

MASTER

Housing Requirements - responsibility for expenditure not to be equated with legal liability for expenditure.

LB/MB

Commissioner's File: CSB/213/1987

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Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF THE SOCIAL SECURITY APPEAL TRIBUNAL
ON A QUESTION OF LAW**

DECISION OF THE CHIEF SOCIAL SECURITY COMMISSIONER

Name: Robin James Neeves

Social Security Appeal Tribunal: Lewisham

Case No: 12/63/12

[ORAL HEARING]

1. My decision is that the housing benefit requirement of the claimant for the purposes of supplementary benefit falls to be determined on the footing that the claimant and his wife (comprised within the same assessment unit) are (within the meaning of regulation 14(3) of the Requirements Regulations, to which I shall come), responsible for the whole of the interest payable to Lloyds Bank PLC under the legal charge of 109 Glenesk Road, Eltham dated 5 August 1983. The claimant's appeal against the decision of the social security appeal tribunal dated 18 November 1986 is allowed accordingly.

2. I held an oral hearing of this appeal at which the claimant was represented by Mr. P. Esam a Principal Welfare Rights Officer of Greenwich LB and the adjudication officer was represented by Mr. E.O.F Stocker of the Solicitor's Office of the DHSS. I am grateful to them both for their submissions. Mr. Stocker rightly supported the appeal.

3. The claimant is in receipt of supplementary benefit. He lives with his wife and two children and a Mr. T. in the property to which I have referred. This house was purchased by a payment of £16,950 made by Mr. T. and a loan of £16,000 from Lloyds Bank. The loan was secured by the legal charge to which I have referred, and under that legal charge the claimant, his wife and Mr. T. are jointly and severally liable to the Bank for the money secured. Additional security was given to the Bank by what has been described as an "endowment policy" in the names of the

claimant and his wife. It is undisputed that the arrangement between the parties was that as between them the claimant and his wife were to be responsible for the repayment of principal and interest to the Bank. Pursuant to this arrangement the monthly amounts of interest are debited to an account at the Bank of the claimant and his wife. Also pursuant to the arrangement Mr. T. does not pay any of the interest.

4. It was agreed that the appeal should proceed before me as an appeal against the revised decision of the adjudication officer allowing 2/3rds of the mortgage interest as the claimant's housing requirement. That revised decision was confirmed by the social security appeal tribunal. I am satisfied that the decision of the tribunal was erroneous in law and that has been common ground before me.

Regulation 14(3) of the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399] is in the following terms:-

"(3) ... an amount shall be applicable under this Part of the regulations only where a member of the assessment unit is responsible for the expenditure to which the amount relates and -

- (a) a person shall be treated as responsible for expenditure -
 - (i) for which he is liable, other than to a person who is a member of the same household;
 - (ii) which, because the person liable is not meeting it, he has to meet if he is to continue to live in the home and for which the benefit officer is satisfied that it is reasonable in the circumstances to treat him as responsible;
 - (iii) in relation to an amount applicable under paragraph (1) of regulation 16 by virtue of sub-paragraph (a) of that paragraph, where he is the person there specified (owner-occupiers);
 - (iv) which he in practice shares with one or more other members of the household, not being close relatives of his, at least one of whom either is responsible under one of the preceding heads of this sub-paragraph or has an equivalent responsibility for housing benefit expenditure and for which the benefit officer is satisfied that it is

reasonable in the circumstances to treat him as sharing responsibility;

(v) for which, being a claimant, a dependant of his would otherwise be treated as responsible;

(b) where responsibility for expenditure is shared, the amount so applicable shall be calculated by reference to the appropriate proportion of that expenditure."

5. Both Mr. Esam and Mr. Stocker have submitted that "responsibility for expenditure" is not to be equated with legal liability for the expenditure. I agree. In my judgment subparagraph (b) has no application on the facts of this case because this is not a case where "responsibility" for the expenditure in question is shared; having regard to the arrangement between the claimant, his wife and Mr. T. there is on the facts no sharing with Mr. T. of the "responsibility" for the mortgage interest. Given the liability of the claimant and his wife to the Bank for the mortgage interest I think there is no doubt that regulation 14(3)(a)(i) applies. Thus in my view the whole of the mortgage interest falls to be treated as part of the housing requirement of the claimant.

6. My decision is as in paragraph 1.

(Signed) Leonard Bromley
Chief Commissioner

Date: 16 June, 1987