

Interest on unpaid road charges could be included
as hsg requirement. Followed R(SB) 3/87.

RFMH/SH/10/MD

Commissioner's File: CSB/0086/1986

C A O File: AO 2439/86

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: Annette Venn (Mrs)

Social Security Appeal Tribunal: Bristol

Case No: 3/015/07

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 5 August 1985 is erroneous in point of law and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide for the reasons set out below that the claimant is entitled to an award of an increase of housing requirements to cover the interest payable to the local authority on unpaid road charges.

2. This is the claimant's appeal against the unanimous decision of the social security appeal tribunal dated 5 August 1985. The claimant asked for an oral hearing of the appeal, a request to which I acceded. At the hearing held before me, the claimant attended and was represented by Mr A Lane from the Avon Welfare Rights Take-up Campaign. The adjudication officer was represented by Mrs A Saxon from the Solicitor's Office of the Department of Health and Social Security.

3. The claimant, a single parent aged 41 at the material time, lived with her two dependant children in owner-occupied property, the title to which is registered under the Land Registration Act 1925. The claimant was in receipt of supplementary benefit and had no capital. The local authority in exercise of powers conferred on them by Part XI of the Highways Act 1980 resolved to execute "private street works" in relation to the road on which the claimant's property abutted. The local authority were empowered to charge the expense on the proprietors of houses fronting or otherwise using the road. In due course the local authority made an apportionment of the charges on the various proprietors. The claimant was served with a final notice of apportionment on 16 January 1985, which showed that her liability amounted to £646.96. This notice offered an option of payment by 15 equal annual instalments which included interest from 16 February 1985. Thereupon the claimant claimed assistance to meet this liability. On 18 February 1985 the adjudication officer decided that the claimant was not entitled to an award of an increase of housing requirements "to cover monthly instalments payable by the claimant as a consequence of levied private street work costs". The claimant appealed to the tribunal.

4. On 5 August 1985 the tribunal dismissed the appeal. After recording the relevant findings of fact, they gave the reasons for their decision as:-

"The avenue is not part of the home as defined in Requirements Regulations 2(1).

And Requirements Regulations 14, 16, 17 and 18 refer to the home as defined in regulation 2(1)."

The claimant now appeals to the Commissioner on a point of law, leave having been granted by me.

5. The provisions relating to housing requirements are contained in regulations 14, 15, 16, 17 and 18 of the Supplementary Benefit (Requirements) Regulations 1984. The relevant regulations in the present case are regulation 17 which refers to interest on loans for repairs and improvements and regulation 18 which provides for miscellaneous outgoings. They provide as follows:-

- "17. - (1) Subject to paragraph (2), there shall be applicable under this regulation the amount calculated on a weekly basis of any interest payable on sums borrowed, with or without security, for repairs and improvements to the home.
- (2) Where the claimant has disregarded capital in excess of £500 the excess shall be set against the amounts borrowed and interest allowed only by reference to any balance.
- (3) In this regulation "repairs and improvements" means major repairs necessary to maintain the fabric of the home and any of the following measures undertaken with a view to improving its fitness for occupation -
- (a) installation of any of a fixed bath or shower, wash basin, sink and lavatory and necessary associated plumbing;
 - (b) damp-proofing measures;
 - (c) provision or improvement of ventilation and natural lighting;
 - (d) provision of electric lighting and sockets;
 - (e) provision or improvement of drainage facilities;
 - (f) improvements to the structural condition of the home;
 - (g) improvements to the facilities for storing, preparing and cooking food;
 - (h) provision of heating, including central heating;
 - (i) provision of storage facilities for fuel and refuse;
 - (j) improvements to the insulation of the home;
 - (k) other improvements which are reasonable in the circumstances.
18. - (1) The amounts, calculated in accordance with paragraph (2), of the following outgoings payable in respect of the home shall, except, in respect of those outgoings specified in

sub-paragraphs (b) to (ff) of this paragraph where, in the opinion of the adjudication officer, it is impracticable to estimate the likely amount of the outgoings be applicable under this regulation -

- (a) charges or rates in respect of water and, except in Scotland, of sewerage and allied environmental services;
- (b) payments by way of rent or ground rent (in Scotland feu duty) under or relating to a long-tenancy as defined for the purposes of regulations 7(2) and 8(2)(c) of the Housing Benefits Regulations (no eligibility for rent rebate or allowance where dwelling occupied under long tenancy) or under or relating to a tenancy or licence to which regulation 8(2)(a) of those Regulations (Crown tenants not eligible for rent allowances) applies;
- (c) payments under a co-ownership scheme to which regulation 8(2)(d) of the Housing Benefits Regulations (co-owners not eligible for rent allowances) applies;
- (d) recurring charges for the emptying of cess-pits and septic tanks and the cost of fluid and materials to service a chemical toilet;
- (e) service charges, (for example for maintenance, insurance, management and the cleaning of common areas) but subject to deduction, where the charges provide for any item which is identified in regulation 4(1) (meaning of normal requirements), of the amount which in the opinion of the adjudication officer, is attributable to that item, and excluding any amount which is not housing benefit expenditure by virtue of paragraph 8 of Schedule 3 to the Housing Benefits Regulations (deductions for services other than charges for fuel);
- (f) where the home or any part of the home is occupied under a crofting tenancy for the purposes of the Crofters (Scotland) Acts 1955 and 1961 the amount of the rent payable in respect of the home or that part of the home;
- (ff) where the home is a tent, payments in respect of the tent or the site on which it stands;
- (g) outgoings analogous to those mentioned in this Part.

(2)-(6) ..."

The amounts "applicable" under the above Regulations are allowable as housing requirements by virtue of regulation 14(2)(a).

"Home" is defined in regulation 2(1) as follows:-

""Home" means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft;"

6. Since the tribunal's decision, there has been a Decision R(SB)3/87 which considered the precise issues involved in the present appeal. In considering the meaning of "home" and the nature of the payment of instalments and interest for the purposes of regulations 17 and 18, the Commissioner said at paragraph 8:-

"I have no hesitation in holding that the road charges themselves and the interest thereon are charges in respect of the homes themselves. Are they outgoings? In my judgment the natural meaning of "outgoings" is the opposite of "incomings", and I think that they are normally payments of an income rather than a capital nature. It follows in my judgment that the instalments (so far as they are instalments of the principal sum due,) are not "outgoings" within the meaning of regulation 18. Indeed no one has suggested that they are. But these instalments so far as they consist of interest payments in my judgment are outgoings, and outgoings in respect of the home."

Mrs Saxon conceded that the road charges themselves and the interest thereon were charges in respect of the home for the purposes of regulation 17 and 18 of the Requirements Regulations. Mr Lane conceded that the instalments of the principal sum due were not "outgoings" for the purposes of regulation 18. As a result the sole point in issue is whether the interest payable to the local authority on unpaid road charges is allowable as a housing requirement.

7. Mrs Saxon provided a very detailed and lucid argument in support of her submission that it was not. She stated that the claimant could not avail herself of regulation 17 because the interest payable was not on a sum borrowed. She referred me to Decision R(SB)3/87 (paragraph 7) where the Commissioner accepted that money was not borrowed by postponing the payment of a debt and agreeing to pay interest on it so that a claimant could not rely on regulation 17. Mrs Saxon submitted that as the interest payments were not outgoings of any of the kind listed in the sub-paragraphs of regulation 18(1), the claimant could only succeed if she could avail herself of sub-paragraph (g) and show that they were outgoings analogous to those mentioned in "this Part" (ie in Part IV of the Regulations, which included regulation 17). Mrs Saxon accepted that "analogous" meant "similar in attributes" (Tribunal of Commissioner's decision on file No. CSSB/189/1985 and R(SB)3/87) and argued that it was not. I disagree and accept the Commissioner's view in R(SB)3/87 (paragraph 9) as correct. He stated:-

"I think that the attributes in question must be relevant to the matter under consideration, that is in this case the appropriateness of treating the two cases alike so far as concerns the inclusion of the interest amongst a person's requirements. In my judgment it is entirely appropriate to treat the two types of indebtedness alike and I hold that thus far at least the analogy holds."

8. Mrs Saxon submitted that in order to satisfy regulation 18(g), it was incumbent on the claimant to show that there was an analogy to the whole of regulation 17(1), ie that the interest payments were analogous to "any interest payable on sums borrowed, with or without security, for repairs and improvements to the home". She submitted that regulation 17(3) defines the meaning of "repairs and improvement" and listed the measures undertaken "with a view to improving its fitness for occupation". She submitted that as sub-paragraph (a) to (j) referred to internal measures undertaken in the home, the reference to "other improvements which are reasonable in the circumstances" in sub-paragraph (k) should be limited to similar internal measures. On that basis she submitted that the claimant could not avail herself of regulation 17(3). Although I appreciate the force of her

argument, it is based on the fallacy that the measures referred to are all internal. I agree with Mr Lane that the reference in sub-paragraph (e) to "provision or improvement of drainage facilities" could include drainage works in the garden. Accordingly the list is not limited to internal works in the home. Further once it is accepted that the road charges themselves and the interests thereon are charges in respect of the home in terms of regulation 2(1), I do not see how it can be said that the making up of a private road is not something undertaken with a view to improving the fitness of the home for occupation. I find support for this conclusion in paragraph 10 of Decision R(SB)3/87 in which the Commissioner stated:-

"I think that a home would not be fit for occupation if it had no means of access; and that improving the means of access is a measure of improving its fitness for occupation. Further the improvement was not only reasonable but compulsory."

It follows therefore in my judgment that the claimant can show that the payment of interest was an outgoing analogous to that within sub-paragraph (k).

9. The tribunal's decision was erroneous in law because they took the view that the road was not part of the home as defined in regulation 2(1) of the Requirements Regulations. They did not have the benefit of Decision R(SB)3/87. The next question for determination is whether in the circumstances it is expedient and possible for me to give the decision the tribunal should have given. I think it is, the facts not being in dispute. Accordingly I give the decision set out in paragraph 1.

10. The claimant's appeal is allowed.

(Signed) R.F.M. Heggs
Commissioner

Date: 1st April 1987