

431/82

VGHH/RPM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Maureen Cotton

Supplementary Benefit Appeal Tribunal: West London

Case No: 01/524

1. This appeal succeeds. My decision is that
 - (1) the decision of the supplementary benefit appeal tribunal dated 22 December 1981 is erroneous in point of law;
 - (2) it is expedient in the circumstances to give the decision that the tribunal should have given namely
 - (3) the appellant and Mr Jackson were not living together as husband and wife.

Accordingly the appellant is not to be treated as the dependant of Mr Jackson in order that their resources can be aggregated.

2. The facts of this case and the relevant law are summarised in the written submission to me made by the benefit officer on 27 October 1982 and I agree with and adopt that summary as my own.

3. The tribunal found the following facts:-

"Mr Jackson has lived at the appellant's address for 3-4 years. [The appellant] had previously taken in lodgers. A letter from a Miss Butterworth said that many of Mr Jackson's belongings were at another address. [The appellant's] doctor had written stating that in his belief there was not a husband/wife relationship. The appellant eats separately from Mr Jackson apart from occasions (usually week ends) when he maybe invited to eat with the family. He does not have access to cooking or laundry facilities and he and the appellant spent their leisure time separately. Mr Jackson has paid no rent for 2 years and arrears amount to approximately £2,000. The relationship was a stable one"

The tribunal confirmed the decision of the supplementary benefit officer that the appellant was not entitled to supplementary benefit (on the ground that she and Mr Jackson were living together as husband and wife) giving as their reasons for decision that

"Mr Jackson has lived in the household rent free for 2 years at the time of the hearing. This suggested to the Tribunal that the relationship goes beyond one of lodger or sub-tenant and is tantamount to a situation of living together".

4. In my judgment, a tribunal, properly directing itself as a matter of law, could not on the facts that it found have come to the conclusion that the appellant and Mr Jackson were living together as husband and wife. The relevant criteria which should have been, but were not, applied by them in determining whether the appellant and Mr Jackson were living together as husband and wife are referred to in Crake v Supplementary Benefits Commission [1980] SB 38 and in Commissioner's Decision R(SB) 17/81 (reported) and are set out in the benefit officer's above mentioned submission. Applying these criteria, the tribunal could not have found that the appellant and Mr Jackson were living together as husband and wife. I agree with the benefit officer that the recorded facts suggest that Mr Jackson was in the house as a lodger. For these reasons, and also for the reasons given by the benefit officer, with which I agree, the tribunal decision was erroneous in point of law. Sufficient facts have been found by the tribunal for me to give the decision which the tribunal should have given and to decide that the appellant and Mr Jackson were not living together as husband and wife.

5. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 11 February 1983

Commissioner's File: C.S.B. 431/1982
C SBO File: 340/82