

membership of household - temporary
absence does not terminate membership

JNBP/BC

Commissioner's File: CSB/367/1985

C A O File: AO 2403/85

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Gail Rumsey

Social Security Appeal Tribunal: Reading

Case No: 16/25/13

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal ("the SSAT") dated 14 January 1985 is erroneous in law and is set aside. In place of the said decision I give as my own decision the decision that the SSAT should have given namely, that in respect of the period 5 November 1984 to 19 November 1984 (both dates included) the claimant was entitled to a supplementary allowance for herself and her child Natalie, including an additional requirement for heating in respect of Natalie and an additional requirement in respect of diet for herself, on the same basis as the allowance she was receiving immediately before 5 November 1984.

2. This is an appeal brought by leave of another Commissioner against the above-mentioned decision of the tribunal which confirmed the decision of the local adjudication officer originally issued on 2 November 1984 but subsequently revised on review prior to the tribunal hearing. As revised the said decision determined that in respect of the said period, in assessing the claimant's requirements, the amount taken into account in respect of the claimant's normal requirements should be modified, that no amount should be taken into account in respect of the normal requirements of Natalie and that no additional requirement for heating in respect of Natalie or additional requirement for diet in respect of the claimant should be allowed.

3. I heard the appeal at an oral hearing granted at the request of the claimant by another Commissioner. The claimant was not present but was represented by Mr M Rowland of Counsel, instructed by the Child Poverty Action Group. The adjudication officer was represented by Mrs G Huka of the Solicitor's Office, Department of Health and Social Security.

4. In his written submission the adjudication officer now concerned with the case submitted that the tribunal erred in law in that the record of their decision did not include an adequate statement of the reasons for the decision and of their findings of fact material thereto, in contravention of regulation 19(2) of the Social Security (Adjudication) Regulations. I agree with that submission. However, whereas the adjudication officer went on to suggest that the case should be remitted to a new tribunal for re-determination, Mr Rowland at the hearing before me submitted that it would be expedient for me

to give the decision that the tribunal should have given. He argued that the primary facts of the case were common ground and that in law only one conclusion, that is, the conclusion favourable to the claimant, could be drawn from those primary facts. As will appear, I agree with Mr Rowland's submission.

5. At the date of her appeal the claimant was aged 25 and single with a daughter Natalie, aged 2, with whom she lived in a local authority house. She was admitted to hospital on 31 October 1984 and discharged on 19 November 1984. Until her admission to hospital she was in receipt of a supplementary allowance at the long term rate for herself and Natalie which took into account additional requirements for heating in respect of Natalie and for diet for herself. While she was in hospital Natalie was looked after by her grandfather who was also in receipt of supplementary benefit.

6. When the claimant became a patient the local adjudication officer reconsidered her entitlement to supplementary benefit. He considered that while the claimant was in hospital Natalie was not a member of her household but was a member of her grandfather's household and that Natalie's requirements and resources were to be aggregated with those of her grandfather, with the consequence that Natalie's grandfather received an increase in his supplementary allowance in respect of Natalie and the claimant's allowance was reduced as mentioned in paragraph 2 above. I do not consider it necessary to set out the details of the local adjudication officer's argument because it has not been suggested either by Mr Rowland at the hearing or on behalf of the adjudication officer now concerned either before or during the hearing that there was anything wrong with the argument except the initial view on which it was based. As to that, the adjudication officer argued that that SSAT had failed to explain why they agreed with that view but Mr Rowland argued that that view was quite wrong as a matter of law, that Natalie had been a member of her mother's household whether or not she had also been a member of her grandfather's household and that in either event it was wrong to reduce her allowance as mentioned above. At the hearing Mrs Huka argued that Natalie had clearly been a member of her grandfather's household and resisted Mr Rowland's argument on the ground that, as a person cannot be a member of two households at the same time, it could not be said that she was also a member of her mother's household.

7. My own view of the matter leads me to the same conclusion as Mr Rowland as regards the claimant's entitlement to continuance of the allowance she was receiving before she went into hospital although I cannot go all the way with him. At that time Natalie was plainly a member of the claimant's household and I do not consider that her stay with her grandfather broke the tie that made her a member of that household. In this connection I find it helpful to refer to the following passage from the judgment of Woolf J in England v Secretary of State for Social Services, decided in 1981:-

"[The tribunal] regarded it as necessary for the children to be 'living in the family's care at home'. In fact, children can remain members of the household even though temporarily absent as long as ties with the parents and the home are sufficiently closely maintained. In this case the parents maintained ties with the children which could not have been closer and that is why, even though there were absences during the week, it is possible to say, as a matter of law, that temporary arrangements did not result in the children ceasing to be members of the household. Such a conclusion is, in my view, contrary to that expressed by the tribunal in accordance with the intention of the legislation.

By using the word 'household' instead of providing a requirement of 'living with' Parliament intended that in appropriate circumstances, if a sufficient tie remained, children should still qualify even if away from home as long as the separation was temporary."

Of course, in the above passage the learned judge was considering the meaning of "household" for family income supplement purposes but it seems to me that what he said is equally applicable when the meaning is being considered for supplementary benefit purposes. As their reasons for decision the SSAT recorded:-

"The home of [the claimant] was unoccupied and therefore she could not receive any benefit for this household." (My underlining).

That suggests to me that the SSAT were confusing "household" with "home". I think it is true that a household, which is an entity consisting of one or more persons must have its origin in a particular home but once the household has come into existence it has an identity separate from that of the home in which it originated and retains, or at least may retain, that identity despite the absence of all the members from the original home, unless the ties which brought it into existence are broken. Thus in the present case the temporary absence of the claimant and Natalie from the house in which they had been living, and presumably intended to resume living, did not have the result that the household consisting of the claimant and Natalie ceased to exist.

8. I said above that I could not go all the way with Mr Rowland. My reason for saying so was that I am not quite sure whether he accepted that Natalie was a member of her grandfather's household while staying with him but argued that there was nothing in the legislation to prevent her being, in the particular circumstances, a member of two households simultaneously, or whether he rejected the view that Natalie was a member of her grandfather's household but if he was wrong in such rejection wished to fall back to the argument that she could be a member of two households simultaneously. However, my own view is that Natalie did not become a member of her grandfather's household and merely remained a visitor. She never formed a tie to that household which took her beyond the stage of merely living temporarily in it. In the circumstances it is unnecessary for me to express a view as to whether or not a person can be a member of two households simultaneously.

9. It follows from the foregoing that I am satisfied that on the undisputed facts the only conclusion that the SSAT could properly have reached was that Natalie remained a member of her mother's household. The result is that the appeal succeeds and I am able to give the decision set forth in paragraph 1 above.

10. Before I leave the case I should add that, as Mr Rowland pointed out, there does not appear to be anything in the legislation to justify the local adjudication officer's decision to treat the child benefit received by the claimant as having been the income of the grandfather.

(Signed) J N B Penny
Commissioner

Date: 11 February 1987