

CSB 283/1981

DGR/GJH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

Decision CSB 18/81

1. I set aside the decision of the Supplementary Benefit Appeal Tribunal given on 7 April 1981 on the ground that it was erroneous in point of law, and accordingly this appeal succeeds.

2. The claimant, who had been in receipt of supplementary benefit in Leicester, moved to Leeds on 10 February 1981 and claimed benefit from the Leeds office. He went to live as a member of a friend's household and stated that he was paying £11.50 per week for the use of a room and access to various other rooms. The benefit officer decided that he should be awarded supplementary allowance for housing expenses at the rate allowed for a person other than a householder, namely £2.15 per week. The claimant appealed to the Supplementary Benefit Appeal Tribunal against that decision, and succeeded to the extent that the allowance was increased by £2.45 per week. The tribunal expressed their reasons for their decision in the following terms:-

"The tribunal feel that the criteria outlined in regulation 23(1)(b) are fulfilled in this case and that the maximum of £4.60 applies".

The benefit officer now appeals to the Commissioner (leave having previously been given) contending that the tribunal's decision was erroneous in point of law. In brief, he argues that the tribunal failed to consider adequately or at all whether regulation 23(1)(b) of the Supplementary Benefit (Requirements) Regulations 1980 (S.I. 1980/1299) had been satisfied, and in any event failed to record any findings of fact to show that they had discharged their duties in this respect. Furthermore, on no footing was there any evidence to support the conclusion that regulation 23(1)(b) had been satisfied.

4. Regulation 23(1) provides as follows -

"(1) There shall be applicable to a person to whom this regulation applies, in respect of his contribution

to the housing expenses of the household of which he is a member -

- (a) the weekly amount of £2.15; or
- (b) where he establishes -
 - (i) that the amount is insufficient having regard to his actual contribution to the housing expenses of the household,
 - (ii) that, having regard to the resources of the household as a whole, hardship would otherwise occur, and
 - (iii) that his entry into the household was on the clear understanding that a contribution to the housing expenses of the household in excess of that amount would be required,

such additional weekly amount as may be reasonable up to a maximum, in aggregate, of £4.60.

- (2) This regulation applies to a claimant where neither he nor any other member of the assessment unit satisfies the condition of sub-paragraph (a) of paragraph (2) of regulation 5 (meaning of householder)."

It is not in dispute that paragraph (b)(i) and (iii) have in the present case been satisfied.

5. Now, having looked at the tribunal record I can find nothing to indicate that the members considered in turn each of the provisions in (i), (ii) and (iii) of paragraph (b), and satisfied themselves that each and everyone of them had been properly fulfilled. Certainly they made no material findings of fact in support of any such approach. But even if they did consider in turn each of the conditions and concluded that they had been satisfied including in particular (ii), the evidence does not justify their conclusion. No evidence was put forward suggesting that, having regard to the resources of the household as a whole, hardship would occur unless there was an increase of allowance to the claimant over and above the standard figure of £2.15; and a decision to this effect can only be regarded as perverse.

6. Accordingly, I set aside the decision of the tribunal and direct that the case be determined afresh by a differently constituted tribunal.

(Signed) D G Rice
Commissioner

Date: 20 October 1981

Commissioner's File: CSB/283/1981
CSBO File: SBO 332/81