

Claimant who had child with him for part of week eligible for long term rate.

JBM/SH/7/LS

Commissioner's File: CSB/0445/1986

C A O File: AO 2310/SB/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

My decision is that the decision of the Leicester and District social security appeal tribunal dated 21 October 1985 is erroneous in point of law. Accordingly I set it aside and substitute the decision that the tribunal should have given, namely that the claimant is entitled to the long-term scale rate of benefit from 4 February 1983 and also an increase in his benefit for his son James the amount of such weekly increase to be in alternate weeks three sevenths and four sevenths respectively of the full scale rate for a child under 11. Regulation 6(a)(i) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 as amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1982. Regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983.

2. This is an appeal by the claimant with the leave of the appeal tribunal chairman to the Commissioner against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 30 April 1985 set out in Box 1 of Form AT2. The facts and history of the case are dealt with in paragraphs 2 and 3 of the submission dated 10 April 1986 on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here. I would add that I issued a direction on 3 October 1986 as to the format of what is now paragraph 1 of this decision and received the helpful submissions of the adjudication officer now concerned on 10 October 1986 and the helpful observations of the claimant received at the Office of the Commissioner on 5 March 1986 in respect thereof.

3. The relevant statutory provisions are referred to in paragraph 4 of the submission dated 10 April 1986 of the adjudication officer now concerned. Nothing is to be gained by my setting out these matters afresh here.

4. In my judgment for the reasons given below in this decision the decision of the appeal tribunal is erroneous in point of law.

The claimant's contention is that his son is and has been since 4 February 1983 a member of two households consecutively and in consequence he is entitled to part-week payments of benefit in respect of James. The claimant's further contention is that the tribunal did not explain why he had to register for employment. On the basis of registration for employment the claimant would not be entitled to the long-term rate of normal requirements.

The relevant provisions of paragraph 3(2) of Schedule 1 to the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980 and regulation 3(2) of the Supplementary Benefit Aggregation Regulations 1981 are set out in paragraph 6 of the

submission dated 10 April 1986 of the adjudication officer now concerned. I do not propose to set them out afresh here. The task before the appeal tribunal was to ascertain whether James and his father were ever members of the same household for the purposes of regulation 3(2)(b) referred to above. I need only refer to paragraph 19 of the decision of the Commissioner in R(SB)4/83 in relation to "household" and "member of the same household".

5. The Commissioner at paragraph 12 of decision R(SB)8/85 concluded that a person could not be a member of two households simultaneously for supplementary benefit purposes. The issue before the tribunal here and one for their consideration was whether James could have been a member of two households consecutively as distinct from simultaneously. Regulation 4 of the Aggregation Regulations consists of disaggregation provisions to be used in prescribed circumstances to disaggregate two persons who would otherwise fall to be aggregated as members of the same household because they satisfy regulation 3 of the same Regulations. The main issue here was whether the claimant and James in relation to one another, satisfied regulation 3(2)(b). The claimant is left in the dark as to why the claimant's contention that the child switched from one household to another on a regular part-week basis was rejected by them. In my judgment the tribunal approached the long-term requirements by asking themselves the wrong question. Their decision was that the claimant had been required to "sign on" (sic) with the Department of Employment. However they failed to give any reasons or findings as to whether the claimant should have been required to be available for employment. The importance of this issue arises from the claimant's contention that for those days in any week that the child spent with him, James was a member of his household.

6. The circumstances in which a person's normal requirements for supplementary benefit purposes shall be calculated at the "long-term" rate are prescribed by regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983. So far as relevant for present purposes the long-term rate of normal requirements will be applicable where the claimant has been in receipt of an allowance, not subject to the conditions of availability for employment, for a continuous period of not less than 52 weeks. The Supplementary Benefit (Conditions of Entitlement) Regulations 1981 as amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1982, regulation 6(a)(i) prescribes the circumstances in which a person's right to an allowance is not subject to the conditions of availability for employment and are set out immediately below:-

"6. A claimant shall not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs apply and regulation 8 does not apply to him:-

(a) he is not a partner and either -

(i) he has a dependant living with him who is a child, or.."

Regulation 8 has no application in the present case. In my judgment the claimant complies with regulation 6(a)(i) set out as above during any weeks in which his son stayed with him. Further the supplementary allowance payable to the claimant in respect of those weeks constitutes a "prescribed allowance" within the meaning and for the purposes of regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983.

7. It is expedient that I give the decision that the tribunal should have made. My decision is as set out in paragraph 1 of this decision. There were sufficient facts for the tribunal to indicate that James was a member of his father's household at the relevant times.

8. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: 18th December 1986