

MJG/OG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

ORAL HEARING

Decision C.S.B. 34/81

1. I allow the appeal of the supplementary benefit officer in this case and set aside the decision of the supplementary benefit appeal tribunal of 7 April 1981. I refer the case to a differently constituted supplementary benefit appeal tribunal to determine it in accordance with this decision: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, rule 10(8).
2. This appeal was the subject of an oral hearing (requested by the supplementary benefit officer) on 28 October 1981. The supplementary benefit officer was represented by Miss Shuker of the Solicitor's Office of the Department of Health and Social Security. The claimant was not present but was represented by her brother. I am grateful to Miss Shuker and to the claimant's brother for the assistance they gave to me.
3. The claimant is a woman divorced from her husband. From 4 March 1980 onwards, she has lived in a council house of which her brother is the tenant. There are no other members of the household. The arrangement between her and her brother was that they should share equally all the expenses of the household, i.e. rent, rates and all other living expenses. In approximate terms, that meant that the claimant's contribution towards the cost of rent and rates alone was £5 per week. The claimant was not, at the time her appeal was heard by the supplementary benefit appeal tribunal on 7 April 1981, the "householder" within the meaning of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299], regulation 5(2), because her brother was solely responsible to the council for the payment of rent (see regulation 14(3) of the Requirements Regulations).
4. As a result, her claim for supplementary benefit had to be determined on the basis that she was a "non-householder" within the

meaning of regulation 23 of the Requirements Regulations, regulation 23(2) providing,

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

The claimant's brother is not a "member of the assessment unit" with the result that the claimant must be regarded as a non-householder. She cannot be regarded as a "boarder" (and thus be entitled to a higher supplementary benefit allowance for housing) within regulation 9 of the Requirements Regulations. That is because regulation 9 excludes "any person whose accommodation and meals (if any) are provided by a close relative or other than on a commercial basis" (my underlining). As the claimant's accommodation was provided by a close relative, i.e. her brother (Requirements Regulations, regulation 2(1)), the fact that accommodation was provided in this case on a commercial basis does not allow regulation 9 (as to boarders) to apply because the conjunctive word used in that regulation is "or" and not "and".

5. Consequently, so far as housing expenses are concerned, the claimant's requirements could be assessed only under regulation 23 of the Requirements Regulations. Regulation 23(1) provides as follows:

"23(1) There shall be applicable to a person to whom this regulation applies, in respect of [her] contribution to the housing expenses of the household of which [she] is a member -

a. the weekly amount of £2.15; or

b. where [she] establishes -

- (i) that the amount is insufficient having regard to [her] 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 [her] 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".

6. I have set aside the decision of the supplementary benefit tribunal of 7 April 1981, because in my view they erred in law in that they did not correctly apply regulation 23(1) (for the reasons set out below), nor did their reasons for decision adequately specify how they were relating the facts of the case to regulation 23(1). It has been

stressed in Commissioner's decisions C SB 5/81 (to be reported as R(SB) 4/81), C SB 13/81 (to be reported as R(SB) 11/81), and C SB 18/81 (to be reported as R(SB) 16/81) that the 3 conditions in regulation 23(1)(b) are cumulative. That means that for more than the standard amount of £2.15 to be awarded to a non-householder for contribution to housing expenses, the claimant must establish all three of those matters. A tribunal must ascertain, on sufficient evidence, that all those 3 requirements are fulfilled before it can make an award in excess of £2.15 per week. Moreover the tribunal must, in its reasons for decision, demonstrate how each of those 3 requirements are fulfilled in the case before it.

7. In the present case, the claimant appeared before the tribunal and gave evidence. She was accompanied by and represented by her brother who also gave evidence to the tribunal. The nature of that evidence can be ascertained from the tribunal's findings of fact (on form M235) and from the supplied copy of the Chairman's notes of evidence. The findings of fact read,

"The appellant has lived in her brother's household (he is the tenant), as from 4 3 80. Her brother has been unemployed for approximately 5 months."

The Chairman's note of evidence reads,

"Brother came too. The claimant is currently attending hospital for Psychiatric and Medical treatment for Depression. She feels the cold. Parkray fire heats water and room, but no radiators and has to be lit each morning. Three bags of coke at £4.50 per week. Under 23(1)(b)(i), tribunal considered extra coke should be allowed i.e. £2.45 for heating until the claimant's brother returned to Employment or for a period of twelve months, whichever is earlier. The tenancy of property is in the claimant's brother's name and he is householder".

8. There arises on those findings and those notes of evidence the question of whether there was sufficient evidence before the tribunal to merit a decision that the claimant satisfied all 3 requirements of regulation 23(1)(b) (cited in paragraph 5 above). It is a question of law (on which an appeal lies to a Commissioner) as to whether there was sufficient evidence before a tribunal on which a reasonable tribunal could properly come to the decision in question. To take each of the 3 requirements in turn, first "23(1)(b)(i) - the amount is insufficient having regard to her actual contribution to the housing expenses of the household".

I consider that on those notes of evidence and findings of fact without recourse to further information (as to which see below), there was evidence before the tribunal on which they could reach a conclusion that part (i) of the regulation was satisfied.

9. So far as concerns part (ii) of the regulation, "having regard to the resources of the household as a whole, hardship would otherwise occur", the claimant's brother told me at the oral hearing that he explained the financial position of himself and his sister (the

claimant) to the tribunal. He told the tribunal that he was unemployed and presumably told them (as he told me) that he was not claiming any kind of benefit. He also told the tribunal the weekly amount necessary to pay rent and rates.

10. A legal question arises from that evidence of the claimant's brother to me, in that there is nothing in the written record of the proceedings before the tribunal as to his having told the tribunal about the matters mentioned in paragraph 9 above. Miss Shuker submitted to me that I was not entitled to take into account anything but the written record of the evidence before the tribunal, and that I could not supplement that record by what the claimant's brother told me at the oral hearing. I do not accept that submission. In my judgment where a point of law before an appellate court or tribunal is the familiar one that there was no sufficient evidence to justify a conclusion reached by an inferior court or tribunal, the appellate court or tribunal is at liberty to take note of any reliable account whatsoever of what evidence was in fact tendered to the inferior court or tribunal, including for example, oral testimony before the appellate body. I consider, therefore, that I am entitled to take into account what the claimant's brother told me as to the evidence he gave to the tribunal.

11. I hold that there was just enough evidence before the tribunal on which they could conclude that part (ii) of the regulation was satisfied. The "household as a whole" (regulation 23(1)(b)(ii)) consisted of the claimant and her brother and her brother did give evidence to the tribunal about the resources and expenditure of that household. Consequently, it was up to the tribunal to decide whether "hardship would otherwise occur" (regulation 23(1)(b)(ii)). However, I should add that the tribunal does not clearly say, in its reasons for decision, whether or not it considered regulation 23(1)(b)(ii). That is an error of law which causes me to have to set aside the decision of the tribunal.

12. So far as concerns part (iii) of the regulation i.e. "her entry into the household was on the clear understanding that a contribution to the housing expenses of the household in excess of that amount i.e. the standard weekly amount of £2.15 would be required", the supplementary benefit officer in his written submission, asserts that there was no evidence before the tribunal to show that there was such an entry by the claimant into the household on any such understanding. The claimant's brother at the oral hearing was inclined to concede that this was the position. Certainly the tribunal were in error in that they did not refer, in their findings of fact or in their reasons for decision, to the application of this particular part of the regulation. Nevertheless, it seems to me that there was some evidence before the tribunal (the nature of which I have ascertained from what the claimant's brother told me at the oral hearing), which could show compliance with part (iii) of the regulation.

13. The claimant and her brother told the tribunal that when the claimant first entered the household, they had agreed to share all the expenses of the household, including rent and rates, of

approximately £10 per week equally between them. The report of the presenting officer before the tribunal states that the claimant's brother told the tribunal, "No legal agreement exists. It is merely their own 'set up'". Nevertheless, one must bear in mind that this regulation will normally apply to close relatives or to persons who cannot claim to be boarders because the relationship is not on a normal commercial footing - see paragraph 4 above. In decision C SB 13/81 (paragraph 11) (to be reported as R(SB) 11/81) I drew attention to the difficulties of applying regulation 23(1)(b)(iii) to close relatives, particularly in the context of the relationship between a child and his parent. In the present case, we have a sister who entered her brother's household on the understanding that she and he would share the household expenses equally between them and, although the amount of the sister's share was not specified, it clearly was an amount in excess of £2.15 per week.

14. I would hold that the new tribunal which rehears this case could, after hearing evidence on the point, legitimately come to the conclusion that the arrangement between the claimant and her brother amounted to as much of a "clear understanding" (regulation 23(1)(b)(iii)) between brother and sister as one could reasonably expect. The fact that the exact financial contribution required of the claimant as a condition of entry into the household was not specified would not matter if it was clear that that contribution would necessarily be more than £2.15 per week.

15. Another error of law was committed by the supplementary benefit tribunal in that part of their decision which read,

"This amount is to continue for a period of 1 year from 16 2 81 or until the appellant's brother starts work, whichever is the sooner".

That was, in my view, a breach of regulation 6 of the Supplementary Benefit (Determination of Questions) Regulations 1980 S.I. 1980 No 1643. Regulation 6 provides,

"Duration of Awards of Pensions and Allowances"

6(1) Subject to paragraph (2), any award of a pension or allowance shall be for an indefinite period (but subject to the provisions of regulations 4 and 5 as to review of determinations).

(2) Paragraph (1) shall not apply -

(a)

(b) if, an award for an indefinite period would be inappropriate (for example, where resources fluctuate or the end of entitlement is foreseeable), where the award shall be for a fixed period which is appropriate in the circumstances but which shall normally be a week or a multiple of a week".

16. In this case I consider that there do not apply any of the

exceptions to the rule in regulation 6 that supplementary benefit shall be awarded for an indefinite period. There was no likely fluctuation of the claimant's resources (which were in fact nil). As to the phrase in regulation 6(2)(b), "or the end of entitlement is foreseeable", the tribunal no doubt considered when they made their award of £4.60 per week to the claimant that if her brother restarted work and she once more became the householder, (as had happened in the past) the amount of benefit would have to be reassessed. However, that would not in my judgment be an "end of entitlement" within regulation 6(2)(b). I would construe that as meaning a total end of all entitlement to supplementary benefit as distinct from a mere change in circumstances (which is covered by the provisions as to review) in regulation 4 of the Determination of Questions Regulations.

17. In any event, I do not consider the actual form of the tribunal's decision, namely limiting the award in the alternative to a period of 1 year or until the claimant's brother restarted work, is permissible. If an award for "a fixed period" is made under regulation 6(2)(b), that period must have a definite ending date and (as the regulation states) be normally specified in terms of a week or weeks. The award could not be in the alternative or have an indeterminate end, e.g. in this case the unknown date when the claimant's brother might start work.

(Signed) M J Goodman
Commissioner

Date: 30 November 1981

Commissioner's File: C SB 289/1981
C SBO File: SBO424/81