

MJG/EA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Iris Margaret Curtis (Mrs)

Supplementary Benefit Appeal Tribunal: Southend

Case No: 08/76

ORAL HEARING

1. The claimant's application for leave to appeal from the decision of the supplementary benefit appeal tribunal is granted and her appeal is allowed. I set aside the decision of the supplementary benefit appeal tribunal dated 20 March 1981 as being erroneous in law and I remit the matter to a differently constituted supplementary benefit appeal tribunal for determination in accordance with this decision: Supplementary Benefits Act 1976, section 15A, and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (S.I. 1980 No 1605), rules 7 and 10.

2. The claimant is a woman who occupies accommodation in a terraced house which is also occupied by another woman (Miss G), who pays the rent and rates of that house. The claimant claimed supplementary benefit in 1979 but her claim was refused (the refusal being upheld on appeal to a supplementary benefit appeal tribunal) on the ground that she was a member of Miss G's household. That decision is not under appeal to the Commissioner. The claimant made a further claim for supplementary benefit in December 1980, which was on 30 December 1980 refused by the supplementary benefit officer because the claimant's resources of invalidity benefit of £29.45 per week exceeded her requirement for living expenses (calculated on the footing that the claimant was not a householder) of £19.20 per week. The claimant appealed to the supplementary benefit appeal tribunal who on 6 February 1981 adjourned the hearing for further enquiries to be made concerning the nature and separateness of the respective accommodation of the claimant and Miss G. On 20 March 1981 the tribunal was reconvened and heard the claimant's appeal. Although the claimant was not present at the hearing she was represented by a member of a Citizens Advice Bureau who made submissions to the tribunal on the question of whether the claimant was or was not a householder.

3. The tribunal made the following finding of fact,

"Miss G is responsible for the household bills i.e. rates, gas and electricity and in order to get to her accommodation she must pass through appellant's room".

The tribunal unanimously dismissed the claimant's appeal and gave as their reasons for decision,

"The tribunal after considering all the facts, were satisfied that appellant's circumstances does [sic] not satisfy the conditions laid down in Regulation 5(2)(a) of the (Requirement) [sic] Regulations 1980 and therefore cannot be treated as a householder".

4. On 1 June 1981 the claimant applied to the Commissioner for leave to appeal against the decision of the supplementary benefit tribunal giving grounds of application for leave under two heads, "The facts found are such that no Tribunal acting judicially and properly instructed as to the relevant law would have come to the determination in question" and "The Tribunal's findings of fact and the reasons for their decision are inadequate".

5. A written submission from the benefit officer now concerned dated 4 November 1981 supports the claimant's application for leave on the grounds (a) that there is no indication in the tribunal's decision that they directed their minds to the relevant test namely whether the claimant was responsible for expenditure other than to a member of the same household within the meaning of regulation 14(3)(a) of the Requirements Regulations and (b) that the tribunal have not fulfilled their duty under rule 7(2) of the above cited Appeals Rules to give "a statement of the reasons for their determination and of their findings on material questions of fact". In effect those two submissions by the benefit officer coincide with the second of the claimant's grounds for application for leave to appeal.

6. Although I take note of the decision of the Commissioner in R(SB) 5/81 that supplementary benefit appeal tribunal's reasons need not be excessively detailed, nevertheless I conclude that in this case the reasons given by the tribunal for their decision were inadequate. There is no reference to the relevant provisions (for which, see paragraph 7 below) of the regulations (other than regulation 5(2)(a) of the Requirements Regulations) and consequently no findings of fact or reasons as to them. Consequently, I set aside the tribunal's decision as erroneous in law and (as I am required to do by rule 10(8)) I refer the case to a differently constituted tribunal for redetermination in accordance with this decision. I should add that I do not accept the first ground of appeal put forward by the claimant namely that the tribunal in effect arrived at a 'perverse' decision. To do so would in my view involve my expressing an opinion on the facts of this case on inadequate materials.

7. The new tribunal which hears this case anew will need to consider the relevant provisions of the Supplementary Benefit (Requirements) Regulations 1980 (S.I. 1980 No 1299) i.e. regulations 5(2), 6(1), 14(3) and 23 and any other regulations to which those regulations make reference expressly or impliedly. The new tribunal will also bear in mind no doubt the need to make short findings of fact and give reasons for the application or non-application of each of the above cited provisions of regulations. I accept in this connection the submission to me of the benefit officer now concerned namely that, for the tribunal to reach proper conclusions on the test in regulation 14(3)(a) of the Requirements Regulations as to responsibility for expenditure, it will be necessary for the tribunal to make findings of fact on the nature of the payments being made by the claimant to Miss G and upon the question of whether or not they occupied separate households.

8. In submissions on the claimant's behalf her representative has indicated that there is a considerable degree of urgency in this case as the claimant is in danger of losing her home in the accommodation in question, as she is unable to pay her rent. That is an assertion which is of course bound up with the factual issues in this case, but nevertheless I mention the matter so that the clerk of the supplementary benefit appeal tribunal can give consideration to an expedited re-hearing in this case.

(Signed) M J Goodman
Commissioner

Date: 4 February 1982

Commissioner's File: C.S.B. 320/1981
C SBO File: S.B.O. 388/81