

MJG/BOS

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. 13/81

1. I allow the appeal of the Supplementary Benefit Officer in this case and set aside the decision of the Supplementary Benefit Appeal Tribunal of 16 January 1981. I refer the case to a differently constituted Supplementary Benefit Appeal Tribunal to determine it in accordance with this decision: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, Rule 10(8).

2. The claimant is a single man aged 23. On 15 December 1980 he made a written claim for supplementary benefit from which and from subsequent details of his claim submitted by him to the Department it was apparent that he lived in the household of his mother, to whom he paid £10 a week for board. In addition he helped with the gas and electricity bills. The Department assessed his expenses at the figures applicable to a single claimant of age 18 and over, namely £17.05 per week (see the Supplementary Benefit (Requirements) Regulations 1980, Schedule 1). Added to those expenses was the sum of £2.15 per week, being the fixed sum per week applicable where a claimant is a non-householder (Requirements Regulations, Regulation 23(1)(a)), thus bringing the claimant's total of expenses to £19.20 per week. His resources however, were assessed as being the £20.65 per week unemployment benefit he was receiving (the taking into account of which is authorised by the Supplementary Benefit (Resources) Regulations 1980, regulation 11(2)(a)). Consequently, as the claimant's resources exceeded those of his requirements, no supplementary benefit was payable.

3. The claimant appealed to the Supplementary Benefit Appeal Tribunal on the footing that he had insufficient money to live on and in particular that he had to pay his mother £10 a week for board, as well as assisting with the gas and electricity bills. The claimant was not present at the hearing before the Tribunal on 16 January 1981. The Tribunal therefore could make their decision only on the written submissions of the claimant and on the information given by the Supplementary Benefit Officer present at the hearing. By their decision (which, perhaps inadvertently, was not dated), the Tribunal found that the claimant was not a householder and was not a boarder (within the meaning of the Requirements Regulations - see below) but that, being a

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non-householder i.e. a member of his mother's household, he was entitled to more than the fixed allowance of £2.15 per week (prescribed by regulation 23(1)(a) of the Requirements Regulations as applicable to non-householders). The Tribunal increased the assessment of the claimant's requirement as a non-householder to the maximum of £4.60 per week payable under regulation 23(1)(b) where certain conditions specified in that regulation (see below) are fulfilled.

4. That meant that the claimant's assessed requirements exceeded the £20.65 per week unemployment benefit that the claimant was receiving, with the result that supplementary benefit would be payable to him. However, the supplementary benefit officer appealed against the decision of the Tribunal and I gave him leave to appeal on 8 April 1981. Under the normal procedure applicable to such appeals the payment of supplementary benefit to the claimant under the Tribunal's decision was suspended pending the Commissioner's decision. The result of my decision allowing the appeal of the supplementary benefit officer will be that supplementary benefit is not payable to the claimant, unless the differently constituted Tribunal to whom I have remitted this case finds that there is sufficient evidence (the nature of which I indicate below) of compliance by the claimant with the conditions laid down by regulation 23(1)(b) of the Requirements Regulations, as necessary for there to be an increase of the fixed allowance of £2.15 per week.

5. The Tribunal were clearly correct in holding that the claimant was not a householder. The definition of "householder" in regulation 5(2)(a) of the Requirements Regulations makes it clear that the claimant was not the householder, there being no evidence, for example, that he was responsible for the payment of rates or rent of the house in which he and his mother were living. It is of course open to the claimant at the new hearing before a differently constituted Tribunal to challenge this finding by appropriate evidence if he wishes, but the evidence at present would clearly indicate that he was and is not a householder.

6. That being so it is also clear that the Tribunal were correct in holding that the claimant was not a "boarder" within the meaning of regulation 9(9)(b) of the Requirements Regulations. That is because that regulation excludes from the definition of boarder "any person whose accommodation and meals (if any) are provided by a close relative or other than on a commercial basis" (my underlining). It should be noted that that provision in the regulation puts the word "or" between "a close relative" and "other than on a commercial basis". That means that if the accommodation etc is provided by a close relative then, even if it is done on a commercial basis, the claimant cannot treat himself as a boarder in the household. "Close relative" is defined by regulation 2(1) of the Requirements Regulations as meaning "a parent, child, step-parent, step-child, brother or sister". The claimant, being in his mother's household, could not therefore claim to be a boarder however much he paid to her for his board.

7. The result is that the claimant must bring himself within the rules set out in regulation 23 of the Requirements Regulations,

applicable to a "non-householder". Regulation 23 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)".

8. As to regulation 23(2), it is clear that the claimant is not a householder. The reference to "any other member of the assessment unit" must be read in the context of the definition of "assessment unit" in regulation 2(1) of the Requirements Regulations as meaning "the claimant and any partner and dependant of the claimant". It is not suggested that the claimant's mother was his dependant (see Supplementary Benefits Act 1976, Schedule 1, Paragraph 3(2)) nor could it presumably be so suggested. The result is that neither the claimant nor any member of the assessment unit (there being in fact in his case no such member) was a householder and regulation 23 applies.

9. The result is that, under regulation 23(1)(a), the claimant is not entitled to have his requirements assessed as a non-householder at more than £2.15 per week, unless under regulation 23(1)(b) he establishes all three of the matters listed as (i), (ii) and (iii) in that sub-regulation, all those requirements (i), (ii) and (iii) being cumulative. In particular it is not enough that the claimant merely establishes that the weekly amount of £2.15 is insufficient having regard to his actual contribution to the housing expenses

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of the household, as the Tribunal appeared to have thought from the way in which their reasons for decision were given. In addition the claimant must establish the other two matters mentioned in regulation 23(1)(b), namely,

"(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 [£2.15 per week] would be required".

10. The Tribunal made no findings as to those requirements (ii) and (iii), nor, particularly as the claimant did not attend the hearing, was there any evidence on which they could have made deductions favourable to the claimant on those matters. Consequently the Tribunal, of whom it should be said that they clearly made a conscientious attempt to deal with this case and to give detailed reasons for their decision, nevertheless made an error of law. The result is that I must set their decision aside and, as required by rule 10(8) of the Appeals Rules 1980, remit the case to a differently constituted Supplementary Benefit Appeal Tribunal to rehear the appeal. At the rehearing it will of course be open to the claimant to give evidence on the additional matters required by regulation 23(1)(b). The new Tribunal that rehears the case must take account of the fact that the onus of proof is placed upon the claimant by regulation 23(1)(b) to establish all three of the requirements set out in that sub-regulation.

11. So far as the wording of regulation 23(1)(b)(iii) is concerned, i.e. "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", the reference to "entry into the household" may be difficult to apply where close relatives are living together and one of those relatives is the householder. In the case of the son and mother, the son may have "entered" into the household only in the sense that he was born into it. I would therefore hold that in such a situation "entry into the household" can properly be construed as meaning "continued entry into the household". That means that, if there is clear and cogent evidence that, for example, a mother and adult son genuinely agreed that the son could no longer continue to live in the household unless he contributed more than £2.15 per week to the household expenses, then from the date that such an agreement was reached the claimant could establish the requirement of regulation 23(1)(b)(iii). If, therefore, in this case the claimant can satisfy all three requirements of regulation 23(1)(b), he might then be in a position to claim that his requirements should be increased up to the maximum of £4.60 per week.

(Signed) M J Goodman
Commissioner

Date: 23 September 1981

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