

SUPPLEMENTARY BENEFITS ACT 1976**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW****DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside; I remit the case for determination to a new social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is a claimant's appeal against the decision of the Walthamstow social security appeal tribunal, given on 15 January 1990, which upheld a decision of the adjudication officer that the claimant and a Mr Fenton were to be treated as an unmarried couple, as defined in section 34 of the Supplementary Benefits Act 1976, and that the claimant's supplementary benefit fell to be assessed accordingly.

3. The case has a long and unsatisfactory history. I do not need to set it out; suffice it to say that an earlier decision adverse to the claimant was set aside under the provisions of regulation 11 of the Social Security (Adjudication) Regulations on 20 November 1989. The case then came for hearing before the tribunal on 15 January 1990 and it is the decision given on that date which is the subject of the appeal.

4. The issue before the tribunal was whether the claimant and Mr Fenton were living together as an unmarried couple as defined in section 34 of the Supplementary Benefits Act 1976, namely whether they were a man and woman not married to each other but are living together as husband and wife. Regard therefore had to be paid to the principles enunciated in Crake v Supplementary Benefit Commission (1982) 1 All E.R. 498 in addition to R(SB) 17/81 and R(SB) 35/85. The findings of the tribunal on questions of fact were that the claimant and Mr Fenton had lived in the same household for some 4¹/₂ years and that there was no evidence of the claimant making attempts to find separate accommodation they further found that the couple shared meals and housework and Mr Fenton was the tenant and owned the furniture. They accepted that there was no sexual relationship but that the claimant returned to Mr Fenton regularly after the ending of other associations. The decision of the adjudication officer was

upheld and the following reasons for such decision were given

"Tribunal accept on the evidence, particularly as to stability of relationship, its length of time and the fact that [the claimant] appears not to apply for separate accommodation that the parties are in fact living together as unmarried couple (RSB17/81 considered & applied)

N.B. - Not practicable to have mixed Tribunal today because of shortage of lady members)"

It is argued by the claimant's representative that it is insufficient for a tribunal to give as the sole reason for a finding of "living together as husband and wife" that the relationship is stable and of long standing. This begs the nature of the relationship. It is right to point out that the tribunal's reasoning was not limited to the stability of the relationship; that was an aspect to which they attached considerable importance but in their reasons they did refer to their decision being based on the evidence and they had made findings of fact relating to factors approved of in Crake. However I do accept that the tribunal dealt inadequately with the question of why the claimant and Mr Fenton were living in the same household. They said in their findings, "there is no sexual relationship". They did not consider whether the couple had never had such a relationship. It was necessary for them to do so. If there never had been a sexual relationship between the claimant and the man concerned then in the circumstances of this case it is difficult to understand how a tribunal could come to a decision that they were living together as husband and wife in the absence of such a finding. It is necessary for me to remit the case for hearing by a differently constituted tribunal. It will be necessary for the new tribunal to decide whether the claimant and Mr Fenton are living in the same household. If they decide that they are, they will have to go on to consider the reason why they are living together in the same household. They should have regard to what was said in R(SB) 35/85. There is a strong conflict on this aspect of the case and it will be necessary for the new tribunal to evaluate the evidence and make findings thereon. Further the tribunal should make and record their findings on all the material facts and give reasons for their decision.

5. I note that the tribunal of 15 January 1990 was all male and that it was noted on the record that it was not practicable to have a mixed tribunal because of the shortage of lady members. Those responsible for the composition of the new tribunal should make every effort to have a member of the same sex as the claimant on it.

(Signed) J J Skinner
Commissioner

Date: 19 March 1992