

Payment of claimant's fuel bills by ex-spouse. Reg 4(5)(a) Resources Regs applies but exact amt of payment must be quantified & not just assumed to be the amt for fuel id down in para 3 Sch 3 HB Regs.

DGR/SH/MD

Commissioner's File: CSB/1092/84

C A O File: AO 9221/84

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: Janice Frost (Mrs)

Social Security Appeal Tribunal: Sheffield

Case No: 10/P13 L10

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 13 July 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 mentioned below.
2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against a decision of the social security appeal tribunal of 13 July 1984. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Dr. Paul Martinez, Senior Welfare Rights Officer of the City of Sheffield, and the adjudication officer was represented by Mrs L Conlon of the Solicitor's Office of the Department of Health and Social Security. I am indebted to them both for their submissions.
3. In November 1983 the claimant, who has 3 dependent children, made a claim to supplementary benefit. On her claim form she declared that she had been separated from her husband for 5 weeks, and that although she was living in the matrimonial home she was maintaining a separate household from that of her husband. She also declared that her husband was paying her £15 per week on a voluntary basis, and that as part of the arrangement he was discharging the cost of the mortgage, the rates and the fuel bills. Shortly after her initial claim the voluntary payment was in fact reduced to £10 per week. The benefit officer (now the adjudication officer) awarded benefit, but calculated her entitlement on the basis that she was a householder. However, as the cost of the mortgage and rates was being discharged by her husband, he did not include these items in her requirements. Moreover, he decided that an amount of £7.35 (later increased to £7.95) should be treated as a resource on the ground that an amount for fuel costs was included in the claimant's allowance but her husband was making all the payments relative to such costs.

4. On 29 March 1984 the claimant's representative queried the reasons for £7.95 being deducted from her benefit. In due course a formal appeal was lodged. In the event, the tribunal upheld the benefit officer/adjudication officer's decision, relying on regulation 4(5)(a) of the Supplementary Benefit (Resources) Regulations 1981. That particular provision reads as follows:-

"(5) Any payment made -

(a) by a person in respect of a member of the assessment unit (but not to another member) shall be treated as possessed by that member notwithstanding that it is made to a third party;

(b)

unless, having regard to the purpose of the payment, the terms under which it is made and its amount, it is unreasonable to do so."

5. In the original written submissions of the adjudication officer to the Commissioner it was conceded that the tribunal erred in law by relying on regulation 4(5)(a). It was contended that the payment made by the claimant's husband for fuel bills was not "in respect of" her, but was in discharge of his own individual responsibility. Initially, Mrs Conlon was inclined to adopt that submission. However, in the course of argument, which took in various regulations on the basis that regulation 4(5)(a) was inapplicable, consideration was again given to the basic facts of the case, as they appeared from the papers. Both Dr. Martinez and Mrs Conlon accepted that the realities of the position appeared to be that the claimant's husband had undertaken to pay maintenance on a voluntary basis, which consisted (1) of his discharging the cost of the mortgage and rates together with the cost of fuel bills and (2) of his paying the claimant an additional weekly sum. In other words, part of the maintenance cost which he was shouldering consisted of his paying to a third party on behalf of the claimant the cost of the fuel that she consumed in her part of the former matrimonial home. If that was right, then it would appear that regulation 4(5)(a) was the appropriate provision to be applied, and that the payment made by the claimant's husband in respect of the fuel consumed by her was to be treated as a notional income. Accordingly, it would appear that the tribunal approached the matter properly in relying on regulation 4(5)(a). It should also be mentioned that they considered whether it was unreasonable to treat the claimant as possessed of the relevant payment, but in the circumstances decided that it was not.

6. However, unfortunately the tribunal went on to quantify the value of the payment made on behalf of the claimant for fuel bills at £7.35 (later £7.95) on the basis of the amounts listed at paragraph 3 of Schedule 3 to the Housing Benefit Regulations 1982 as amended by the Housing Benefits Amendment Regulations 1983. That was a wholly erroneous approach. The quantification has to be made by reference to the value of the fuel consumed by the claimant and paid for by her husband as part of the maintenance arrangement. The failure to compute properly the amount of the payment under regulation 4(5)(a) renders the tribunal's decision erroneous in point of law.

7. Accordingly, I must set aside the tribunal's decision and direct that the matter be reheard by a differently constituted tribunal who will have regard to the matters referred to above. In particular, on the basis that at the rehearing they reach the conclusion that regulation 4(5)(a) is applicable, they must make a specific finding as to the amount of the payment falling within that provision.

8. Finally, I would observe that in the course of her submissions Mrs Conlon pointed out

that although the parties had agreed that the claimant was a householder within the relevant statutory provisions, the facts, as they appeared in the papers, at least cast some doubt on this, and she contended that the matter ought to have been considered by the tribunal. I agree. Accordingly the new tribunal must also consider this aspect of the case.

9. I allow this appeal.

(Signed) D.G. Rice
Commissioner
Date: 4th October 1985.

DGR/SH/MD

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Region: North Eastern

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DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: J. F. (Mrs)

Social Security Appeal Tribunal: Sheffield

Case No: 10/P13 L10

[ORAL HEARING]

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9. I allow this appeal.

(Signed) D.G. Rice
Commissioner
Date: 4th October 1985.