

R/S 13/82

CSB 244/1981

DGR/EFM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision No: C.S.B.12/82

1. My decision is that the decision of the supplementary benefit appeal tribunal is erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal in accordance with the principles here laid down.

2. The claimant, a single man aged 28, originally shared the tenancy of 13 Clifton Park Road, Caversham with three friends. However, at the time of his claim for supplementary benefit on 10 December 1980, two of these friends had bought the property in their joint names, and the claimant and the fourth occupant had each been granted a lease of one room, together with access to other parts of the house and to the garden, as specifically set out in a formal agreement dated 29 August 1980. The said agreement contained various 'covenants' usual in a domestic lease. The claimant has what can be called in common parlance a small flat at 13 Clifton Park Road. There are services used in common by all the occupants of 13 Clifton Park Road, namely electricity, gas, telephone and cleaning. The costs are apparently divided equally between the four occupants. Moreover, they each contribute equally to the cost of food.

3. The supplementary benefit officer decided that the claimant's supplementary allowance should be calculated on the basis that he was a person other than a householder, because the responsibility for the costs of the whole house fell on the two owners. He did not maintain a separate household and could not be treated as a person responsible for housing costs, nor was he a member of the household with a major control over household expenditure. In other words, the claimant did not satisfy regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980.

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4. The claimant appealed against this decision to the supplementary benefit appeal tribunal, who reversed the decision of the supplementary benefit officer and made the award set out in Box 4 of their decision. However, I do not think they really grappled with the intense complexities of the problem - and I say this in no particular spirit of criticism in that the regulations are extremely complex - but seemed at the end of the day simply to have adopted an equitable, and to this extent, an arbitrary approach.

5. The benefit officer lodged an application for leave to appeal against the decision of the tribunal, and this application was granted by the Commissioner. The benefit officer then asked for an oral hearing, a request which was acceded to. At that hearing, the claimant was represented by Mr R Birch of the Solicitor's Office of the Department of Health and Social Security. The claimant did not appear.

6. Rather than that I should criticise in detail the decision of the tribunal and the reasons for it, I think it would be more helpful if I simply set out the principles which, in my judgment, apply to this case and direct a differently constituted tribunal to reconsider the matter in the light of those principles.

7. Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980 provides as follows:

"For the purposes of the table a householder is a person, other than a partner, who

- (a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of those regulations other than regulation 23 (non-householder's contribution) relates 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 whose absence is for a period which has not yet continued for more than 13 weeks".

8. Regulation 14, which occurs in Part IV reads, as far as is relevant for present purposes, as follows:

"(1) The items to which housing requirements relate are:

- (a) rent;
- (b) mortgage payments;

- (c) repairs and insurance;
 - (d) interest on loan for repairs and improvements;
 - (e) miscellaneous outgoings;
 - (f) items applicable in special cases;
 - (g) non-householders' contribution
- (2)
- (3) Except in relation to the item specified in paragraph (1)(g) (non-householder's contribution) 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, in particular as owner-occupier or party to the lease or tenancy agreement of the home, other than to a person who is a member of the same household".

9. On the facts of this case, which do not seem to be in dispute, the inevitable inference must be that the claimant as the leaseholder of a flat in 13 Clifton Park Road is a party to a lease or tenancy agreement of a home within regulation 14(3)(a)(i). It is also to be noted in this connection that "the home" is defined in regulation 2(1) as meaning:

"the accommodation, with any garage, garden and out-buildings, normally occupied by the assessment unit and any other members of the same household as their home

10. Now, as the claimant, in my judgment, satisfies the definition of a householder as contained in regulation 14(2)(a)(i), he must also satisfy the definition of a householder in regulation 5(2) of the regulations. There is no question of his sharing responsibility or control with another member of the same household and he has not been absent for the period specified in paragraph (2)(c). He is the only occupant of his flat at 13 Clifton Park Road, and as far as this flat is concerned there are no other members of the household.

11. Considerable attention has been given in this case to whether or not the four friends living at 13 Clifton Park Road are living as members of one household. They may well have been doing so originally, but, at the time the claimant made his claim for supplementary allowance, 13 Clifton Park Road had become divided

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into several different households. Since the claimant acquired his lease, he has his own separate household and he cannot, at least in the absence of the most unusual circumstances, be a member simultaneously of any other household. The importance of the point is that in the present case there can be no possibility of the final words of regulation 14(3)(a)(i) "other than to a person who is a member of the same household" having any practical effect, so as to take the claimant out of the definition of a householder. It is immaterial whether he has to make any contributions to one of the other three occupants in discharge of his responsibility for a quarter of the common expenditure because that person is not a member of the claimant's household, nor is the claimant a member of anyone else's household.

12. In my judgment, neither the supplementary benefit officer nor the local tribunal got the position right, and accordingly the matter must be remitted to a differently constituted tribunal to determine the claimant's entitlement in the light of the principles here set out.

13. I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 16 April 1982

Commissioner's File: C.S.B. 244/1981
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