

DGR/SG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

CSB 1001/1982

free fuel in almshouse: to be treated as income & not

1. For the reasons appearing below the decision of the supplementary benefit appeal tribunal dated 23 July 1982 is erroneous in point of law, and accordingly I set it aside. Furthermore, being satisfied that it is expedient in the circumstances that I give the decision the tribunal should have given, I further decide that the claimant is not entitled to supplementary benefit.

2. This is an appeal brought with my leave by the benefit officer against the decision of the supplementary benefit appeal tribunal of 23 July 1982. The essential facts of the case are simple and straightforward. The claimant is an inmate of an Almshouse, a charitable foundation administered pursuant to a scheme made in or about 1979. At the date he claimed supplementary benefit i.e. on 6 May 1982, he was paying to the trustees of the Almshouse a weekly rent of £7.70, and in addition he received free of charge heating, lighting, cooking facilities and hot water. The supplementary benefit officer decided that, as the claimant was in receipt of invalidity benefit, he was not entitled to supplementary benefit. His requirements fell short of his resources. However, in reaching this conclusion the benefit officer proceeded on the basis that the supply of free services constituted income in kind to be taken into account subject to a disregard of £4.00. (Supplementary Benefit (Resources) Regulations 1981, S.I. 1981 No. 1527 Regulation 11(5)(e), (6)(c)).

3. The appeal tribunal reversed the benefit officer's decision, holding that the claimant was entitled to supplementary pension. They gave as their reasons the following -

"The tribunal looked at the facts presented, they agreed that the expense for all heating, lighting, cooking and hot water met by the Almshouse Trustees is an income in the form of a concession. Regulation 11(4)(f) (Resources) states that benefit in the form of a concession should be disregarded therefore giving the appellant an entitlement to Supplementary Benefit".

The only findings of fact the tribunal made were

"1. The appellant is resident in Almshouse accommodation.

2. All heating, lighting, cooking and hot water is provided for the residents at the expense of the Almshouse Trustees".

4. The benefit officer contends that the tribunal erred in point of law, in that the supply of free heating, lighting, cooking and hot water ("the amenities") did not constitute a concession, and therefore had to be taken into account in computing whether the claimant was entitled to supplementary benefit. The benefit officer puts his case as follows:

"There was no evidence before the tribunal which indicated that "the amenities" were being provided free to the claimant as a concession to the claimant personally or to a class of people of which the claimant was a member. The evidence before the Tribunal was that the amenities were provided to (all) the residents at the expense of the Almshouse trustees. In the absence of any evidence to show that the trustees were charging some other residents for "the amenities" it cannot be concluded that "the amenities" were provided free as a concession to the claimant. It is submitted that in the context of this case the word "concession" would mean that the charges had been reduced or waived because of the particular circumstances of the claimant after they had been fixed at a certain level. Accordingly where the amenities are provided free of charge to all the residents it seems that the free provision is without reference to any concession".

5. I agree with the above submission and with the definition given to the word "concession". The word "concession" implies that, apart from the claimant and others belonging to the same class as the claimant, there are other users of the amenities who are required to pay a higher price than the claimant and others of his class. Thus, the National Coal Board might well allow miners to receive coal at a reduced price or up to a certain weight free of charge altogether, and as the National Coal Board supplies the world at large at the market price, the facility accorded to miners can properly be regarded as a concession, and as such falling within the ambit of Regulation 11(4)(f) of the Resources Regulations. The position is quite different where, as in the present case, no one was enjoying "the amenities" save and except the claimant and his fellow residents in the Almshouse. Whatever it was they were enjoying, it was not a concession. Accordingly, the tribunal were clearly erroneous in point of law, and I must necessarily set aside their decision.

6. However, just as I am satisfied that the tribunal erred, I am likewise satisfied that the benefit officer was mistaken in concluding on the evidence that "the amenities" constituted income falling within Regulation 11(5)(e) subject to a disregard of £4.00. In my judgment, the only conclusion that can be drawn from the evidence is that the claimant was paying an inclusive rent covering

not merely his occupancy of the premises, but also the cost of heating, lighting, cooking facilities and hot water. Whether or not rent is so inclusive does not depend upon the label attaching to it, but on the realities of the position. Where a landlord demands a rent of a certain sum per week, and also provides, without further charge, free heating, lighting, cooking facilities and hot water, then, in the absence of any other explanation, the only reasonable inference is that the rent must be deemed to be sufficient to cover the cost of those additional items. I am satisfied that no tribunal properly instructed as to its role and the relevant law could reasonably reach any other conclusion than that the rent was inclusive, and that there should be deducted therefrom, pursuant to Regulation 15(3) of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299] as amended, the following sums in respect of the relevant amenities, namely

- (a) for heating £5.10
 - (b) for lighting £0.40
 - (c) for cooking £0.60
 - (d) for hot water £0.60
- £6.70

7. Accordingly, in determining whether the claimant is entitled to supplementary benefit, the sum of £6.70 has to be deducted from his household requirements. As at the time he made his claim for benefit he was in receipt of invalidity benefit, then his resources were at that date in excess of his requirements, and he is not entitled to supplementary benefit.

8. This appeal succeeds and I give the decision set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 31 May 1983

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