

CSB 14571984

JM/EA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Helen Santamera (Mrs)

Supplementary Benefit Appeal Tribunal: Liverpool

Case No: 5/1

1. This is a claimant's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 20 September 1983 which confirmed a decision issued by the benefit officer (now the adjudication officer) on 16 December 1982 and "corrected" by that officer on or about 24 January 1983. In a most helpful and characteristically objective submission the adjudication officer now concerned submits that the claimant's appeal should be allowed. The reasons in support of that submission are clearly and carefully set out. I could, indeed, have disposed of this matter in three short paragraphs had I not decided to make yet another attempt to dispel an error of construction into which appeal tribunals are still falling - although it is now almost four years since the "new" system of supplementary benefit came into effect and the error has been repeatedly adverted to in decisions of the Commissioner (reported and unreported).

2. The claimant is now aged about 63. On 20 March 1982 she moved into premises of which her daughter was the landlady. For about 5 months thereafter she was paid supplementary benefit upon the basis that she was a householder. The benefit officer then decided that she was not a householder and that there had been misrepresentation on her part as to her true status. The upshot was a decision - upheld by the appeal tribunal - that the Secretary of State was entitled to recover the sum of £392.34.

3. It must be said at once that the appeal tribunal approached its task most conscientiously. Indeed, it is because it recorded its findings of fact so thoroughly that I am able myself to give the decision which it ought to have given. I quote verbatim from those findings - save that I have abbreviated to "Mrs G" the name of the claimant's daughter and have written "the claimant" where the record refers to the claimant by name:

"Mrs G's accommodation had been previously let to a series of tenants at rents of £20 for double letting and £15 for single letting.

Householder.

Separate household.

mother/daughter.

The claimant paid £15 per week for exclusive use of a bed sitting room where she spent much of her time doing her own cooking, storing her own food with shared use of the bathroom.

On occasion she ate with her daughter.

She did her own shopping for food.

Fuel bills were paid by Mrs G, her linen was provided by Mrs G who did the laundry

Mrs G was dependent for her standard of living on taking in 'lodgers'. Her husband's income was £300 a month approx. Her expenses including mortgage rates, and fuel but excluding food and clothing were £160 approximately The claimant's entry into her daughter's household was only made possible by the previous tenant being moved out and only on the basis of her giving £15 per week to her daughter. Without this amount hardship would have occurred to the household".

(The examination of the standard of living of the claimant's daughter resulted in the tribunal's assessing the claimant's non-householder's contribution at the higher rate provided for in regulation 23 of the now revoked Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299], as that regulation stood at the relevant time.)

4. The aforesaid findings of fact ought to have led inexorably to the conclusion that the claimant was a householder. Unfortunately, however, the local benefit officer and the appeal tribunal (like so many local benefit officers and appeal tribunals before them) fell into the fundamental error of treating "house" and "household" as synonymous. The submission of the local benefit officer contained the following passage:

"The supplementary benefit officer decided that the appellant's supplementary pension should be calculated on the basis that she is a person other than a householder. The responsibility for the housing costs of the house is her daughter's. The appellant pays her an amount each week in respect of the rooms she occupies. In the opinion of the supplementary benefit officer the appellant cannot be treated as a person responsible for the rent/housing costs nor is she a member of the household with major control over the household expenditure". (My underlining)

So far as the appeal tribunal is concerned, the relevant form LT 235 records that the claimant's representative cited Decision R(S.B.) 4/83 - in which I myself said all (and much more!) than I say in this decision. But the record immediately continues:

"However it was decided on the basis of common sense and common knowledge that in this particular case the major part of household expenditure was borne by the daughter which excluded [the claimant's] claim to a separate household".

The crucial question before the tribunal has been answered by begging that very question.

5. The consolidating Requirements Regulations of 1983 [S.I. 1983 No 1399] were not in effect at the time material to this appeal. Since, however, I hope that this decision may be of some future use, I quote regulation 5(6) of those Regulations:

"(6) For the purposes of the table a householder is a single claimant who -

- (a) is responsible for housing expenditure or, if the household incurs no such expenditure, is the member of the household with major control over household expenditure;
- (b) does not share such responsibility or control with another member of the same household; and
- (c) is either not absent from the home or if absent is absent only -
 - (i) otherwise than as a student on normal vacation;
 - and
 - (ii) for a period which has not yet continued for more than 13 weeks".

(Regulation 5(2) of the Requirements Regulations 1980 - which was the predecessor to the current regulation 5(6) - underwent more than one amendment but, for the purposes of the point which I am trying to drive home, there has never been any material difference in the effect of those regulations.)

6. It is absolutely essential that, when applying regulation 5(6) to premises which are in multiple occupation, the adjudicating authority should look first at the circumstances of the claimant. If the claimant is a licensee who -

- (a) is paying a sum in respect of permission to live at the premises (which sum will constitute "rent" within the expanded meaning accorded to that term by both the Requirements Regulations and the Housing Benefit Regulations 1982 [S.I. 1982 No 1124]), and
- (b) is not a "boarder" within the meaning of regulation 9(13) of the Requirements Regulations,

the probabilities are that such claimant is a householder in his or her own right. Further examination of the position may be called for - but at least the problem will have been approached from the right end. To approach the problem by first applying regulation 5(6) to the claimant's immediate landlord or landlady is to invite error.

Experience has shown that concentration upon such landlord or landlady all too easily diverts attention from the vital distinction between "house" and "household". From there it is but a step to finding that such landlord or landlady is -

- (a) "responsible for housing expenditure"; and/or
- (b) "the member of the household with major control over household expenditure".

And - as I have said in paragraph 4 above - the crucial question ("How many households?") will have been answered by the begging of that very question.

7. I need hardly add that, of course, "housing expenditure" is in no way to be taken as meaning "the expenses of the house" (see regulation 5(7) and the definition of "housing benefit expenditure" in regulation 2(1)).

8. My decision is as follows:

- (1) The claimant's appeal to the Commissioner is allowed.
- (2) The decision of the appeal tribunal dated 20 September 1983 is erroneous in law and is set aside.
- (3) The claimant's appeal to the appeal tribunal is allowed.
- (4) At all times material to this appeal the claimant was a householder within the meaning of the Requirements Regulations 1980.
- (5) In consequence there has been no overpayment of benefit and, in turn, no question of recovery by the Secretary of State arises.

(Signed) J Mitchell
Commissioner

Date: 17 September 1984

Commissioner's File: C.S.B. 145/1984
CSBO File: 52/84
Region: North Western