

INTEREST ON MORTGAGE ARREARS
CSB 1106/1982

IDENTIFICATION NUMBER
NO. OF THE DEPARTMENT

7
Dawngs
JNBP/RPM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the Manchester Supplementary Benefit Appeal Tribunal ("the Tribunal") dated 21 October 1982 is erroneous in law and is set aside. In exercise of the power conferred on me by regulation 27 of the Social Security (Adjudication) Regulation 1984 in substitution for the said decision I give my own decision as follows:-

- (a) the decision of the benefit officer that supplementary allowance was payable to the claimant on the basis that he was entitled by way of a housing requirement to the allowance for mortgage interest restricted to the interest on the amount outstanding as at 31 March 1982 after deduction of the amount of arrears included therein was erroneous in law and falls to be reviewed and
- (b) on review the said decision is revised so as to make supplementary allowance payable on the basis that the claimant was entitled by way of a housing requirement to an allowance of £23.04 per week (being the weekly equivalent of the amount of interest payable by him on the whole of the amount outstanding under his mortgage as at 31 March 1982) as from 1 April 1982.

2. This is an appeal brought by the claimant with my leave from the above-mentioned decision of the Tribunal which confirmed the decision of the benefit officer issued on 15 July 1982. According to the form LT 205 submitted to the Tribunal the latter decision was simply "Allowance of £20.95 per week for mortgage interest" and the form LT 205 was accompanied by an assessment of the claimant's entitlement to supplementary allowance which was stated to be effective from 19 July 1982. However, it is clear to me from the

correspondence about the appeal to the Tribunal and from the other contents of the form LT 205 that from some time before 19 July 1982 the claimant's supplementary allowance had been assessed on the basis that he was entitled to an allowance for mortgage interest of £20.95 per week and that the decision issued on 15 July 1982 was in reality a decision refusing to review an earlier decision assessing his entitlement on that basis. It appears that the claimant had in effect asked for a review on the ground that he was required to pay mortgage interest of more than £20.95 per week because he had accumulated arrears on which additional interest was payable. In substance he was asking for an increased weekly allowance to cover the increased interest and for arrears from the date from which he had been required to pay the increased interest and I propose to deal with his appeal on the basis that the Tribunal's decision should be treated as a refusal to review and revise the original decision fixing his supplementary allowance so as to provide for such increase and arrears from 1 April 1982.

3. I directed an oral hearing of the appeal. The claimant did not attend but was represented by Mr H Mason of the City of Manchester Welfare Rights Service. The benefit officer was represented by Mrs L Conlon of the Solicitor's Office, Department of Health and Social Security. I am indebted to both representatives for their assistance.

4. The Tribunal recorded their findings of fact as follows:-

"[The claimant] owes the Local Authority the sum of £8,263.45 on a mortgage. ~~£750.30 of this represents arrears. He is in receipt of £20.95 for mortgage interest in his weekly Supplementary Benefit~~".

After stating their decision they recorded their reasons as follows:-

"The Tribunal consider that the sum was correctly calculated in accordance with regulation 16(1) of the Requirements Regulations as interest on the mortgage (that is the capital amount owing on his house)."

5. In his grounds of appeal the claimant put forward two objections to the Tribunal's decision, namely that the Tribunal had failed to give adequate, or indeed any, reasons for their decision and that they had misinterpreted regulation 16(1) of the Supplementary Benefit (Requirements) Regulations 1980. In response to the appeal it was submitted on behalf of the benefit officer that the first of these objections was unfounded but it was conceded that the Tribunal had misinterpreted regulation 16(1). However, although there was this agreement that the Tribunal's decision was erroneous in law as regards its interpretation of the regulation I considered that it was desirable that I should hear full argument on the subject and for that reason I directed the oral hearing.

6. Regulation 16 mentioned above provides for the inclusion, in the requirements of householders and owner-occupiers, of mortgage

interest payable by them. At the date of the benefit officer's decision the relevant part of the regulation was in the following terms:-

"16. (1) There shall be applicable under this regulation in respect of any mortgage charged on and taken out for the purpose of acquiring an interest in the home, the amount calculated on a weekly basis which is payable and attributable to mortgage interest.

(2)

(my underlining).

With effect from 9 August 1982 the words "or other loan" were substituted for the first 3 words underlined above and the words "interest on the loan" were substituted for the last 2 words underlined, by regulation 2(10)(a) of the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1982. 9 August 1982 fell between the date of the benefit officer's decision and the Tribunal hearing.

7. The only matter in dispute before the Tribunal was whether the allowance under regulation 16(1) showed have been the interest on the whole of the outstanding balance at 31 March 1982 of £8,263.45 or the interest on only £7,513.15 which would have been the outstanding balance if there had been no arrears.

8. After considering all the submissions and the arguments of Mr Mason and Mrs Colon at the hearing I am satisfied that when the words of regulation 16(1) are given their natural meaning the effect of the regulation is that allowance may be given for interest payable on the whole of the amount outstanding, including any arrears, under the mortgage agreement. I am also satisfied that there can be no justification for construing the words otherwise than in accordance with their ordinary meaning. The Tribunal evidently took a different view of the meaning of the regulation and in that respect erred in law. Moreover, I consider that they also erred in law in failing to state their reasons for rejecting Mr Mason's argument, which is recorded in the Chairman's note of evidence, to the effect that the regulation made no distinction between interest on arrears and interest which would have been payable had there been no arrears.

9. I can understand that the Tribunal may have been somewhat surprised at the suggestion that interest could be allowed on arrears and indeed Mr Mason himself said in his letter of 7 June 1982 that he had been inclined to agree with the benefit officer that housing requirements should only cover interest on the mortgage as if it were not in arrears. However, Mr Mason, on looking into the matter, came to the conclusion that there was no justification for that view and the Tribunal have not explained why they reached opposite conclusion.

10. For completeness I should add that in my view the situation as regards allowance for interest on arrears was not changed by the amendment of regulation as mentioned in paragraph 6 above. I agree with Mr Mason's submission that "interest on the loan" and "mortgage interest" both mean interest under the terms of the relevant agreement.

11. As I have found the Tribunal's decision erroneous in law I must set it aside. However, the facts found by the Tribunal together with the facts not in dispute provide a factual basis on which I am able to give the decision the Tribunal should have given and in the circumstances I am satisfied that it is expedient for me to do so.

12. For the foregoing reasons the appeal succeeds and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 30 May 1984

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