

(It addition - a) householder in para 3 sub 7 does not have to be the claimant b) applicable in reg 12(2)(j) means entitled, not nec. in receipt of.

RFMH/SH/11/MD

Commissioner's File: CSB/1177/1986

C A O File: AO 3010/SB/1986

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Ann Flynn (Mrs)

Social Security Appeal Tribunal: Mansfield

Case No: 13/10

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 1 July 1986 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal in accordance with the directions in this decision.

2. This is the claimant's appeal on a point of law against the decision of the social security appeal tribunal dated 1 July 1986, leave having been granted by the tribunal chairman. The claimant asked for an oral hearing, a request to which I acceded. The claimant did not attend the hearing held before me but was represented by Mr G W Richardson from the Nottingham Welfare Rights Service. The adjudication officer was represented by Miss J Rowe, of Counsel, instructed by the Solicitor's Office of the Department of Health and Social Security. I am grateful to them for their helpful submissions.

3. On 30 December 1985 the claimant claimed supplementary benefit as her husband had been committed to prison. Prior to his committal he was in receipt of supplementary benefit for the family, which included an additional allowance for central heating at the higher rate under paragraph 3(b) of the Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. The adjudication officer decided that the claimant was entitled to supplementary benefit, but that she was disentitled by virtue of the provisions of regulation 12(2)(j) of the Requirements Regulations from receiving additional allowance for central heating under paragraph 3(b) of Schedule 4. Thereupon the claimant appealed to the tribunal.

4. On 1 July 1986 the tribunal dismissed the appeal. Their recorded findings of fact were:-

"1. A [Appellant] claimed SB [supplementary benefit] on 30.12.85 as her husband had been committed to Prison.

2. Previously the assessment unit had been in receipt of SB including an

additional requirement for central heating from before 5.8.85 and continuously up to 30.12.85 but the benefit had been payable to A's husband who had been the claimant.

3. The central heating addition was not applicable to A immediately before 5.8.85."

The tribunal's recorded reasons for their decision were:-

"1. There was no dispute on the facts and the only issue was the interpretation of the resources regulations 12(2)(j).

2. They preferred the AO's [adjudication officer's] interpretation and felt that the intention of reg 12(2)(j) was that entitlement to the central heating addition depended on it being applicable to the same claimant continuously since immediately prior to 5.8.85.

3. We did not think that the reference to 'partner' in regulation 12(5) was of assistance to A as it was aimed at a different situation and Reg 12(2)(j) seemed to require the same identity of claimant throughout the whole period."

5. The relevant law is as follows:-

(1) Regulation 2(1) of the Requirements Regulations, as amended, provides that unless the context otherwise requires:

""partner" means one of a married or unmarried couple;"

(2) Regulation 5(6) provides:

"(6) For the purposes of the table a householder is a single claimant who -

(a) in respect of a home or, as the case may be, a householder in Great Britain is responsible for the housing expenditure 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 if absent is absent only -

(i) otherwise than as a student on normal vacation, and

(ii) for a period which has not yet continued for more than 13 weeks.

(3) Regulation 12 (1) of the Requirements Regulations provides:-

"(1) The weekly amount notified in column (2) of any paragraph in Part 1 of Schedule 4 shall be applicable to the claimant in respect of a member of the assessment unit to whom column (1) of the corresponding paragraph applies."

(4) Regulation 12(2)(j) of the Requirements Regulations provides:

"(j) no amount shall be applicable to a householder under paragraph 3 unless that paragraph was applicable to him before 5 August 1985 and has been continuously applicable to him since that date or would have been so applicable to him but for the effect in this case of regulation 12(2)(f)."

(5) Regulation 12(5) of the Requirements Regulations provides:

"(5) For the purposes of Part I of Schedule 4 "householder" means a person (including a partner) who satisfies the conditions of sub-paragraph (a) and (b) of paragraph 6 of regulation 5 (meaning of householder) but where a person satisfies the condition of sub-paragraph (a) but, contrary to sub-paragraph (b), shares responsibility for, or control of, the expenditure there referred to with another member of the same household -

(a) paragraphs 2 to 6 of Schedule 4 shall apply to him as if the amount specified in column (2) of those paragraphs were divided by the number of the persons in the household who share responsibility or control;

(b) paragraph 8 of Schedule 4 shall apply as if he was a householder.

(5) Paragraph 3 of Schedule 4 to the Requirements Regulations provides:

"(3) Person who is a householder where the home, excluding any bathroom, lavatory or hall, consists of -

(a) not more than four rooms; (a) £2.20

(b) five or more rooms; (b) £4.40

and is centrally heated by a single system, including night storage heaters, which (notwithstanding that individual parts of the system may be operated independently of each other) is operated from a central point and is the normal means of heating the living or dining areas."

6. Mr Richardson submitted that the tribunal's decision was erroneous in law because the record failed to comply with the statutory requirements of regulation 19(2) of the Social Security (Adjudication) Regulations 1984, in that there was no finding of fact as to whether or not the claimant was a householder for the purposes of regulation 12(5) of the Requirements Regulations. This was crucial to the issue. He argued as follows:- It was common ground that initially the claimant's husband was the relevant person as defined in regulation 2(1) so that his requirements and resources included those of the claimant by virtue of paragraph 3(1) of Schedule 1 to the Supplementary Benefits Act 1976. Her resources and requirements were aggregated with those of her husband for the purpose of assessing his entitlement to supplementary benefit. Regulation 11(1) of the Requirements Regulations provided that the category of additional requirements related to the items for which provision was made to Schedule 4. Regulation 11(2) provided that the additional requirements of a claimant included the requirements of any partner. The claimant was a "partner" as defined in regulation 2(1). As a result entitlement to an additional requirement was not limited to a claimant. Paragraph 3 of Schedule 4 provided for entitlement to a

heating addition in certain circumstances for a person who was "a householder". Regulation 5(6) related to normal requirements and defined a householder as "a single claimant" who satisfied certain conditions. Regulation 12(5) extended the definition of "householder" for the purposes of Part I of Schedule 4 to include a partner who shared responsibility for, or control of, the housing expenditure with another member of the same household. The wording of regulation 12(1) was entirely inconsistent with the view that the householder in terms of paragraph 3 of Schedule 4 must be a claimant. In order to establish entitlement to a heating addition it was incumbent on the tribunal to determine whether or not the claimant was a householder for the purposes of regulation 12(5). If they concluded that she was, it was not in dispute that as a heating addition was applicable to her under paragraph 3 before 5 August 1985 and had been continuously applicable to her since that date Regulation 12(2)(j) did not preclude the award.

7. Miss Rowe submitted that whether or not the claimant was a householder in terms of regulation 12(5) was irrelevant. The tribunal's decision was not erroneous in law because their failure to record a finding of fact on this issue was venial. Regulation 12(1) specified that "the weekly amount specified in column (2) of any paragraph in Part I of Schedule 4 shall be applicable to the claimant in respect of a member of the assessment unit to whom column (1) of the corresponding paragraph applies." The crucial words were "applicable to the claimant". The claimant's resources and requirements for supplementary benefit included the resources and requirements of the assessment unit. Where the conditions of paragraph 3 of Schedule 4 were satisfied the additional requirement for heating at the appropriate rate was included in the calculation of the claimant's requirements irrespective of whether or not he was the householder. The entitlement was included in the claimant's assessment. In the present case the claimant's husband as the relevant person had made a claim prior to 5 August 1985 and his assessment included an additional requirement for heating under paragraph 3 of Schedule 4. On 30 December 1985 the claimant had submitted a fresh claim and her entitlement had to be reassessed. Regulation 12(2)(j) precluded an award of an additional requirement for heating because paragraph 3 had not been continuously applicable to her since 5 August 1985 in the context of her particular claim. The term "householder" in regulation 12(2)(j) should be limited to mean the claimant. She found support for this argument because the provision was enacted to phase out the payment of central heating allowance and such an intention would be defeated if the term "householder" included any person in the assessment unit. The claimant was not assisted by the fact that she had become the nominated person in a couple. It was still a new claim which had been made after 5 August 1985 though by virtue of regulation 12(2)(j) it was no longer relevant that the conditions in paragraph 3 were satisfied. There had been a break in the continuity of the claim. She submitted that regulation 12(5) did not confer but merely extended the status of householder to a partner, who would otherwise be precluded by virtue of regulation 5(b).

8. In my view the term "householder" does not bear its ordinary meaning in regulation 12(2)(j). It bears a meaning attributed to it by regulation 12(5) which the tribunal did not consider at all. I find support for this conclusion in a decision on Commissioner's file no. CSB/0159/1986 in which the Commissioner considered this issue and stated at paragraph 13(2):-

"Mr Latter, representing the adjudication officer, did not seek to support the written submission that it was necessary to be the claimant for supplementary benefit, in order to qualify as a householder, in terms of regulation 12(5) of the Requirements Regulations. He drew my attention to the wording of regulation 12(1) which, as he pointed out, is entirely inconsistent with the view that the householder in terms of paragraph 3 of Schedule 4 must be a claimant. I agree. Column 1 of Part I of that Schedule is directed to persons who are members of the assessment unit. It is possible to qualify under Part I without the person concerned being a claimant at all. Regulation 12(5) defines the meaning of "householder" for the purposes of Part I of

*... to be the claimant
who is the householder*

Schedule 4. There is nothing in that definition to incorporate the opening words of regulation 5(6), namely "For the purposes of the table a householder is a single claimant who". Regulation 12(5) refers to "a person (including a partner) who satisfies the conditions of sub-paragraph (a) and (b) of paragraph 6 of regulation 5.. Any person, including one of a married or unmarried couple (the definition of "partner"), can qualify under paragraph 3 of Schedule 4, as a householder if he satisfies these conditions. The assessment unit will, however, not benefit unless the householder is a member of that unit. It is irrelevant whether or not he or she is the claimant."

9. For the reasons stated above the tribunal's decision was erroneous in law and I set it aside. I direct that the matter be reheard by a differently constituted tribunal. The new tribunal should determine whether the claimant was "the householder" in terms of regulation 12(2)(j) of the Requirements Regulations before 5 August 1985 and remained the householder continuously from that date. In order to do this they should disregard the fact that she was not the claimant until her husband was committed to prison. That, for the reasons stated above, is irrelevant. Their concern is to see whether she satisfied the conditions of paragraph (a) and (b) of regulation 5(6) of the Requirements Regulations. It was argued before the tribunal that she did because she was equally responsible for household expenditure. It will be for the new tribunal to determine whether she satisfied the conditions throughout the relevant period. In determining whether the amount was continuously applicable to the claimant the new tribunal should determine the date from which supplementary benefit should have been awarded by the adjudication officer by reference to the relevant provisions in the Supplementary Benefit (Claims and Payments) Regulations 1981 and the Supplementary Benefit (Determination of Questions) Regulations 1980. Under those provisions the day of award is determined on grounds of administrative convenience. Where justice requires that some other day should be chosen that constitutes "special reasons" in terms of regulation 7(2) of the Determination of Questions Regulations: see paragraph 6 of Commissioner's decision CSB/0027/1987. In the present case the day of the week that should be chosen is that immediately following the last day for which the claimant's husband received benefit and I direct the tribunal, in the absence of some compelling reason to the contrary, so to decide. If the new tribunal concludes that the claimant did satisfy the conditions of paragraph (a) and (b) of regulation 5(6) of the Requirements Regulations from before 5 August 1985, they should decide that the adjudication officer's award of benefit is to include a central heating allowance at the higher rate specified in paragraph 3(b) of Schedule 4 to the Requirements Regulations.

10. Before parting with this case it is appropriate to comment on the arguments addressed to me on the meaning of the expression "applicable to him" in regulation 12(2)(j) of the Requirements Regulations. In the said Decision CSB/0159/1986 the Commissioner stated that since the householder in terms of paragraph 3(b) of Schedule 4 of those Regulations did not have to be the claimant, there was no reason why paragraph 3(b) should not be applicable to her where there was title, but no award had been made. A Commissioner in Decision CSB/0297/1986 decided that a continuous award was essential. But he gave no reason for this conclusion other than that he considered this "appropriate" and his attention was not drawn to the decision of the House of Lords in Insurance Officer v McCaffrey [1984] 1 WLR 1353 which draws a clear distinction between title and award. In the present case, there will, on my direction in paragraph 9 above, be a continuous award so that this question does not in fact arise. If, however, I am wrong, I would hold that "applicable to" refers to entitlement.

11. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 2 June 1987