CSB 229/1981

JNBP/AB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Edwin Low

Supplementary Benefit Appeal Tribunal: Finchley

Case No: 09/86

1. My decision is that the decision of the Finchley Supplementary Benefit Appeal Tribunal ('the tribunal') dated 20 February 1981 is erroneous in law and I set it aside. I remit the case for re-determination by a differently constituted tribunal in accordance with this decision.

2. This is an appeal brought by the claimant with my leave from the above-mentioned decision of the tribunal which confirmed the decision of the benefit officer issued on 18 December 1980. The latter decision was set out on form LT 205 in the following terms:-

> "Supplementary allowance of £70.50 determined and paid weekly from the prescribed pay day Thursday in week commencing 24 11 80."

It is necessary to refer to the assessment of the claimant's requirements and resources on form LT 205 to find the subject matter of the present appeal, namely, the deduction of £12.00 per week, because of high housing costs from the rent of £40.00 per week being paid by the claimant.

3. I directed an oral hearing of the appeal at which the claimant, who was not present, was represented by Mr J Douglas, Solicitor, of the Child Poverty Action Group. The benefit officer was represented by Mrs G M V Leslie. I am indebted to Mr Douglas and Mrs Leslie for their helpful submissions.

4. At the relevant time the housing requirements of claimants for supplementary benefit were provided for in regulations 14 to 23 of the Supplementary Benefit (Requirements) Regulations 1980 (as amended by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980). Regulation 15, which dealt with rent was, so far as relevant to the present appeal, in the following terms:-

> "15. - (1) Subject to paragraphs (2) to (6), there shall be

applicable under this regulation the amount, calculated on a weekly basis, of the rent payable for the home and of any additional charge made by a landlord in respect of the home because of letting of any part of the home, taking in lodgers or accommodating non-dependants.

(2) No amount shall be allowed under paragraph (1) -

(a) .....

(b) where the rent is registrable under Part IV or VI of the Rent Act 1977 (registration of rents under regulated tenancies and lettings by housing associations and others) or Part IV of the Rent (Scotland) Act 1971 (registration of rents under regulated tenancies) but the rent is not so registered and the benefit officer is satisfied that the rent payable exceeds the rent which would be payable after registration, in respect of the amount of the excess, as estimated by him, of the actual rent over the rent which would be payable after registration so however that this sub-paragraph shall not apply if and so long as the rent has not been registered but an application for registration has been made and not withdrawn.

(3) Where the amount payable for rent is inclusive of any of the items mentioned in sub-paragraphs (a) to (d) there shall, in respect of those items, be deducted from the amount applicable under paragraphs (1) and (2) -

(a) for heating £4.35

(b) for lighting £0.35

(c) for cooking £0.50

(d) for hot water £0.50

Regulation 21 provides as follows:-

"21. - (1) Where the amounts applicable under regulations 15 to 20, and subject to any reduction applicable under regulation 22, are excessive they shall be subject to restriction in accordance with this regulation.

(2) Subject to paragraphs (3) and (4), the amounts so applicable shall be regarded as excessive and

accommodation and the generally high level of housing costs in London relevant to the application of Regulation 21(3) of the SB (Requirements) Regulations.

(c) The Tribunal do not state what evidence if any, they had that Highgate is in an unnecessarily expensive area or that the rent would be likely to rise on registration.

2. The Tribunal have erred in law because they failed to consider whether the rent was registrable within the meaning of regulation 15 of the SB (Requirements) Regulations. An application for registration of a fair rent had been made but not determined by the Rent Officer. Regulation 21 of the SB (Requirements) Regulations should not have been applied until the level of the registered rent was known."

7. In response to the appeal the adjudication officer now concerned with the case, dealing with ground 2 above, submitted that the tribunal's "Reasons for Decision", which are set out in paragraph 5 above, showed that they had considered regulation 15 of the Requirements Regulations. She conceded that no findings of fact had been made as to whether or not the rent was registrable within the meaning of regulation 15 but submitted that it would have been inappropriate for them to do so as the question was to be determined by a Court at some future date. She went on to submit that on the evidence before the tribunal it was open to them properly to conclude that the rent applicable under regulation 15 was that applicable under regulation 15(1) subject to the appropriate deductions under regulation 15(3) and that although it was not clear from the record of the tribunal that that was what they had done, it demonstrated that they had not erred in law in making a restriction, which she submitted was under regulation 21(2)(a), prior to any rent determination made by the Rent Officer.

8. At the hearing Mr Douglas said that the tribunal should have looked at regulation 15 but conceded that regulation 21 could be looked at on its own by which I understand him to mean that contrary to what had been submitted under ground 2 mentioned in paragraph 6 above, it was proper for the tribunal to consider regulation 21 notwithstanding that the level of the registered rent was not known.

9. In my view the tribunal did not deal adequately with regulation 15. It is, I think reasonably clear that they appreciated that in the circumstances they could not make any restriction under regulation 15(2) although it would have been better if they had said so, but they said nothing at all about regulation 15(3) although the submission to them on behalf of the claimant had very properly drawn their attention to it. I consider that they erred in law in failing to deal with that paragraph.

10. Dealing with ground 1(a) of the grounds of appeal the adjudication officer now concerned submitted that the tribunal had accepted that a change of school would affect the claimant's children, that they did not wholly accept the opinion of the Headmaster and were satisfied that because of the short period of the childrens' attendance at the school a change of accommodation which resulted in a change of school would not disrupt the childrens' education to the extent that it would justify not expecting the claimant to move. At the hearing Mrs Leslie supported the above submission. She pointed out that the children had already changed school at least three times and had been at their then present school for a period which I think she said was one month but was given as one term by the tribunal. The specific reference in regulation 21(5)(b) to "the effect on the education of any dependants were a change in accommodation to result in a change of school" clearly indicates recognition of at least the possibility that a change of school would have an adverse effect on education and the childrens' Headmaster said "I think it goes without saying that any moves or changes in childrens' education are bound to be disruptive". It seems to me that common sense suggests that the more changes of school that a child has to make the greater the disruption and risk of adverse effect. I agree with Mr Douglas' submission that the tribunal gave inadequate reasons for their conclusion that the children would not be adversely affected if they had to change school again. In particular they give no reason why they thought it followed from the fact that the children had been at the school for only one term that they would not be affected by a change. Also, it does not appear that the tribunal considered the fact that the children had changed schools twice in the recent past. There is nothing in the tribunal's decision to indicate that they considered that the possible detriment to the children, who were aged 7 and 8 at the relevant time was less than it would have been if they had been 11, as Mrs Leslie submitted at the hearing. If they had taken that view it would certainly have been necessary to give reasons for doing so. My conclusion is that the tribunal's decision was erroneous in law as submitted in ground 1(a).

11. As to ground 1(b), the tribunal did not make any finding as regards the availability of suitable alternative accommodation or say anything to indicate that they had considered the evidence relevant to that aspect of the case. It was suggested in the benefit officer's written submission that they may have been using their own local knowledge and it was submitted that if that was so they should have said so. At the hearing Mrs Leslie supported that submission and submitted that they were entitled to use their local knowledge. Mr Douglas submitted that it would not be enough to say that they were using their own local knowledge where evidence had been provided by the claimant. I would certainly agree that it would be inadequate for a tribunal merely to state that they preferred their own view, based on their local knowledge, to the view supported by the claimant's evidence but I consider that it would not be improper for them to prefer their own view provided that they gave adequate reasons for holding it and preferring it. In my judgment the tribunal erred in failing to deal with the evidence as submitted in ground 1(b).

shall be restricted, and the excess not allowed, if and to the extent that -

(a) in the case of an amount applicable under any of those regulations, the home, excluding any part which is let or is normally occupied by boarders, is unnecessarily large for the assessment unit and any non-dependants or is located in an unnecessarily expensive area; or

(b) in the case of an amount applicable under regulation 15, the rent is excessive by comparison with that for similar available accommodation in the area.

(3) Where, having regard to the relevant factors, it is not reasonable to expect the assessment unit to seek alternative cheaper accommodation no restrictions shall be made under this regulation.

(4) Where paragraph (3) does not apply and -

(a) the claimant (or other member of the assessment unit) was able to meet the financial commitments for the home when these were entered into,

no restriction shall be made under this regulation during the first six months of any period of entitlement to a pension or allowance nor during the next six months if and so long as the claimant uses his best endeavours to obtain cheaper accommodation.

(5) In this regulation "the relevant factors" are -

(a) the availability of suitable accommodation and the level of housing costs in the area; and

(b) the circumstances of the assessment unit including in particular the age and state of health of its members, the employment prospects of the claimant and the effect on the education of any dependants were a change in accommodation to result in a change of school."

5. The tribunal made findings of fact as follows:-

"Department's officer explained assessment and gave background of claim. Contents of letter from solicitors was made known to the tribunal. /Claimant's_7 representative explained the provisions of the Supplementary Benefit (Requirements) Regulations 1980. Department's officer

submitted that from the Department's knowledge of the local area the /claimant_7 and his family are living in an unnecessarily expensive area."

After stating their decision the tribunal recorded their reasons as follows:-

"The Tribunal have given careful consideration to the submissions of the /claimant_7 and his representative. They have studied the provisions of Regulations 15 and 21 of the Supplementary Benefit (Requirements) Regulations 1980. The Tribunal feel that

1. The /claimant_7 lives in an unnecessarily expensive area.

2. Since the /claimant_7 already has made two moves it would not be unreasonable for him to seek cheaper accommodation.

3. The Tribunal do not accept that the /claimant_7 could afford the accommodation when he moved in since he was unemployed.

4. Although the Tribunal accept that children are affected by changes in school the /claimant's_7 children were not established at the school having only been there one term and this could not apply in this case."

6. The claimant's grounds of the present appeal as originally stated were as follows:-

"1. That the reasons for the decision and the findings of fact are inadequate because:

(a) Adequate reasons have not been given for the rejection of evidence that the education of the claimant's children would be affected if they had to move. The reasons for the decision state

> "Although the Tribunal accept that children are affected by changes in school, the /claimant's_7 children were not established at the school having only been there one term and this could not apply in this case."

The reasons do not explain why the fact that the children had only been at the school one term means that they could not be affected by changes in school - frequent short periods at different schools would normally appear to have a disruptive effect on children as evidenced by a letter from the children's Headmaster.

(b) The Tribunal do not appear to have considered evidence as to the lack of available suitable

12. Turning now to ground 1(c), here again the tribunal failed to give adequate reasons for their conclusion. It appears that in deciding that the accommodation was in an unnecessarily expensive area they may have been making use of their own local knowledge without saying that they were doing so. If, as Mr Douglas suggested, they may have been relying on the letter from SHAC dated 13 January 1981, they gave no indication that they were doing so. Mr Douglas also submitted that support for the view that the area was not unnecessarily expensive could be found in the response of Mr Selman of New Lease Flats, as recorded on page 1 of the letter dated 28 January 1981 from Messrs Tyler Roxburgh & Co to the clerk to the tribunal. That evidence was not mentioned by the tribunal. My conclusion is that the tribunal's decision was also erroneous as submitted in ground 1(c).

13. It follows from the foregoing that the tribunal's decision must be set aside and the case remitted for re-determination by a differently constituted tribunal. I should like to add, however, that although I have been critical of the decision I appreciate that the case was a difficult and complicated one.

14. The appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 12 June 1984

Commissioner's File: CSB/229/1981
C SBO File: 269/81
Region: London North