

CSB 1142/1982

MJG/AG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Mohammed Bashir

Supplementary Benefit Appeal Tribunal: Coventry

Case No: 20/445

ORAL HEARING

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 7 September 1982 and I set that decision aside as being erroneous in law. I give the decision which the tribunal should have given, namely that as at the date of claim, 2 March 1982, the claimant was for the purposes of the Supplementary Benefits Act 1976 and the Supplementary Benefit (Requirements) Regulations 1980 /S.I. 1980 No 1299 as amended by S.I. 1980 No 1774 and S.I. 1981 No 1016/ a "householder". Consequently, his "normal requirements" should be assessed accordingly and in assessing his "housing requirements", there should be taken into account the rent of £10 per week paid by him in respect of his home: Social Security (Adjudication) Regulations 1984 /S.I. 1984 No 451/, regulation 27.

2. This is an appeal to the Commissioner by the claimant, a single man aged 35 at the material time, from the majority decision of the supplementary benefit appeal tribunal dated 7 September 1982, in which that tribunal held that the claimant was not a "householder" within the meaning of the above-cited statutory provisions. The dissenting member of the tribunal considered that the claimant was in fact a "separate householder". In my view that reason for dissent is correct and the majority decision was wrong, for the reasons set out below. I have therefore set the tribunal's decision aside and myself given the decision which the tribunal ought to have given. The financial implementation of it is left to the local adjudication officer but if difficulty arises over that implementation, the difficulty can be referred to me.

3. The appeal was, at the claimant's request, the subject of an oral hearing before me on 22 May 1984 at which the claimant was not present but was represented by Mr F S Dhami assisted by Mr M Singh. The adjudication officer was represented by Mr E O F Stocker. I am indebted to Mr Dhami, Mr Singh and Mr Stocker for their assistance to me at the hearing.

4. The relevant facts, either as presented to the local tribunal or as found by that tribunal, are that on his return to this country from Pakistan in February 1982 the claimant obtained accommodation in the house of a Mr Z H, to whom he is not related. The house was owned by Mr Z H and the claimant agreed to pay to him the sum of £10 weekly by way of what was stated to be rent. Apparently the £10 per week included not only rent proper but also a contribution towards rates, water rates, heating, lighting, furniture, linen and crockery. The claimant had his own room in the house and shared the kitchen, bathroom and living room with Mr Z H. Mr Z H was in full-time employment but the claimant was unemployed. Mr Z H threatened the claimant with eviction if the rent was not paid and I understand (although this fact was not before the tribunal and cannot therefore influence my decision) that the claimant has indeed since been required to leave and has had to find other accommodation. Mr Z H and the claimant took their meals separately though they did store their food in the same place. The claimant bought his own food, the payment of £10 per week to Mr Z H containing no element of payment for food (as a result the claimant was not a "boarder" within the meaning of regulation 9 of the above cited Requirements Regulations).

5. The reasons for decision of the majority of the tribunal were as follows:

"The appellant was living as a non-dependant member of /Mr Z H's/ household (/Mr Z H/ being responsible for the household outgoings) and ... the correct amounts have been allowed under regulations 6 and 23 of the Requirements Regulations."

It is clear that the statement "The appellant was living as a non-dependant member of /Mr Z H's/ household" is not a finding of fact but a reason for decision. In my view it is an untenable inference from the facts before the tribunal. Indeed on behalf of the adjudication officer, Mr Stocker supporting the appeal, submitted that the conclusion that the claimant was a member of Mr H's household was wrong and I accept that submission.

6. The starting point in this type of case is regulation 5(2) of the above cited Requirements Regulations which at the relevant time (date of claim) read as follows:

"Normal requirements of relevant persons and householders

5. (1)

(2) For the purposes of the table /in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 - providing for the normal requirements of (among other persons) a "householder"/ 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;

- (b) does not share such responsibility or control with another member of the same household; and
- (c) is either not absent from the home or whose absence is for a period which has not yet continued for more than 13 weeks."

There is no doubt on the facts of this case that the claimant satisfies the requirements of regulation 5(2)(b) and (c) and the question is whether he also satisfies the requirement of regulation 5(2)(a).

7. That depends, under the terms of regulation 5(2)(a), on whether the claimant is, under Part IV of the regulations (housing requirements) to be treated as responsible for expenditure on the items to which the relevant regulations relate. In part IV, regulation 14(1) provides,

"Housing requirements

14 - (1) The items to which housing requirements relate are -

- (a) Rent:
- (b) - (g)

One has therefore next to consider whether the claimant is to be "treated as responsible for expenditure on" any of those items in regulation 14(1) and, in particular, rent. In that regard, regulation 14(3)(a)(i) provides that "a person shall be treated as responsible for expenditure ... for which he is liable, in particular as owner-occupier or party to the lease or tenancy agreement of the home, other than to a person who is a member of the same household,".

8. That means that if the £10 per week paid by the claimant to Mr Z H was expenditure for which the claimant was liable as a "party to the lease or tenancy agreement of the home" then he also comes within regulation 5(2) and is to be treated as a householder for the purpose of ascertaining his normal requirement, that requirement for a householder being greater than that for a non-householder. It should be borne in mind in this context that regulation 2(1) of the Requirements Regulations gives a very wide definition of "rent" as including "corresponding payments in respect of a licence or permission to occupy the home" and provides that "let" and "letting" shall be correspondingly construed. Nevertheless for a claimant to come within regulation 14(3)(a)(i), there must be a genuine "rent" payable and it must be ensured that the payment of a small weekly sum is not just a colourable device to try to label the claimant as a "householder" with beneficial financial results, when in truth he is not. In the present case I am satisfied that the payment of £10 per week made by the claimant

to Mr Z H, though small in amount, was nevertheless not a colourable device but was genuinely "rent" that being an irresistible inference from the facts before the local tribunal.

9. A further question, though, under regulation 14(3)(a)(i) is whether or not the payment of rent is made by the claimant as "party to the lease or tenancy agreement of the home" (my underlining). The expression "the home" is defined by regulation 2(1) of the Requirements Regulations as meaning "the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home ..." (my underlining). The question therefore in this type of case is whether the lease, tenancy agreement or licence or permission to occupy is of "the home" as thus defined. If for example in this case the claimant and Mr Z H were "members of the same household" then the entirety of the house would be the "home" and it could not be said that the payments under a tenancy agreement made by the claimant came within regulation 14(3)(a)(i) because the agreement would not be of "the home". As a result, he would not be a householder within the meaning of regulation 5 (normal requirement).

10. So far as concerns the definition of "the home" in regulation 2(1), there is no statutory definition of the expression "the same household". However, in reported Commissioner's Decision R(SB) 4/83, the learned Commissioner stated (in paragraph 19),

"I have already observed that the legislature has furnished no definition of either 'household' or 'member of the same household'. Neither of these terms has any technical meaning in general usage nor is either a term of art in the general law of the land. The terms fall, accordingly, to be given their normal, everyday meaning; and their application by the determining authorities is primarily a matter of fact. (See, for example, Cozens v Brutus 1973 A.C. 854 per Lord Reid at p. 861). In these circumstances it is undesirable that I should here attempt my own definitions - and I do not do so. It is a matter of common-sense and common experience. I say this, however: a person who has, and lives in, his own separate home cannot reasonably be regarded as a member of someone else's household. In the case under appeal /a woman in the claimant's house/ clearly had a home of her own. She had the exclusive occupation of two rooms, which she herself had furnished. She bore her own costs in respect of lighting and heating. She bought and cooked her own food and provided for herself such other household goods as she required. All this is quite incompatible with her having been, at the same time, a member of the claimant's household".

11. I am satisfied, on considering those remarks and applying them to the facts before the local tribunal, that the claimant and Mr Z H cannot possibly be said to have been "members of the same household" within the meaning of regulation 2(1). Consequently, therefore, the rent paid to Mr Z H by the claimant was in respect of the claimant's "home". As a result he is "to be treated as responsible for expenditure ... as ... party to the lease or tenancy agreement of the home" (regulation 14(3)(a)(i)). He therefore comes also within the definition under regulation 5(2)(a) (normal requirements of householders - see paragraph 6 above). In coming to this conclusion, I should emphasise that all the facts of the case must

be looked at. In my view, the mere existence of a tenancy agreement or permission to occupy a separate "home" does not of itself necessarily mean that the claimant is a "householder". All the relevant facts (of which the existence of a tenancy agreement or licence is only one) must be looked at in deciding whether or not the claimant is "a member of the same household" within the meaning of regulation 2(1) and thus having responsibility for rent under regulation 14(3)(a)(1). I do not read reported Commissioners' Decisions R(SB) 13/82, R(SB) 20/82 and R(SB) 4/83 as indicating to the contrary.

12. I would stress that careful attention must be focussed on the existence of so-called tenancy agreements and rents to ensure that they are not colourable devices, in order to see whether the truth of the matter is that the claimant is in fact maintaining a separate "household". I should nevertheless add however that the phrase in regulation 5(2)(a) "is the member of the household with major control over household expenditure", used, it appears, by benefit officers and tribunals to determine this question is not relevant unless one has reached the conclusion under regulation 14 to 22 of the Requirements Regulations that there is no expenditure within those regulations which "the household incurs". That must be a very rare case and the test of "major control" is inapplicable to the normal type of case, of which this is one.

(Signed) M J Goodman
Commissioner

Date: 25 June 1984

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CSBO File: 1265/82
Region: Midlands