

CSB/1010/1983

SOCIAL SECURITY ACTS 1975 TO 1986

THE SOCIAL SECURITY (ADJUDICATION) REGULATIONS 1984 REGULATION 9.

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

Name: Andrew Nicholson

Social Security Appeal Tribunal: Bath

Case No: 2/3

Page 4 Paragraph 10 delete 'dismissed' substitute 'allowed'

(Signed) J.B. Morcom
Commissioner

(Date) 17th November 1986

Commissioner's File: CSB/1010/1983

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Region: Wales & South Western

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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Andrew Nicolson

Supplementary Benefit Appeal Tribunal: Bath

Case No: 2/3

[ORAL HEARING]

1. My decision is that the decision of the Bath Supplementary Benefit Appeal Tribunal dated 16 May 1983 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal; regulation 27 of the Social Security (Adjudication) Regulations 1984, [SI 1984 No 541].

2. This appeal to the Commissioner with the leave of the Commissioner by the claimant is against the unanimous decision of the appeal tribunal confirming the benefit officer's decision issued on 14 October 1982 "the appellant is not entitled to supplementary allowance from 9 6 82". The claimant requested an oral hearing to which request I acceded. Accordingly on 12 July 1984 I held an oral hearing. The claimant was represented by Miss L Findlay of the Child Poverty Action Group and the insurance officer by Mr E O F Stocker. To both of them I am indebted.

3. The findings of the tribunal as set out in the record of their decision are as follows:-

- "(1) The appellant is single, signing as unemployed who claimed Supplementary Benefit on 9 6 82.
- (2) Although signing as unemployed he is employed by Avon Valley Bike Hire Centre as a cycle hire manager but does not expect to work more than 28 hours a week.
- (3) He receives an Employment Transfer Grant from the Manpower Services Commission of £150 per quarter.
- (4) Although he is neither permitted to sleep on the premises where he works nor prohibited from the same, he does sleep there for which no housing costs arise.
- (5) Following contact with the Wages Inspectorate the Supplementary Benefit Officer was advised that the appellant could expect to be paid at the rate of £1.56 an hour. He is, in fact, only paid £10 weekly from April to October and £5 weekly retainer for the remaining months. The appellant disputed the rate of £1.56 per hour.

(6) The appellant stated that the employer was unable to pay more than the £10 (and £5) weekly".

4. The relevant statutory provisions are as follows:

Paragraph 1(2) of Schedule 1 to the Supplementary Benefits Act 1976 as amended;

regulations 5(2)(a) and 14(3)(a) of the Supplementary Benefit (Requirements) Regulations 1980, [S.I. 1980 No. 1299] which were in force at the date of the claim but are now replaced by the Supplementary Benefit (Requirements) Regulations 1983.

regulations 4(3) and 10(1) of the Supplementary Benefit (Resources) Regulations [SI 1981 No 1527];

5. Miss Findlay submitted that the tribunal had erred in law, in that they failed to consider whether the services performed by the claimant were comparable to those for which £1.56 per hour was the going rate, or to consider whether payment was normally made for comparable employment. The tribunal further failed, in Miss Findlay's submission, to consider, if payment was normally made for comparable employment, whether the organisation for whom the claimant performed the services had the means to pay him, despite evidence to the effect that they had not. Further the appeal tribunal failed to exercise their discretion not to apply regulation 4(3) of the Resources Regulations, to the claimant's case, even if they did consider that comparable services were compensated by earnings and that the organisation for whom they were performed had the means to pay for them. Miss Findlay referred me to the Chief Supplementary Benefit Officer's guidance, paragraph 32 of Memo No 5, and said that this suggests that regulation 4(3) should not apply where voluntary work of a casual nature is performed for a reputable organisation. Miss Findlay submitted that this is analogous to the claimant's situation and that it is not the intention of regulation 4(3) to penalise those who offer their services on a voluntary basis to non-profit making bodies whose purpose is to benefit the community or a section of it. She submitted that the purpose of the regulation was rather to avoid a situation in which an employer who could afford to pay for services normally compensated by earnings and who profits by those services being subsidised by supplementary benefit. Miss Findlay referred in her opening submission to the meaning of "means" in the context of regulation 4(3) and submitted that in this sense "means" cannot be intended to cover an individual organisation's fixed assets since this would defeat the object of the regulation. If fixed assets had to be sold the individual organisation would not be able to pursue the purpose to which the services performed are directed for example Avon Valley Bike Hire would become defunct and the claimant's contribution to its operation would not be required and he would have to claim benefit in any event.

6. Mr Stocker was in general agreement with these submissions and it is no disrespect to him if I do not set out his submissions in detail. He submitted that the tribunal had failed to set out clearly the interaction of the three organisations referred to in Mr Platts' letter dated 20 October 1982, that is Cyclebag, Avon Valley Bike Hire Centre, and Sustainable Transport Limited. The tribunal, so submitted Mr Stocker failed to indicate that they had exercised their discretion under regulation 4(3) of the Resources Regulations. In relation to the

means to pay Mr Stocker submitted that a commonsense judgment should be exercised. He accepted that an organisation did not have the means to pay if it had to sell up but if a business could borrow where it had not money to hand to pay the wages then that could be counted as "means", no special or technical meaning should be given to the word "means".

7. I accept the submissions of Miss Findlay and Mr Stocker as set out in the above paragraph. A tribunal could perfectly properly exercise their discretion in favour of the claimant and his employing organisation where such an organisation is for example a charity or non-profit making organisation but a tribunal should always bear in mind that there are many instances of charities trading in a normal way and at a profit. Except where relieving provisions are applicable charities are liable for payment of taxation on their profits where they trade: Groves v YMCA (1903) Tax Cases 613. In considering the exercise of their discretion (which the tribunal here failed to record as having considered) it would be perfectly proper for a tribunal to consider such matters as are referred to above. As to a consideration of the organisation's means a tribunal should adopt a commonsense approach as referred to above.

8. I now turn to Mr Stocker's submissions at the hearing as to whether the claimant was a householder or a non-householder for the purposes of the Supplementary Benefit (Requirements) Regulations 1980 which are the Regulations in force in this case as the date of claim is 9 June 1982. I need only refer to regulation 5(2)(a) of the Supplementary Benefit (Requirements) Regulations 1980 which provides in relation to normal requirements as follows:-

"5(2) For the purposes of the table a householder is a person, other than a partner, who -

(a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of those regulations other than regulation 23 (non-householder's contribution) relates, or if the household incurs no such expenditure, is the member of the household with major control over household expenditure;"

As a question of law it follows from the above provision that it is possible for a claimant who is not treated as responsible for housing item expenditure because the household does not incur such expenditure to be a householder for normal requirements. This is a question of fact for the appeal tribunal to determine. If they find that the claimant is a householder then the benefit of his living in the property is a resource provided to the claimant by his employer which should be taken into account as such under regulation 10(1)(a) of the Resources Regulations. Miss Findlay in reply submitted that as the tribunal had found in their findings of fact at paragraph 2.4. "although he is neither permitted to sleep on the premises where he works nor prohibited from the same, he does sleep there for which no housing costs arise" that this should not be included as a resource of the claimant's. I do not accept this submission as although the appeal tribunal found that the claimant was not permitted to sleep on the premises they did find "he does sleep there". However a further matter to be taken into account by the tribunal

if they take the benefit of his free accommodation as a resource is that any notional resource calculated under regulation 4(3) of the Resources Regulations should be adjusted accordingly on the basis that low wages are commonly paid to those with free accommodation. I would add that questions of fact are fully at large before the tribunal to whom I remit this case.

9. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision and I direct that the tribunal to whom I remit this case in re-hearing the matter should pay particular attention to all the matters to which I have referred above and they shall also consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

10. Accordingly the claimant's appeal is dismissed.

Signed J B Morcom
Commissioner

Date: 25 September 1984

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Region: Wales and South West