

JBM/EA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Shiela Ann Wallinger

Supplementary Benefit Appeal Tribunal: Cleveland

Case No: 05/82

CSB 342 | 1982

ORAL HEARING

Maintenance

1. My decision is that the decision of the Cleveland Supplementary Benefit Appeal Tribunal dated 2 February 1982 is erroneous in law. Accordingly I set it aside and remit the case for hearing by a differently constituted tribunal with the directions hereinafter contained. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by Rule 6(2) of S.I. 1982/40.

2. This appeal to the Commissioner with the leave of the Commissioner is against the unanimous decision of the supplementary benefit appeal tribunal dated 2 February 1982 confirming the decision of the benefit officer issued on 25 November 1981 that "the appellant is not entitled to supplementary allowance from 9 November 1981 to 6 December 1981". On 21 December 1982 I directed an oral hearing. Accordingly on 17 May 1983 I held an oral hearing. Miss J Allbeson of the Child Poverty Action Group represented the claimant, Miss L Shuker of the Solicitor's Office, Department of Health and Social Security represented the benefit Officer. To both of them I am indebted.

3. The facts and history of the case are dealt with in paragraphs 2 to 4 inclusive of the submission dated 20 September 1982 of the benefit officer now concerned on which the claimant has had the opportunity to comment. I do not propose to set these matters out afresh here. I have had the benefit of written submissions from both the claimant and the benefit officer in addition to the oral submissions made at the hearing. In addition to the case papers I had handed to me at the hearing by Miss Allbeson a document headed "1981 year planner" giving the dates and amounts in July, September, October and November of the claimant's receipt of maintenance and supplementary benefit.

4. At the date the maintenance payments of £68 each were received by the claimant (that is on 3 November 1981 and 10 November 1981) the relevant regulations were regulation 2(1) (definition of "liable relative") 9 and 11(3) of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] as amended by the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980 [S.I. 1980 No 1774]. For completion I note that the above regulations were consolidated on 23 November 1981 by the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1980 No 1527] one of the results being that regulation 11(3) became regulation 13. The regulations were further amended by the Supplementary Benefit (Requirements and Resources) Amendment Regulations 1982 [S.I. 1982 No 1125] on 9 August 1982.

I propose only to set out the relevant provisions of regulation 9 of the Supplementary Benefit (Resources) Regulations 1980 as amended by regulation 8(b) of the Supplementary Benefit (Aggregation, Requirements and Resources) Amendment Regulations 1980 as follows:

"9 (1) ... the amount of a claimant's income resources to be taken into account shall be -

(a) ...

(b) the whole of any other income of the assessment unit, calculated in accordance with regulation 11,

calculated on a weekly basis

(2) the payment of any income shall be taken into account for -

(a) a period equal to the length of the period in respect of which it is payable;

(b) where it is not paid in respect of a period, for the period to which it is fairly attributable,

at a weekly rate beginning -

(c) ..

(d) in the case of an income resource which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable"

Regulation 9(2) relates to income which has been paid as the opening words "the payment of any income" indicate. As to regulations 2(1) and 11(3) as amended I need only say that the payment of maintenance in the present case is a periodical payment made by a liable relative, that is the claimant's separated spouse.

5. It was common ground before me that the appeal tribunal had erred in law in that they did not consider regulation 9 of the Resources Regulations referred to above and they failed therefore to

make relevant findings and decisions on the matter, for example the dates when the maintenance payments were due to be paid and the periods they covered. The point of the appeal before me is the manner in which the benefit is to be calculated. The appeal tribunal did not deal with that. On the face of the record the appeal tribunal do not explain why they reached their conclusions and they do not state what led them to their decision.

Miss Allbeson made two alternative submissions. The first is that the maintenance payments are to be taken into account from the date they are payable and they are payable when they first became due to be paid. The main issue before me is the meaning of "payable" in regulation 9(2)(d) as amended. Miss Allbeson's alternative submission was on the basis that "payable" means "paid" and on that basis the 2 payments of £68 are not to be taken for 4 consecutive weeks but for 2 periods of 2 weeks each period commencing on a certain date in relation to when the sum was paid. Miss Allbeson submitted that the maintenance payments count as income in full in accordance with regulation 11(3) (this submission I accept). It is then necessary to turn to regulation 9 to look at the period to which it should be attributed. Regulation 9(2)(d) as amended and set out above contains the word "payable". "Payable" has a distinct meaning different from "paid". It means in this context the date the sum first becomes due. The claimant's husband had been ordered by the Teeside Magistrates Court in April 1981 to make maintenance payments at £34 per week. There were certain weeks when the sum became payable under the Court Order but was not paid. The claimant's husband did not pay forcing the claimant to claim supplementary benefit. When the benefit officer and the appeal tribunal came to assess the period to which the 2 payments of £68 should be attributed they should (so ran Miss Allbeson's submission) have considered regulation 9(2)(d) as amended in that these were income resources payable before the first benefit week pursuant to the claim and therefore the dates when the sum became payable were the 6 to 12 July 1981, 7 to 20 September 1981 and 12 to 18 October 1981. Miss Allbeson submitted that there was no different rule applicable to maintenance than to unemployment benefit in that where a person claimed unemployment benefit and 3 weeks later claimed supplementary benefit (on the assumption that the unemployment benefit was not actually paid until the start of the supplementary benefit claim) no question that unemployment benefit would be counted as a double benefit arose, the unemployment benefit would be attributed back. Miss Allbeson then dealt with the problem created for the Department of Health and Social Security in re-claiming supplementary benefit that the Department had paid out on account of non-payment of maintenance because the benefit officer is unable to take into account a resource until it has been paid. However there is power conferred by the Supplementary Benefits Act 1976 section 12(1A) and regulation 4 of Supplementary Benefit (Duplication and Overpayment) Regulations 1980 to recover supplementary benefit payments paid out on account of non-payment of maintenance. I turn now to Miss Shuker's submissions as to the meaning of "payable" in regulation 9(2)(d). Miss Shuker submitted that "payable" was inserted so that it could be used in different ways depending on the circumstances. Payable could mean "received" or "due to be paid". Miss Shuker sought to support her

submission for a wide meaning of "payable" on the grounds of Departmental inconvenience and difficulty if "payable" in the context was confined to "due to be paid". Under section 12(1A) of the Supplementary Benefits Act 1976 the Secretary of State has to ask the claimant for return of the money and on refusal by the claimant to return the money the Secretary of State's remedy is then through the courts. Miss Shuker stated that although we know the dates of the payments here in many cases such dates would not be known. Difficulties are I appreciate inherent in maintenance payments whether under a court order or otherwise. Such payments may well be made late or not at all and applications to the County Court to enforce payment may be required. During periods of non-payment of maintenance a claimant may well claim supplementary benefit. Such a claimant who has applied for and been paid supplementary benefit might well be unwilling to repay that benefit at a later stage involving further court proceedings. These difficulties are inherent in the subject matter. However I have to construe the statutory provisions as I find them. Miss Shuker in argument initially submitted that the claimant was receiving supplementary benefit for one week during the relevant period and that in consequence regulation 9(2)(d) would not have applied for that week. However this claim was rightly withdrawn in argument by Miss Shuker as a question of fact the claimant was not in receipt of benefit during the relevant period. I was referred to the decision of the Commissioner R(SB) 15/82 and in particular to paragraphs 6, 7 and the bottom of paragraph 8 of that decision. However this is in a different context and I accept Miss Allbeson's submission that when a sum is paid it can also be described as "payable" but the converse does not apply that is "payable" does not mean "paid". Accordingly I reject Miss Shuker's submissions as to the meaning of "payable" in regulation 9(2)(d) as amended. As a question of law "payable" in the present context has not the wider meaning Miss Shuker sought to give it but has the more limited meaning of "due to be paid". In common parlance one talks of rent or taxes as "payable", such a statement by no means connotes that they have actually been paid. On the view I take therefore of the meaning of "payable" I do not need to consider the alternative arguments based on "payable" meaning "received".

6. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by Rule 6(2) of S.I. 1982/40 provides as follows:-

"10(8) On an appeal from a decision of a tribunal the Commissioner may -

(a) hold that the decision is erroneous in point of law; and

(i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given; or

(ii) refer the case to another tribunal with directions for its determination or

(b) hold that the decision is not erroneous in point of law."

7. In accordance with my jurisdiction as set out above I remit the case for re-hearing by a differently constituted tribunal to apply the law as I have described it and to make the necessary findings of fact.

8. I would add one point. The appeal tribunal in their findings of fact refer to the Court Order. This is apparently the Teeside Magistrates Court Order made in April 1981. The construction of such Court Order is a question of law. The appeal tribunal to whom I remit this case should have before it an authenticated copy of the Court Order made and should consider its terms. It may well be that the purport of the Court Order was correctly reported to the appeal tribunal from whom this appeal comes. However, the appeal tribunal to whom I remit this case should see and consider an authenticated copy of such Court Order. In all cases where documents are before an appeal tribunal they should be expressly referred to in the chairman's note of evidence and/or in the findings of fact and a copy of such documents should be contained in the case papers. There is no copy of the court order in the case papers here.

9. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 16 June 1983

Commissioner's File: C.S.B. 342/1982
C SBO File: 254/82