

JGM/II

CSB 133/1983

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Stanley Green

Supplementary Benefit Appeal Tribunal: Euston

Case No: 13/669

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 8 December 1982 is erroneous in point of law and is set aside. In lieu thereof I decide that the requirements of the claimant are from the appropriate pay-day, Thursday, in the week commencing 26 July 1982 to be computed on the footing that he was then a boarder.

2. The claimant made a claim for, or was in receipt of, a supplementary allowance before 16 July 1982. On that day he and his wife and infant son moved into accommodation called Elgin House provided by a London Borough. This was accommodation for homeless persons. The accommodation comprised a double bedroom with some sort of facilities for cooking in it. No meals were supplied by, or available from, the owners. The benefit officer decided that with effect from the pay day above mentioned the claimant should be awarded a supplementary allowance at the rate of £72 per week. The allowance was calculated on the basis that the claimant was a householder for purposes of supplementary benefit. The claimant appealed to the appeal tribunal claiming that he ought to be have been treated as a boarder and not as a householder. But the appeal tribunal dismissed the appeal and the claimant now appeals to the Commissioner.

3. The term "boarder" is defined in regulation 9(9)(b) of the Supplementary Benefit (Requirements) Regulations 1980 as amended as follows:-

"boarder" means a person, not being a person to whom any of paragraphs 1 to 9 of Schedule 2 applies, who -

(i) pays a charge which is inclusive of his accommodation and at least some cooked or prepared meals which are both prepared and consumed in the accommodation or in associated premises, or

(ii) is living in a hotel, guest house, hostel or lodging-house, or in some similar establishment, or

(iii) is a refugee as defined in regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980 who is living in a special centre for the reception of refugees prior to settlement in the community,

but excluding any person whose accommodation and meals (if any)

are provided by a close relative or otherwise than on a commercial basis."

4. The benefit officer decided that the claimant was not a boarder in terms of the above definition on the ground that Elgin House no longer traded commercially as a hotel and that no meals were provided. There was produced to the tribunal on appeal a fair amount of written evidence about the nature of the accommodation at Elgin House and the benefit officer himself stated that a charge of £52.50 per week was made for the accommodation. It would appear that broadly all the evidence produced was uncontradicted with some exceptions that do not appear to me to be relevant to the question that I have to decide. The appeal tribunal rejected the appeal exclusively on the ground that as no meals were provided Elgin House was not a lodging-house, which they took to mean a lodging place where some meals are provided.

5. The benefit officer now concerned submits that this latter conclusion was incorrect pointing to the definition of "lodging-house" in the Oxford English Dictionary where it is defined as (a) a dwelling house or (b) a house other than an inn or hotel in which lodgings are let. There is nothing in these definitions which suggests that it is a necessary characteristic of a lodging-house that meals should be provided there. The tribunal could point to the fact that the phrase appears in the regulation alongside a list of establishments such as hotels and guest-houses in which meals are normally provided, and conclude that in the context a lodging-house should be construed similarly. Furthermore it is a specific requirement under sub-paragraph (1) that the payment for the accommodation should include a payment for some cooked meals consumed in the accommodation, which again might suggest that only accommodation in which meals are provided was in the contemplation of the draftsman of the regulation. There is however a strong indication the other way in the closing words of the definition where there is a reference to any person whose "accommodation and meals (if any)" are provided by a close relative or otherwise than a commercial terms. This indicates that the draftsman thought that there might be cases that would (apart from the closing words) be comprehended within the definition of boarder even though no meals were provided. So far as I can see unless persons in lodging-houses fall into that class there would be no one other than refugees who might do so, and the provisions about refugees do not seem to have been devised in contemplation of their living in accommodation provided by close relatives. I conclude therefore that it is not a necessary feature of a lodging-house that meals should have been provided. I conclude therefore that Elgin House is a lodging-house in terms of the definition.

6. It was at one time suggested that, as Elgin House is no longer a normal commercial lodging-house but has been taken over to a substantial extent by the local authority for accommodating the homeless, the accommodation is not provided on commercial terms. That is not now suggested; and I do not follow how on the facts it could be suggested that the terms were not commercial terms. I add that it is not suggested that the claimant is excluded from the definition as being a person to whom any of paragraphs 1 to 9 of Schedule 2 to the Regulations applies.

7. I conclude therefore that the decision of the appeal tribunal was erroneous in law. The benefit officer now concerned submits that I should give the decision that the appeal tribunal should have given. I do not have sufficient information or, without guidance, expertise to give the full decision. I note however that under regulation 2(2) of the Supplementary Benefit (Determination of Questions) Regulations it is provided that different aspects of the same question may be dealt with by different benefit officers. It must follow that one and the same benefit officer or different benefit officers may deal with different aspects one at a time; and an appeal tribunal can (under section 15(3)(c) of the Act) substitute any determination which the benefit officer could have made. They thus had power to deal exclusively with the question whether the claimant was a boarder and leave the assessment of the amount of the supplementary allowance to be determined thereafter (subject to further appeal) by the benefit officer. I am taking that course and giving the decision in paragraph 1 leaving it to the benefit officer to determine the rate of the allowance payable in consequence of this decision.

8. The claimant's appeal is allowed.

Signed: J G Monroe
Commissioner

Date: 26 May 1983

Commissioner's File: CSB/133/1983

C SBO File: 82/83