CSB 356/1981

DGR/JAW

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

'blind'

Decision C.S.B. 6/82 = R(SB) 16/82

1. I refuse the claimant leave to appeal against the unanimous decision of the Supplementary Benefit Appeal Tribunal dated 17 February 1981.

2. The claimant in claiming supplementary benefit contended that he was blind within the meaning of regulation 2(1) of the Supplementary Benefit (Requirements) Regulations 1980 (S.I.1980 No 1299), and therefore entitled by virtue of regulation 22(5) of the aforesaid regulations to have his housing requirements assessed without reduction under regulation 22(3) by the amount of a housing contribution in respect of his sister Helen Francis, who occupies his home as an independant. The supplementary benefit officer did not accept that the claimant was blind within the meaning of the relevant regulation, and accordingly assessed the claimant's housing requirements by making a reduction by the amount of such housing contribution. Thereupon the claimant appealed to the local tribunal who in the event upheld the benefit officer.

3. The claimant then applied to the Commissioner for leave to appeal against the decision of the Supplementary Benefit Appeal Tribunal on the ground that it was erroneous in point of law. He asked for an oral hearing, a request to which I acceded. At that hearing he was represented by Ms Sally Robertson, of the Disability Alliance, and the supplementary benefit officer by Mr R Birch of the Solicitor's Office of the Department of Health and Social Security. I am grateful to them both for their submissions.

4. In regulation 2(1), "blind" is defined as meaning:

"so blind as to be unable to perform any work for which eyesight is essential".

It is to be noted that the above statutory definition is not based on any fixed medical criteria. The yardstick is non-technical, being purely and simply whether the claimant is able to do any work for which eyesight is essential. The definition throws up two difficult points of construction, namely, what is meant by "work" and what is meant by "essential".

5. In my judgment, in the context of regulation 2(1), work, taken by itself, is not to be given a technical or restricted meaning. It is not necessary to regard it as confined to work for which someone would be willing to pay money. It denotes any activity (other than that undertaken for pure pleasure and without any necessity for its performance), involving some degree of exertion. Thus, doing housework or odd jobs about the home or gardening, albeit to a standard falling short of that for which payment could be demanded, is nevertheless work, but not so, watching television unless the person concerned is, for example, a professional television critic or a TV repair engineer.

6. As regards the meaning of "essential" Ms Robertson contended that the word should not be restricted in scope so as to be deemed synonymous with "material" or even "important". In her submission, "essential" meant "indisputably requisite", so that without eyesight the job in question simply could not be done. She went on to point out that there was a large range of activities which, perhaps somewhat surprisingly, the blind were able effectively to carry out, thereby demonstrating that eyesight was not essential for their due performance. Thus, the ability to function as a university lecturer did not mean that the person concerned was not blind within the regulation. Fully blind people had been able to discharge the duties of a university lecturer, so that this was simply a job for which eyesight was not essential.

7. Mr Birch, on the other hand, argued in effect that work calling for eyesight should be defined in a practical common-sense way and should embrace those activities where eyesight is generally regarded as a necessary faculty for their proper performance. In his view, work still fell within such a definition if, although the visual handicap of the person concerned could be compensated for, this could only be achieved by resort to wholly extraordinary measures. If, then, a claimant was able to undertake work of this nature, he was not blind within regulation 2(1).

8. On balance, I prefer the approach of Ms Robertson. The difficulty about Mr Birch's submission is that, if, for example, a university lecturer, who is totally blind, by exceptional means overcomes his disability, then under Mr Birch's definition, the lecturer concerned, in view of the fact that the job in question normally calls for eyesight as a necessary faculty for its proper performance, cannot under regulation 2(1) be regarded as blind. This conclusion would be absurd.

9. Now, in the case under appeal the claimant is not completely blind. The medical report of Mr A H McAdam MA FRCS DO, Consultant Ophthalmic Surgeon, establishes beyond any doubt that the claimant is partially sighted. In his final paragraph Mr McAdam observes as follows:

> "I think that [the claimant] is eligible for registration as visually handicapped (partially sighted). I do not think he is eligible for registration as severely visually handicapped (blind). I agree that he is unable to do much work which a normally sighted person could do".

10. The Tribunal gave as their reasons for their decision the following:

> "Medical evidence submitted on [the claimant's] behalf states that [the claimant] is likely to be registered as partially sighted but not as a blind person and unable to do much of the work which a normally sighted person could do. The regulations define a blind person as being unable to perform any work for which eyesight is essential and the Tribunal have taken account of this and [the claimant] appears to be able to do tasks around the home - albeit very limited - and is of the opinion that he cannot be regarded as blind as defined in the regulations".

11. Ms Robertson contended in effect that in reaching their decision the Tribunal were perverse. According to her no reasonable tribunal duly instructed as to the law and acting judicially could have come to the conclusion that they did. As regards their interpretation of Mr McAdam's report and their application of it to the definition contained in regulation 2(1) I see no grounds for criticism. In my judgment, they were fully entitled to reach the conclusion that they did. On the evidence they were satisfied that there was some work, for which eyesight is essential, that the claimant could in practice carry out.

12. However, Ms Robertson went on to complain that the household tasks which the claimant had admitted before the Tribunal he could perform, namely skinning a rabbit and digging a patch in the garden previously staked out, amounted in his case to work for which eyesight was not essential, and accordingly his ability to perform these functions did not take him out of the definition contained in regulation 2(1). Ms Robertson argued that the Tribunal had failed to realise this point, and in so far as they based their decision on it they were wrong.

13. The difficulty that faces Ms Robertson is that not all the evidence given before the Tribunal by the claimant as to his abilities is contained in the papers. Clearly other instances of the claimant's abilities were given, apart from his expertise at skinning rabbits and digging in the garden. In the grounds of their decision the Tribunal

did not specify exactly what tasks around the home the claimant was able to perform, nor in the circumstances of the case do I think they were required so to do. Tribunals do not normally act in a perverse way. They usually consider all the evidence before them and reach a decision which is reasonable. If a claimant wishes to allege perverseness, he must at least recite all the relevant evidence put before the tribunal and show that in the face of that evidence no reasonable tribunal could have reached the decision that they did. In the present case Ms Robertson could not demonstrate that the non-medical evidence, whatever was its full extent, was such that the unanimous conclusion of the tribunal must necessarily have been wrong.

14. Ms Robertson had some criticism of the way in which the tribunal had expressed their findings of fact. However, if the reasons for their decision are read with their findings of fact, I do not think that any serious misunderstanding could have arisen as to what view they took of the evidence.

15. Accordingly, as, in my judgment, there are no grounds on which it could reasonably be argued that the tribunal in giving their decision erred in law, I refuse the application for leave to appeal.

(Signed) D G Rice
Commissioner

Date: 19 March 1982

Commissioner's File: C.S.B. 356/1981
C SBO File: S.B.O. 391/81