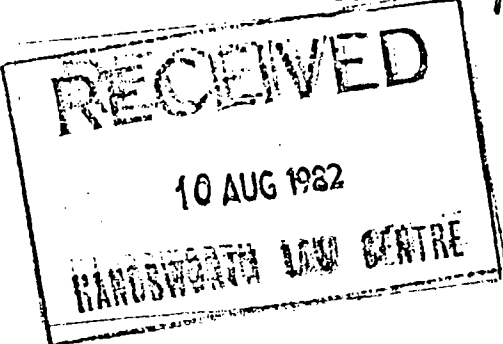


CSB 7 / 1982



IEJ/GJH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Household

Name: Penelope Benton (Mrs)

SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL: Greater Birmingham

Case No: 83/1805 and 83/1806

[ORAL HEARING]

- 1. (1) My decision on this appeal follows an oral hearing on 1 July 1982 at which the appellant Benefit Officer was represented by Miss L Shuker of the Solicitor's Office DHSS and the claimant was represented by Mr A Rust, Solicitor, of the Handsworth Law Centre.

I am indebted to both Miss Shuker and Mr Rust for their helpful submissions.

- (2) The appeal achieves a technical success but its practical effect is in the claimant's favour.

I set aside the decision dated 6 October 1981 of a Supplementary Benefit Appeal Tribunal ("the Tribunal") as erroneous in point of law and in exercise of my jurisdiction in this behalf, and being satisfied that it is in the circumstances of the case appropriate to do so, give next below the decision which the Tribunal should have given.

- (3) (i) Supplementary allowance is payable to the claimant in respect of the assessment unit of which she and her dependant child are the only members on the basis, and with such increments as are appropriate on the basis, that she is properly to be regarded as a householder for the purposes of the Supplementary Benefit (Requirements) Regulations 1980 as amended and in force at the material dates ("the Regulations"), and in particular for the purposes of paragraph 3 of the "Table" as defined in the Regulations.

- (ii) Should the amount of weekly allowance as re-computed by the benefit officer in accordance with the foregoing not be agreed by the claimant the appeal can be restored to me for a supplementary determination as to the proper amount.

2. It is not in dispute that the claimant's resources in combination with her requirements render her eligible for supplementary allowance. The only question in issue is as to whether the amount of allowance properly falls to be determined on the basis that she is a "householder" within the meaning of the Regulations or whether she is not. Nor are the relevant facts in any way in dispute.

3. The claimant, with her young son, lives in a house which is in multiple occupation. Four other adults live there also, one of whom is her brother, and he is in fact the owner of the house, which he is purchasing on mortgage. The claimant and each of the other adults other than her brother pay rent of £9.00 per week (payable fortnightly) to her brother, and the claimant has produced her rent book in proof of her tenancy. Under her tenancy she is entitled to the exclusive use of a bedroom which she occupies with her child and to the shared use of the kitchen, living room and bathroom in the house. Each of the 5 adult occupants of whom the claimant is one pays an equal share of the common expenditure on such services as fuel and pays £2.00 per week into a common purse for household staples such as bread and coffee. Prior to the claimant coming to live in the house, the room she now occupies had been let by her brother to an earlier tenant on similar terms. The other 4 adults eat together, but the claimant and her son do not eat with them, the claimant buying and cooking food for the two of them.

4. The tribunal's unanimous decision was in the following terms:-

"The SBO's decision is revised. The appellant should be assessed as a joint householder sharing a household with 4 other people and having a housing requirement of £9.00 a week. An additional heating requirement of £1.40 should also be added in respect of son" [Named].

The reasons given by the tribunal for their decision (apart from their reasons for awarding in respect of the claimant's child an age related heating allowance, the propriety of which is not now in issue) were as follows:-

"It was considered that" [the claimant] "was living as a joint householder. She entered the house on the understanding that there would be a definite arrangement for paying rent and other household bills having replaced another person previously occupying her room under the same arrangement. Reg 6(2) of" [the Regulations] "was considered to be applicable."

5. As was pointed out in Decision CSB 10/82, the expression "joint householder" does not appear in the Regulations; but it is a colloquial and convenient label to describe a claimant who is properly within the scope of regulation 6(2) of the Regulations. But, as was also pointed out in the same decision, only such persons as satisfy all the conditions

of paragraph (2) of regulation 5 of the Regulations except one of those conditions - paragraph (b) of regulation 5(2) - and who share responsibility for, or control of, the expenditure there referred to with another member of the same household, can properly be regarded as coming within the ambit of regulation 6(2) of the Regulations. The local tribunal in the present case, as in the case with which Decision CSB 10/82 was concerned, took the view that the claimant did share responsibility for, or control of, the expenditure referred to in regulation 5(2)(b) with another member of the same household; but omitted to give due weight to the provisions of regulation 5(2)(a) as to what constituted relevant expenditure the sharing with another member of the same household of responsibility or control for which can bring a claimant within the ambit of regulation 6(2). I have every sympathy with them in that respect, because the correct evaluation of that involves a correct interpretation of "legislation by reference" of some complexity. But it is in my judgment quite clear that the Tribunal went wrong in that task and that I must set aside their decision on that account.

6. Stating that aspect of the matter as shortly as I can - for that the tribunal did go wrong is accepted by both Miss Shuker and Mr Rust -

- (i) Regulation 5(2) provides who is to be a "householder" for the purposes of the Table of allowances set out as Schedule 3 to the Regulations;
- (ii) persons other than "partners" - who cannot be treated as householders - fall to be treated as householders if they comply with all 3 of the conditions specified in Regulation 5(2);
- (iii) it is not in doubt that the claimant satisfies the third such condition, and it was - to put it no higher - a tenable view that the claimant satisfied the second such condition provided that she satisfied the first, with which the second is interrelated.
- (iv) in order to satisfy the first condition the claimant must be a person who under part IV of the 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;"

- (v) Regulation 14(1) of the Regulations (the first regulation in part IV) specifies the items to which housing requirements relate, and in the present case the first item so specified - rent - was the only potentially applicable item.
- (vi) rent is a term which under regulation 2(1) of the regulations is, unless the context otherwise requires, to include corresponding payments in respect of a license or permission to occupy the home, and "let" and "letting" and "tenancy" are to be correspondingly construed;

(vii) however - and most materially - regulation 14(3) includes a provision that a person is to be treated as responsible for expenditure -

"(i) 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."

and, on the postulation on which the Tribunal was proceeding, the claimant was a member of the same household as her brother to whom she was paying rent - and accordingly was not to be treated as responsible for expenditure on rent in respect of that household; and accordingly failed to bring herself within regulation 5(2)(a) - and in the result, could not properly be brought within the ambit of regulation 6(2).

7. The appeal has proceeded before me on the quite different question as to whether the claimant is not a "householder" in her own right in terms of regulation 5(2).

8. The benefit officer's appeal was instituted prior to the reporting of Commissioner's Decision CSB 12/82; and as the matter proceeded before me Mr Rust was substantially "beating at an open door" - because, in the light of that decision, Miss Shuker was prepared to accept that on the facts of the present case the claimant did so qualify, and should succeed on this appeal accordingly. But Miss Shuker expressed particular concern as to the proper approach to be made in arriving at that conclusion - and was most anxious that I should guard, in my decision, against treating as immaterial circumstances of the case which in her contention were material to be taken into account - notwithstanding that I might in this particular case regard the claimant as qualifying. Mr Rust, on the other hand, was no less concerned that I should in principle leave out of account in arriving at my decision circumstances of the case which in his contention should not be had regard to in reaching my decision - although since Miss Shuker had already accepted that I could in the instant case treat the claimant as qualifying even if circumstances of the character he considered were not in principle proper to have regard to were looked at - the outcome of the appeal would not turn on this contested issue.

9. I do not propose to attempt any exhaustive prescription of the considerations of which account is, or is not, properly to be taken in deciding whether a person is or is not a "householder" in accordance with the prescriptions in regulation 5(2) of the Regulations. The regulations do not define what is a "householder", although that term is used frequently in the Regulations and para 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 as amended ("the Act") defines "Householder" - but only for the purposes of the Table in that Schedule - as meaning "a person who is not one of a married or unmarried couple but who satisfies prescribed conditions with respect to living accommodation".

10. (1) It is common ground that the Regulations are made under section 14 of the Act for carrying into effect that Schedule -

indeed the Regulations expressly contemplate in the opening words of their enactment paragraph 2(3) of the Schedule to the Act from which the above definition of "householder" is taken.

- (2) On that foundation it is Mr Rust's submission that it is proper to take account for the purposes of regulation 5(2) only conditions which are prescribed "with respect to living accommodation", and that it is not permissible to look any more broadly at - to use a neutral phrase - the circumstances in which a claimant lives - than lies properly within the scope of prescribed conditions with respect to living accommodation. Miss Shuker contends for a broader approach in which all the circumstances of a particular case which might lead to a conclusion as to whether or not a person was a "householder" within the prescription of regulation 5(2) may legitimately be looked at, amongst them any surrounding circumstances which may throw light upon what is the "household" in which the claimant lives.

11. (1) Shorn of the artistry of advocacy, the practical thrust of these contentions was on Mr Rust's part the hope for a ruling which would indicate that it should follow from substantiation simply that a claimant was the tenant of an accommodation unit of which he or she had a legal tenancy, licence or permission to occupy on payment of "rent", whether or not it included shared use of common parts or facilities, that such claimant must properly be regarded as a "householder" (whose "household" consisted of the assessment unit which he or she constituted, or of which he or she formed part), and undertook the material responsibility for rent, regardless of any other circumstances obtaining.
- (2) He conceded, however, that it was permissible to probe further to this extent, that a "sham" letting would not qualify a claimant.
- (3) I readily understand the desire of those who, like himself, seek to give simple but valid advice to claimants as to their position, to have a simple yardstick to apply; and why accordingly he particularly argued against there being in point any such detailed and searching enquiry into the circumstances of a particular claimant's personal life being here applicable as was already the practice of the DHSS with regard to issues as to "cohabitation".

12. Miss Shuker put forward no specific limits to what should on her view be regarded as the proper scope of enquiry and verification but said in effect (though the wording here is my own) that one is both entitled and required to look at the realities of the overall

situation obtaining and to treat as a "household", even where the claimant establishes a tenancy and that he or she pays rent under it, only what should properly be so regarded in the light of all the circumstances of the particular case - thereby precluding a claimant from ranking as a "householder" if he or she was in practical reality living as a member only of some larger entity engaged in communal living.

13. As to those rival contentions I will say this:

- (1) Mr Rust's concession of the point as to a letting which is a "sham" being of no avail to a claimant was clearly correct.
- (2) Beyond that, I regard Decision C.S.B. 12/82 as already authority that substantial account needs to be taken in the context of regulation 5(2) of the circumstance, where it obtains, that a claimant is a tenant of residential accommodation which he or she occupies in right of that (taking in this context the extended meaning of "tenancy" prescribed by the Regulations).
- (3) But that does not in my view constitute the simple yardstick Mr Rust would wish. One must go further than that. "Household" is used in the Regulations without definition and is thus to be construed in its normal sense in everyday language.
- (4) For that purpose the statutory authorities are in my judgment to reach a conclusion as to what constitutes a "household" and to take that into account in deciding whether or not a person is a "householder" within the meaning of Regulation 5(2).
- (5) To my mind, they are to make that evaluation - on a common-sense basis - from all available materials which can properly be considered relevant.
- (6) It is inevitable that on such a view "circumstances will alter cases"; but I regard the conclusion I have just expressed as implicit in the omission on the part of the legislature to define "household".

14. Mr Rust indicated that if I was unable to hold in favour of the "simple yardstick" by which a "tenant" in the extended sense was automatically to be treated as a "householder" he would welcome guidance as to how far it would be proper for a claimant's professional adviser such as himself to indicate to a claimant - in the same spirit as a "tax planning adviser" advises his clients on mitigating tax - how to qualify as a "householder".

But this is not an invitation which I regard it as the proper function of a Commissioner to act upon, and I will say no more than that in the foreward to the Supplementary Benefits Handbook that work is specifically commended "to all those concerned with advising claimants".

15. My decision is as indicated in para 1(2) above.

(Signed) I Edwards-Jones
Commissioner

Date: 4 August 1982

Commissioner's File: C.S.B. 7/1982
C SBO File: 22/82