

Fact that claimant was a friend of his landlady did not mean that his board & lodging was not a commercial basis - he was entitled to SB as a boarder.

BJD/SH/3/MD

Commissioner's File: CSB/56/1987

C A O File: AO ALC/32/SB/86

Region: North Eastern

**SUPPLEMENTARY BENEFITS ACT 1976**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** Lawrence Damian Bothwell

**Social Security Appeal Tribunal:** Doncaster

**Case No:** 024/06

1. This is an appeal by the claimant against a decision of the social security appeal tribunal dated 8 September 1986. My decision is that this appeal should be allowed and that the decision of the tribunal should be set aside as being erroneous in point of law.
2. In a helpful submission to me dated 2 June 1987 the adjudication officer submits that this appeal should be remitted for rehearing before a differently constituted tribunal. Whilst I agree that the decision under appeal discloses errors of law, I consider that under Section 101 of the Social Security Act 1975, as amended by Schedules 5 and 7 of the Social Security Act 1986, I should give the decision which I think the tribunal should have given. I reach this conclusion because the basic facts are not in dispute: what is in issue is the inference to be drawn from those facts and, in my judgment, only one conclusion can properly be drawn from them.
3. The claimant is a single man aged 29. In March 1985 he moved to live in a room in the house of Mrs X. At first he said that he was staying there as a friend but within a few days Mrs X pointed out that she could not afford to keep the claimant indefinitely without charge. Accordingly they agreed that he would pay a weekly board and lodging charge of £32.50 for bed and breakfast. The adjudication officer accepted that the claimant's requirements were those of a boarder. This conclusion affected the amount of the supplementary benefit which the claimant was entitled to receive, he being a person who at all material times was in receipt of supplementary benefit.
4. In June 1985 the claimant moved to work in another town where he stayed in bed and breakfast accommodation. After his job there had finished, he returned to Mrs X's accommodation in November 1985, where he was charged £34 a week for bed and breakfast. In January 1986 the claimant started a course at a College of Higher Education in a town approximately 100 miles away. However, he did not move to the town where the College was situated but remained in his present accommodation. He travelled daily to attend the course. He preferred to do this because he could either get accommodation in that town or be paid his travelling expenses. He believed that the sort of accommodation he could find would not be conducive to his studies and he preferred to stay at Mrs X's. The travelling time, he said, did eat into his studying time (although he could probably have worked on the bus or train) but he liked the privacy of his own room at Mrs X's. He missed no lectures and

he passed all his examinations.

5. In June 1986 the adjudication officer decided that the claimant was no longer qualified as a "boarder" under the Regulations. The claimant appealed against this decision and the tribunal dismissed his appeal. It is that decision against which he now appeals.

6. The matter in issue is a short question. Regulation 9 of the Supplementary Benefit (Requirements) Regulations 1983 makes special provision for "boarders". The claimant said that he was a "boarder" within that Regulation. Schedule 2A to those Regulations defines certain persons who are not boarders for the purposes of Regulation 9. Paragraph 1 of that Schedule refers to:

"1. A person whose accommodation and meals (if any) are provided in whole or in part by a close relative or other than on a commercial basis."

There is no question that Mrs X was a close relative of the claimant. The only question was whether his accommodation and meals were provided "other than on a commercial basis".

7. In the reasons for their decision the tribunal stated,

"We have had to consider in applying the facts whether the [claimant's] accommodation and meals are provided in whole or in part other than on a commercial basis."

The adjudication officer submits to me that the tribunal were here in error because, he contends, the words "in whole or in part" qualify only the provision "by a close relative" and do not refer to the provision of accommodation and meals other than on a commercial basis. He refers me to a decision of the Commissioner CSB/0209/1986 which, he says, supports his contention. For my part, I do not find it necessary to decide this issue. I only observe, in passing, that the Commissioner in the above-mentioned decision can hardly be said to have decided the point. It seems unlikely that it was argued before him.

8. The tribunal decided that the claimant was a friend of Mrs X and that it was for this reason that he preferred to stay in her accommodation rather than move to the town in which his College was situated. They took the view that he would have been able to obtain suitable accommodation in that town had he so wished and that he chose instead to travel a considerable distance each day, "thereby depriving himself of valuable study time, in order to live at the same address as someone who he himself referred to in a previous application for benefit as a friend." It was on that basis that the tribunal decided that the claimant was excluded by paragraph 1 of Schedule 2A, being a person whose accommodation and meals were provided other than on a commercial basis.

9. I consider that this reasoning of the tribunal discloses an error of law. The fact that the claimant was a friend of Mrs X and he preferred to live some distance away from his College, rather than find some new accommodation, does not support a conclusion that his accommodation and meals were provided by Mrs X other than on a commercial basis. It must be by no means uncommon that a lodger becomes a friend of his landlord or landlady nor is it to be wondered at if a person prefers to stay in such accommodation rather than move to accommodation in a new town, even if this means a loss of some studying time. These decisions are for a claimant to make for himself. The only question in issue for present purposes was whether Mrs X provided bed and breakfast for the claimant other than on a commercial basis. There is no suggestion that the claimant lodged with Mrs X in any way or that the sum which she charged him was other than at the usual commercial rate. In these circumstances it seems to me that only one conclusion is possible from the facts which have been found, viz. that the claimant was not excluded by paragraph 1 of Schedule 2A. There is no evidence to support any conclusion that he was provided with his bed and breakfast other than on a commercial basis; indeed, all the evidence points the other way.

In my view, the tribunal were misled into thinking that friendship and the commercial basis for the provision of bed and breakfast were inconsistent with each other. As I have said, such a conclusion would be wrong as a matter of law.

10. In his submission to me dated 2 June 1987 the adjudication officer accepts that the fact that the claimant and Mrs X were friends is not conclusive in deciding whether accommodation and meals were provided on a commercial basis. He submits, however, that their friendship might be relevant on the point. I accept that in some cases friendship between a lodger and his landlady may afford some support for the conclusion that accommodation and meals were provided other than on a commercial basis. However, I can see nothing in the material before me which would support any inference other than that the bed and breakfast provided for the claimant by Mrs X were provided on a commercial basis. In these circumstances the claimant was not excluded by paragraph 1 of the Schedule 2A and it is for this reason that I have reached the conclusion that his appeal should be allowed.

(Signed) B.J. Davenport  
Commissioner

Date: 21 January 1988