

3/1982

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

1. (1) This is a claimant's appeal against the decision of a Supplementary Benefit Appeal Tribunal dated 25 September 1981, brought by my leave.
- (2) The appeal is allowed. I set aside the decision of the Supplementary Benefit Appeal Tribunal dated 25 September 1981 on the ground that the record of such decision does not sufficiently comply with the provisions of rule 7(2) of the Supplementary Benefit Appeals Rules 1980 and also as given in error of law in regard to the term "householder" as used in the Supplementary Benefit (Requirements) Regulations 1980 ("the Regulations").
- (3) I direct that the appeal to the Supplementary Benefit Appeal Tribunal from an original decision by a benefit officer dated 4 August 1981 be re-heard before a differently constituted tribunal.
- (4) The claimant invited me, if setting aside the subsisting decision, to give myself the decision which the tribunal should have given. But I accept the submission of the benefit officer now concerned that there is not sufficient information on which to enable me to take that course; and I am reinforced in so deciding by the circumstance that the claimant himself has furnished additional information which I would regard as of relevance on a re-hearing but which in the circumstance that my jurisdiction in the material respect would be limited to giving the decision which the tribunal "ought to have given" - on the materials as they stood before them - I would not be able to take into account if I accepted his invitation.
- (5) I further direct that the tribunal re-hearing the claimant's appeal shall in arriving at their decision take into close consideration the rulings to be found in Decision CSB 12/82 (unreported, but to be reported as R(SB) 13/82) as to what constitutes a household under the regulations last above-mentioned, and shall in their decision record all material facts and reasons for their decision as reached in the light of those rulings.

2. I can deal with the present appeal more shortly than would otherwise be the case because the benefit officer now concerned concedes (very properly, if I may say so) that the decision of the tribunal should be set aside for the reason firstly above indicated by me in para 1(2) above.

3. The claimant resides in a house of which his brother is the owner (and responsible for the mortgage). When assessing the claimant's requirements the benefit officer decided that the claimant's supplementary allowance should be calculated on the basis that he was for the purposes of the Regulations a person other than a householder - on the footing that he was lodging in his brother's household, paying an amount each week in respect of the room he occupied but providing his own food.

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- (1) The claimant contends that although residing in his brother's house he is a tenant of separate accommodation in that house, and that he is properly to be regarded as a householder in his own right and is not properly to be regarded as a member of his brother's household.
 - (2) He has indicated that he pays £8 per week rent to his brother in respect of such tenancy and that at a time prior to the tribunal's hearing (at which it would appear that he did not produce any rent book) he had produced his rent book to a local office of the Department.
 - (3) The local tribunal recorded as their only finding of fact material to their decision "appellant resides in the household of his brother".
 - (4) They gave as their reasons for their decision "we found that the correct entitlement is in payment on the known facts and calculated in accordance with the Act and Regulations".
 - (5) The tribunal did not in the record of their decision refer to any specific regulation, and it is open to substantial question whether they "asked themselves the right questions". Their findings of fact do not indicate whether they accepted or rejected the claimant's contention that he was a tenant paying rent, and their decision presumptively gave no consideration to the question whether, if they did, he fulfilled the statutory requirements as to being a "householder", - or that if they did and he did it was unnecessary for them to embark upon the question whether the claimant should receive the higher rate of the non-householder scale rate (which the chairman's notes indicate they did in fact embark upon).
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- (1) For the reasons above indicated this strikes me as a case (of the character commented on in Decision CSB/26/81 (unreported)) in which it would have more closely focussed the tribunal's minds to the true issues if they had pinpointed the particular regulations with which they were concerned.

(2) But, be that as it may, Decision CSB 12/82 - which was not a decision cited to the tribunal - has focussed attention upon the very real possibility that a person who pays rent in respect of separate accommodation in a house in multiple occupation may, in the proper contemplation of Regulations, be a "householder" in his own right and not a member of any other household in the same house; and this the tribunal clearly did not have in their contemplation: And they must in my view be regarded as in error of law in failing to express any findings or reasons of decision material to this point.

6. However, the circumstance that a person pays rent in respect of a room in a house in multiple occupation, even where found as a fact, does not in my judgment of itself properly found a conclusion that he is a householder. It is in my view appropriate to look at all the circumstances before a conclusion is reached either way. But neither does the circumstance that a claimant, although paying for the use of one room, shares the use of other parts of the premises in which the room is situated - or even that he contributes to a common pool in respect of particular outgoings - lead as a matter of course to the opposite conclusion. I accept the submissions of the benefit officer now concerned that further information as to the circumstances as a whole are requisite to a proper determination of the claimant's appeal.

7. My decision is as indicated in paragraph 1 above.

(Signed) I Edwards-Jones
Commissioner

Date: 10 August 1982

Commissioner's File: C.S.B. 32/1982
C SBO File: 932/81