signed) D.G. Rice
Commissioner

Date: 2nd April 1987