

RAS/LMM/2

Commissioner's File: CSB/307/1990

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Social Security Appeal Tribunal dated 8 June 1990 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant, a single man now I think in his early thirties, had been in receipt of supplementary benefit since December 1981. He changed his address on several occasions between 1981 to 1986. At two of those addresses he was said to be the tenant of a Mr Ramsey. At another, the property was apparently owned by Mr Ramsey's mother and he and Mr Ramsey both lived there. Then, at another address, he was a joint tenant with Mr Ramsey. For a short time, after Mr Ramsey had left, the claimant was the sole tenant. In October 1985 the claimant moved to Hastings, whether with or without Mr Ramsey I am not sure. In October 1986 the claimant moved to a flat also in Hastings and informed the department that he paid £45 rent to Mr Ramsey who also lived there. The rent was to include all bills but no meals were provided. The claimant had his own bedroom and the use of the rest of the flat. On the basis of that information an adjudication officer decided that the claimant was a householder and, presumably, supplementary benefit was paid at the householder rate. Subsequently the local authority advised the department that payments of housing benefit had been suspended because of doubts about the tenancy. On 18 May 1987 Mr Ramsey wrote to the local authority stating that from that date he would be providing a full breakfast each morning and that the arrangement with the claimant was that of board and lodging for which a tenancy agreement was not required. On 10 June 1987 the claimant told his local office that he was renting a room at the address in question for £45 a week which included a full breakfast. In a later statement he said his accommodation consisted of "my own bedroom, bathroom, living-room, back garden." An adjudication officer then issued a decision, presumably on review, to the effect that, as the claimant was not

a householder and was not to be treated as a boarder because the arrangement was not on a commercial basis, he was entitled only to the non-householder rate of benefit. The claimant unsuccessfully appealed to the tribunal. Their decision was set aside on appeal to the Commissioner and the case was remitted to a new tribunal. They disallowed the appeal and the claimant now appeals to the Commissioner against their decision.

3. The Commissioner who set aside the first tribunal's decision explained the issues as follows -

"6. It is not in dispute in this case that the claimant was a boarder within regulation 9(13)(a) of the Requirements Regulations, provided he was not excluded by the operation of regulation 9(14). Regulation 9(14) provided as follows:-

"(14) Notwithstanding paragraph (13), a person shall not be a boarder for the purposes of this regulation if he is a person to whom any paragraph of Schedule 2A applies."

Paragraph 1 and 3 of that Schedule are relevant. They read as follows:-

- "1. A person whose accommodation and meals (if any) are provided in whole or in part by a close relative or other than on a commercial basis.
3. A person who in the opinion of the adjudication officer has entered into arrangements referred to in paragraph (13) of regulation 9 (meaning a "boarder") made for the purpose of taking advantage of that regulation."

In the present instance, the tribunal were satisfied that the claimant was caught by paragraph 1, so that it was unnecessary for them to go on to consider paragraph 3. They decided that "the arrangement was not in our opinion on a commercial basis."

7. Unfortunately, the tribunal did not find any facts, on the basis of which they could properly conclude that the arrangement was not commercial. Manifestly, there was a breach of regulation 25(2)(b) of the Adjudication Regulations. It follows that I must set aside the tribunal's decision and direct that the appeal be reheard by a differently constituted tribunal. That tribunal must go into the question of whether or not the arrangement for providing accommodation and meals was on a commercial basis. In considering this, it is not enough merely to regard the existing friendship between the claimant and Mr L R as a bar to the arrangements being regarded as commercial. It is merely one of many factors to be taken into account. If the tribunal find that the claimant is not caught

by paragraph 1, they must then go on to consider whether he falls within paragraph 3. If the tribunal concludes that the claimant is caught by neither paragraph, then in computing his entitlement to benefit he must be treated as a boarder. If, on the other hand, the new tribunal conclude that the tribunal comes within paragraph 1 or 3 of Schedule 2A, they must then go on to determine whether he was a householder or non-householder and, depending upon the answer, calculate his entitlement to benefit accordingly."

The tribunal whose decision is now in question concluded that accommodation and meals were provided on a commercial basis and that therefore the claimant was not ruled out from boarder's status by paragraph 1 of Schedule 2A to the Supplementary Benefit (Requirements) Regulations 1983. However, he was, they concluded, ruled out by paragraph 3 because the arrangements were entered into in order to take advantage of regulation 9 - in effect the claimant was only pretending to be a boarder. So, having decided he was not a boarder they then considered whether in the circumstances the claimant was a householder. They decided he was not but unfortunately they did not explain why they came to that conclusion. Nor, with regard to the boarder point, am I sure that they sufficiently explained why they took the view that paragraph 3 of Schedule 2A applied. I allow this appeal because the tribunal's findings and reasons are insufficient with regard to those two matters.

4. There are two letters, at pages 56 and 57 to 58 of the papers, which may assist the claimant with regard to householder status. The current adjudication officer submits, in relation to that matter as follows -

"3. The letters from the claimant and his landlord in May 1989 give a strong indication that payments for occupancy were required if that occupancy was to continue. The landlord's brief letter of 27.5.89 indicates a measure of independence in the men's lifestyles; Mr Bunting had his own bedroom, and shared use of kitchen, etc. It remains a fact, however, that breakfast was being provided for Mr Bunting at the material time. It was made clear in Commissioner's Decision R(SB)4/83 that a boarder was not necessarily a non-householder, as the Requirements Regulations distinguished between these two concepts (paragraphs 12-16). But the Commissioner went on to point that not being a "non-householder" did not necessarily mean being a householder by default (paragraph 16). There is a wider concept, of persons who are merely not householders. I submit that as he is in fact a boarder who is debarred from receiving a special assessment under Requirements Regulation 9, Mr Bunting comes into this wide category of a "single claimant who is not a householder", as described in Requirements Regulation 6(1). His requirements would thus fall to be assessed in accordance with paragraph 1 of Schedule 1 to those

Regulations. [He would also qualify for housing costs under regulation 23. Note that although paragraph 1 of Schedule 1 and regulation 23 refer in their titles to "non-householders", in the first instance regulation 6(1) - referring to single claimants who are not householders - directs determination under Schedule 1 paragraph 1 or 2; and secondly regulation 23(2) states that the regulation applies to a claimant aged 25 or over, not satisfying the meaning of householder.] I submit that the Commissioner should decide the case accordingly."

Now that sets out the issues with regard to whether at the material time the claimant was a householder and I note that the adjudication officer invites me to decide that he was not. I might have been inclined to make that decision, but, as I have said, the question of boarder status was not sufficiently dealt with by the tribunal in that they did not explain why they considered that paragraph 3 of Schedule 2A applied. So it seems to me that the case must go to another tribunal for that reason alone, and that being the case there is no point in my deciding the householder point.

5. I allow this appeal and remit the case for rehearing by another tribunal. There is a preliminary matter which does not seem yet to have been considered. As I have said, it appears that the original adjudication officer altered the claimant's benefit entitlement by changing him from householder to non-householder status and that change was presumably effected on review. It is technically therefore first necessary for the new tribunal to decide whether there were grounds for review. That presumably will not cause them much difficulty and if they decide there were such grounds they must then decide whether at the material time the claimant was entitled to boarder status. If that matter goes against the claimant they then have to determine the householder question. They will of course decide those various matters in accordance with the principles referred to in this decision and in the decision of the Commissioner who decided the first appeal.

(Signed) R A Sanders
Commissioner

(Date) 13 May 1992