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JBM/SH/6/MD

Commissioner's File: CSB/0019/1986

C A O File: AO 2144/SB/86

Region: Wales & South Western

**SUPPLEMENTARY BENEFITS ACT 1976**

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

Name: Penelope Joan Butterell (Mrs)

Social Security Appeal Tribunal: Taunton

Case No: 8/3

1. My decision is that the decision of the Taunton social security appeal tribunal dated 24 June 1985 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 18 February 1985 and set out in Box 1 of Form AT2.

3. The facts and history of the case are dealt with in paragraphs 1 to 6 inclusive of the submission dated 6 March 1986 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to in paragraph 7 of the submission dated 6 March 1986 of the adjudication officer now concerned and the relevant provisions of regulations 3(1), 5 and 22 of the Urgent Cases Regulations are set out in paragraph 8 of that submission. Nothing is to be gained by my setting out those references or provisions here.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law in that their decision that the claimant was not entitled to supplementary benefit is not supported by the findings of fact necessary to a determination under regulation 3(1) and 5 of the Urgent Cases Regulations. Further the reasons for decision on the face of the record are insufficient.

It is not disputed that the claimant's requirements and resources fell to be aggregated with and treated as those of her husband. Further there is no dispute that the claimant's husband was not at the material time entitled to supplementary benefit and that the claimant did not satisfy any of the conditions whereby she was entitled to be the "claimant" for supplementary benefit purposes. Accordingly the appeal tribunal rightly concluded that the only assistance to be derived by the claimant was under the Urgent Cases Regulations. Further there is no dispute that the claimant claimed benefit on 17 January 1985 in consequence of her husband's unemployment and the resultant drop in income. Accordingly it was the duty of the tribunal in the instant case to consider the claimant's entitlement to

an allowance under the Urgent Cases Regulations from 17 January 1985. It is not clear on the face of the record what period the tribunal were considering. In my judgment the tribunal should have given consideration to the question whether during the relevant period the claimant's resources were sufficient to meet her requirements as calculated in accordance with regulations (3)(1) and 5 of the Urgent Cases Regulations. Before the tribunal was an explanation of the requirements of the claimant under the above regulations. Their accuracy was not in dispute and it was open to the appeal tribunal to accept those amounts for the purposes of the case before them. However the tribunal failed clearly to deal with the details of the claimant's resources. The case papers refer to a number of resources which might have to be taken into account under regulations (3)(1) and 5(4)(b) of the Urgent Cases Regulations which include references to trust funds in favour of each of the five children; child benefit of £32.50 per week; rental of horse boxes; £2,200 received from her husband; capital of £420.96; 68 shares in Rolls Royce; children's premium savings bonds of some £60; £102 received from her husband on 18 February 1985; and a credit card and an overdraft facility.

It was the duty of the appeal tribunal to make adequate findings of fact in order to decide and give adequate reasons for their decision first as to the extent to which those resources fell to be taken into account under regulation 5(4)(b) during the period in question and secondly the precise amount (if any) of credit available to the claimant during the period in question. It was only having dealt with the above matters that it would have been open to the tribunal to reach a decision whether "sufficient funds" within the meaning of regulation 3(1) were available to the claimant.

The decision of the appeal tribunal is erroneous in law in that they failed to identify the appropriate dates and resources and to relate one to the other. Further although the claimant had stated that the bank manager had already refused overdraft facilities the appeal tribunal failed to state precisely why they concluded that the claimant had overdraft facilities. The claimant is left guessing as to why her evidence has been rejected.

6. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. There are inadequate findings before me to enable me to give the decision the appeal tribunal should themselves have given. I therefore direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred to above. Further they shall consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom

Commissioner

Date: 19th November 1986