

IOG/EFM

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S.B. 5/81

reported [CSB 4/81]

1. This is an appeal by the Supplementary Benefit Officer from the decision of a Supplementary Benefit Appeal Tribunal (hereinafter referred to as "the tribunal"), dated 29 January 1981, varying the decision of the Supplementary Benefit Officer issued on 29 December 1980 by awarding the claimant the weekly sum of £4.60 in respect of non-householder's contribution as opposed to the weekly figure of £2.15 determined by the Supplementary Benefit Officer. My decision is that the tribunal misdirected itself in law; in consequence its decision dated 29 January 1981 is erroneous in point of law. The said decision is therefore set aside, and I direct that the matter be referred for hearing and determination by a differently constituted tribunal. In the premises, the appeal is allowed.

2. The claimant is 30 years of age. He became unemployed in April 1980, and in May 1980 he went to live at his mother's house. He exhausted his entitlement to unemployment benefit in December 1980. On 22 December 1980 he claimed supplementary benefit. On 29 December 1980, the Supplementary Benefit Officer assessed the claimant's non-householder's contribution at the weekly sum of £2.15. The claimant was dissatisfied with that determination, and appealed. On 29 January 1981 the tribunal heard and determined the claimant's appeal. The full decision of the tribunal was. "The decision is revised to allow £4.60 per week for housing expenses in accordance with Regulation 23(1)(b)(iii) of the Supplementary Benefit (Requirements) Regulations 1980". The reason for the tribunal's decision was "the Tribunal are satisfied that the above Regulation applies".

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3. Regulation 23 of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299] provides as follows -

"23 (1) There shall be applicable to a person to whom this regulation applies, in respect of his contribution to the housing expenses of the household of which he is a member -

(a) the weekly amount of £2.15; or

(b) where he establishes -

(i) that the amount is insufficient having regard to his actual contribution to the housing expenses of the household,

(ii) that, having regard to the resources of the household as a whole, hardship would otherwise occur, and

(iii) that his entry into the household was on the clear understanding that a contribution to the housing expenses of the household in excess of that amount would be required,

such additional weekly amount as may be reasonable up to a maximum, in aggregate, of £4.60.

(2) This regulation applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder)."

4. The claimant was clearly not a householder within the meaning of regulation 5(2) of the Regulations because the claimant does not share the responsibility for making the appropriate payments, or control with another member of the same household. Moreover, the claimant is not a boarder, because regulation 9(9)(b) of the Regulations provides that a boarder does not include a person whose accommodation and meals (if any), are provided by a close relative, or are provided other than on a commercial basis. In my judgment, therefore, the claimant is a non-householder within the meaning of that term as defined by regulation 23(2).

5. The sole finding of fact relevant to regulation 23 made by the tribunal was that the claimant satisfied the provisions of regulation 23(1)(b)(iii), and that accordingly, he was entitled to

the weekly sum of £4.60. In my judgment that was a clear misdirection. And in consequence the decision arrived at by the tribunal was erroneous in point of law.

6. In my judgment, in order to qualify for an amount in excess of £2.15 per week as contribution to expenses of a household of which the claimant is a member, a claimant is required to prove the existence of facts which satisfy sub-paragraph (i), sub-paragraph (ii) and sub-paragraph (iii) of regulation 23(1)(b). It is clearly in my judgment not sufficient to satisfy one sub-paragraph only. As a matter of grammatical construction each of the sub-paragraphs (i), (ii), (iii) must be satisfied in order for a claimant to be entitled to an amount up to £4.60 per week. In my view the use of the word "and" at the end of sub-paragraph (ii) of regulation 23(1)(b) makes it perfectly clear that each of the requirements set out in those three sub-paragraphs must be satisfied. If the construction accepted by the tribunal were correct, then the word 'or' would necessarily be required to be inserted at the end of each of sub-paragraphs (i) and (ii) and the word 'and' deleted at the end of sub-paragraph (ii). Those words do not appear in the regulation.

7. In the present case, the tribunal considered only sub-paragraph (iii). It is accepted by the Supplementary Benefit Officer that on the facts found by the tribunal, the requirements of regulation 23(1)(b)(iii) are satisfied. However, in my judgment that is not the end of the matter. The tribunal did not consider the requirements of sub-paragraph (i) nor of sub-paragraph (ii). In consequence, the tribunal made no findings of fact on the matters set out in those two sub-paragraphs. So far as I can see, there was no evidence before the tribunal which would justify them in coming to any conclusion on the matter in sub-paragraph (ii), that is to say, whether having regard to the resources of the household as a whole, hardship would occur if a contribution to the housing expenses of the household in excess of £2.15 a week was not allowed.

8. It follows therefore that the tribunal misdirected itself and that its decision, in my judgment, was erroneous in law. The decision of the tribunal must therefore be set aside. I direct that the matter be heard and determined by a differently constituted tribunal. Accordingly, the Supplementary Benefit Officer's appeal is allowed.

(Signed) I O Griffiths
Chief Commissioner

Date: 17 July 1981

Commissioner's File: C.S.B. 99/1981
CSBO File: SBO 121/81