

DGR/SH

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: Battersea

Case No: 11/315

*Householder - de
Non-householder*

*Temporary absence
from home*

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 23 December 1982 is erroneous in point of law, and accordingly I set it aside. Furthermore, being satisfied that it is expedient that I give the decision the tribunal should have given, I further decide that during the period from 26 September 1982 to the date of receipt of her first salary cheque:-

(i) the claimant was a householder within Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980, and as such was entitled by way of normal requirements to the ordinary rate specified in paragraph B(b) of Schedule 1 to the aforesaid Regulations,

(ii) the claimant was entitled by way of housing requirements to half of the mortgage payments due in respect of her home at Lewes, a weekly sum of £1.65 for repairs and insurance and the rates and water rates, and

(iii) that the claimant's two children constituted part of her household and her benefit was to include an allowance in respect of their requirements.

2. This is an appeal brought with my leave against the decision of the supplementary benefit appeal tribunal of 23 December 1982. The facts are not in dispute and can be shortly stated. On 20 September 1982 the claimant, who had finished a training course in the previous July, started part-time work as a lecturer at College in London. Her home was at Lewes, but the nature of her work required her to reside during week-days in London, and in fact she lived with friends at London. However, at weekends she returned to her home at Lewes. She has two children, aged 12 and aged 17 years, who were looked after by the claimant's ex-husband during the week-days and by the claimant herself during the weekend. The

claimant's ex-husband had at the relevant time a home of his own on a houseboat, and he was making no contribution to the expenses of [redacted] save and except for the cost of the mortgage. The claimant was responsible for the rates, water rates, repairs and insurance together with normal fuel bills. Her ex-husband paid the mortgage sum of £50 a week as part of the divorce settlement. He made no maintenance payments towards the up-keep of the children. On 26 September 1982 the claimant claimed supplementary benefit for the period until she received her first salary cheque.

3. The benefit officer decided that the claimant was a non-householder at the London address and that no allowance was payable to her for the children because they lived with their father. He relied on Regulation 4(2)(d)(ii) of the Supplementary Benefit (Aggregation) Regulations 1981. On appeal the tribunal upheld the insurance officer.

4. For the reasons hereinafter appearing I am satisfied that the tribunal reached the wrong conclusion and that their decision must be set aside as being erroneous in point of law. However, rather than criticise in detail their reasons I think it would be simpler if I merely set out what should have been their decision. Moreover, I think that this is a case where it is expedient that I substitute my own decision rather than send the matter back to a differently constituted tribunal.

5. First, the claimant's home was at [redacted], Lewes. She was responsible for the rates, water rates, repairs and insurance, and accordingly was during the period with which I am concerned a householder within Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980. She was not, incidentally, changing her address, so that Regulation 20(4) did not apply, and she was not absent from the house for more than 13 weeks, in that she returned home weekly. It follows that she was during the relevant period entitled to a payment in respect of housing requirements. The amount is set out in paragraph B(b) of Schedule 1 to the aforesaid Regulations. She was not entitled to benefit at the long-term rate in that at the date of claim and during the period under consideration, she had not been in receipt of supplementary benefit for more than 52 weeks.

6. The claimant was the joint owner of [redacted]. For the purposes of sub-paragraph 3(a)(i) of Regulation 14 of the Requirements Regulations, she was responsible for expenditure as an owner occupier. The amount of benefit to which she was entitled has to be calculated on the basis of her proportionate share of such expenditure (see sub-paragraph (3)(b)). On the basis of the facts found, she was during the relevant period a joint owner of the property with the sole responsibility for the payment of rates, repairs and insurance. Accordingly, her housing requirements were one half of the mortgage payment, the weekly sum of £1.65 for repairs and insurance (calculated in accordance with Regulations 17(1)) and the rates and water rates (Regulation 19(a) and (b)). Although the claimant did not herself make any contribution towards the mortgage payments, she was nevertheless entitled to claim the cost of one half of such payments by virtue

of Regulation 4(5) of the Supplementary Benefit (Resources) Regulations 1981, which, so far as is relevant, provides as follows:-

"Any payment made -

- (a) by a person in respect of a member of the assessment unit (but not to another member) shall be treated as possessed by that member notwithstanding that it is made to a third party;
- (b) unless, having regard to the purpose of the payment, the terms under which it is made and its amount, it is unreasonable to do so".

The payment of the mortgage was derived from a 'liable relative', defined in Regulation 2(1) of the Resources Regulations as including 'a spouse or former spouse', and accordingly it fell within Regulation 13(1) which provides that 'any periodical payment, ... whether in pursuance of a Court Order or otherwise, to a member of the assessment unit, by or derived from a liable relative ... shall be taken into account in full as income'. It follows that during the period with which I am concerned, as the claimant's ex-husband paid the mortgage direct to the mortgagee, the claimant must be treated as having herself contributed one half of that payment. She was therefore entitled to a sum in respect thereof by way of housing requirements.

7. On the facts it is quite clear that the claimant's household lies in Lewes and that she was responsible for the children pursuant to Regulation 3(2) of the Supplementary Benefit (Aggregation) Regulations 1981. Moreover, there is no question of the position being affected by paragraph (3) of that Regulation, in that the claimant's ex-husband only resided at the claimant's home on a temporary basis. Furthermore, there can be no question of not treating the children as members of the claimant's household by reason of anything contained in Regulation 4 of the aforesaid Regulations. In particular, Regulation 4(1)(d)(ii) did not apply, in that the children were not being maintained under any legally enforceable obligation by the claimant's ex-husband. In so far as the benefit officer, and the tribunal held otherwise - what exactly the tribunal held on this point is obscure, in that their conclusion, as set out in the reasons for their decision, is contradictory - they were clearly wrong. The children were not absent from the claimant's household and her own absence was only on a temporary basis. Accordingly they constituted part of her household and her benefit during the relevant period must take into account their requirements.

8. My decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 11 October 1983

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Region: London South