

Top copy

JNBP/BC

Commissioner's File: CSB/460/1985

C A O File: AO 2367/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Donald William Kenyon

Social Security Appeal Tribunal: Hertford

Case No: 04/218

[ORAL HEARING]

1. My decision is that the decision of the supplementary benefit appeal tribunal ("the SSAT") dated 15 October 1984 is erroneous in law and is set aside. I remit the case for re-determination by a differently constituted tribunal in accordance with this decision.

2. This is an appeal brought by the claimant with the leave of the tribunal chairman against the above-mentioned decision of the SSAT which was in the following terms:-

"1. [The claimant] is not entitled to interest on loans for repairs and improvements.

2. [The claimant] is entitled to £88.40 per annum in respect of maintenance and insurance."

3. The appeal to the SSAT was against decisions of the local adjudication officer described on the form AT2 submitted to the SSAT as follows:-

"APPEAL A

(1) The claimant is not entitled to an allowance for interest on his second mortgage (point 2. of [the claimant's] appeal).

(2) The claimant's entitled to interest charges of £879.95 per annum in respect of his mortgage (this takes in points 1 and 3 of [the claimant's] appeal). This was superseded before the Tribunal.

(3) The claimant is not entitled to a central heating addition. This decision was superseded before the Tribunal.

(4) The claimant is entitled to the sum of £88.40 per annum in respect of maintenance and insurance for his household.

(5) The claimant is not entitled to a supplementary allowance until 2.9.83. This decision was superseded before the Tribunal.

APPEAL B

- (1) The claimant is entitled to an allowance for interest on a portion of his second mortgage amounting to £37.42 per annum (this figure is based upon 10% of the mortgage outstanding at 24.11.80 of £2,494.87). This decision takes in both points of [the claimant's] second appeal and applies to the amount issued for the period prior to 24.11.80 also."

In the above quotation the observations in brackets did not form part of the actual decisions and were no doubt inserted to assist in reference to the claimant's grounds of appeal. The references to decisions being superseded were also not part of the actual decisions but indicate how decisions had been revised on review by the adjudication officer, before the SSAT hearing, as explained in his submission on form AT 2.

4. I heard the appeal at an oral hearing in private requested by the claimant. The claimant attended and was represented by Mr Mark Rowland of Counsel, instructed by Miss Ruth Cohen of the Child Poverty Action Group. The adjudication officer was represented by Mr E O F Stocker of Counsel. I am indebted to both representatives for their helpful submissions.

5. The claimant is a single parent with two dependent children and is buying his own home. Until 1976 he worked in his business as a self-employed haulage contractor but in September of that year his lorry was damaged and he was unable to continue in his business. He therefore claimed supplementary benefit and it appears that in August 1979 he was in receipt of a supplementary allowance of £56.66 per week. Then on some date before 20 August 1979 (probably on 6 August 1979) he applied for a review of his allowance to make it cover interest charges in respect of a loan (which is sometimes referred to in the case papers as a "second mortgage") which he had taken out in 1974 to pay for making certain improvements to his home. Under the law as then in force it was possible for a supplementary allowance to include an element in respect of the net rent payable by the claimant and "net rent" could include amounts attributable to interest on any sum payable in respect of a mortgage debt or heritable security charged on the house in which such claimant resided. I assume that allowance must have already been made in respect of the claimant's main or first mortgage relating to the purchase of his house. It does not appear that it has ever been in dispute that it was reasonable for the claimant to take out the loan in 1974 having regard to his circumstances at that time. However on 20 August 1979 an officer of the Supplementary Benefit Commission issued a decision refusing to review the weekly allowance evidently because he considered that the work carried out in the house had not been essential and that it would therefore not be appropriate to allow interest on the loan obtained to pay for the work. The claimant then appealed and an appeal tribunal on 17 October 1979 allowed the interest on the loan but only for the period 6 August 1979 to 5 November 1979. The tribunal considered the award was reasonable in the circumstances and would allow the claimant time to sell his house and move into one less expensive. A payment of £103.60 was made on 26 October 1979 pursuant to the decision of the tribunal of 17 October 1979. There is nothing in the case papers to indicate that the claimant appealed or attempted to appeal at the time against the decision of 17 October 1979 or the decision to pay him £103.60 pursuant to the decision of 17 October 1979. However, it does appear from the note of evidence before the SSAT that he argued that he had been underpaid.

6. Following his appeal on 17 October 1979 the claimant made a further application for an increase of his benefit in respect of interest charges on the loan which was refused by an officer of the Supplementary Benefit Commission on 10 January 1980. The claimant's appeal was disallowed by an appeal tribunal on 30 April 1980. The claimant made a further application which was refused on 13 November 1980 and on 24 June 1981 (after an adjournment from 17 December 1980) an appeal tribunal decided that the alterations made to the claimant's house were inessential and that the interest charges on the loan could not be allowed. The claimant then appealed to the Commissioner who on 18 May 1983 allowed the appeal and remitted the case for redetermination by another tribunal. That other tribunal heard the appeal on 13 January 1984 and gave a decision in the following terms:-

"Appeal allowed; interest on second mortgage payable".

Unfortunately the tribunal did not go on to calculate the amount of the arrears of interest due to the claimant. However, in their findings of fact they stated that the original amount of the loan had been £4,000 and that it had been reduced to £1,421 by the date of the application to the Supplementary Benefits Commission for an allowance to cover the interest. It is not clear to which application they were referring. As mentioned above there were altogether three such applications, one probably on 6 August 1979 which ultimately succeeded in respect only of the period 6 August to 5 November 1979, one which was disallowed on 10 January 1980 and again on appeal on 30 April 1980 and one which was originally disallowed on 13 November 1980 and eventually allowed (after going to the Commissioner) on 13 January 1984, but only as regards general entitlement and not at that stage as regards amount. Between the date of the Commissioner's decision on 18 May 1983 and the tribunal rehearing on 13 January 1984 the claimant made a further appeal on 14 October 1983 which is described as Appeal A in the case papers and relate to five matters. Of the five only numbers (a) and (4) were still alive at the SSAT hearing and (4) was abandoned before me.

7. Appeal B arose from the adjudication officer's initial decision following the tribunal decision of 13 January 1984. He decided that interest was payable on the whole of the loan up to November 1980 but that the tribunal's decision was not applicable to the law from 24 November 1980 onwards. However, he considered that interest was allowable in respect of 10% of the interest which he regarded as attributable to some of the work for which the loan was obtained. He also considered that the effect of his decision was that up to 23 November 1980 a weekly allowance of £7.20 was payable but thereafter only a weekly allowance of £0.72 (10% of £7.20). He therefore decided to make an anomaly addition and applied regulation 10 of the Supplementary Benefit (Transitional) Regulations. Pursuant to the above decisions arrears of £870.36 were found due to the claimant as follows:-

12 November 1979 to 17 November 1980 - interest in full - £462.22

24 November 1980 to 2 April 1984 - interest on 10% of
loan outstanding - £126.72

24 March 1980 to 23 November 1981 - anomaly addition - £271.19

Correction of award made from 6 August 1979 to
5 November 1979 calculated at wrong rate £10.23

Total £870.36

I should perhaps mention that the comment on decision Appeal B(1), as recorded on form AT 2, seems to suggest that only 10% of the interest was allowed in respect of the period prior to 24 November 1980 whereas in fact it was allowed in full as mentioned above.

8. In the Chairman's note of evidence at the SSAT hearing it is recorded that the parties agreed that the issues remaining for decision were:

- "(a) Whether or not the [claimant] is entitled to interest on his loan taken out for building work on his home and if so how much? Consideration should be given to the position both before and after the Commissioner's decision of 18 May 1983 and the change in the law on 24 November 1986 (my underlining).
- (b) This related to Appeal A(4) and as that was abandoned I need not refer to it again."

It was also recorded that following the above agreement the SSAT decided to hear evidence and submissions with a view to deciding the following preliminary questions:-

- (1) Is [the claimant] generally entitled to interest after 24.11.80 on sums previously borrowed for repairs and improvement (my underlining)
- (2) [this related to Appeal A(4) and need not be considered].

I think it is clear from the passages I have underlined above that the SSAT interpreted the decision of the tribunal of 13 January 1984 as meaning that the tribunal considered that the repairs and improvements carried out by the claimant were such that he was entitled to the interest on any sums borrowed to finance the work but left it to the adjudication officer to ascertain the interest thus due. On that view of the matter, which I think is correct, the decision of the tribunal had not completely disposed of the appeal in respect of the period prior to 24 November 1980. To put it in another way, the tribunal had answered only the question corresponding to question (1) above in respect of the period prior to 24 November 1980 and question (a) above remained for decision. In fact question (a) in respect of that period had been answered by the adjudication officer by the decision (1) of Appeal B but it seems clear from the case put to the SSAT by the claimant that he challenged the calculations of interest made in that decision in respect of the periods before and after 24 November 1980 and thus threw the whole matter open for decision by the SSAT.

9. The answer given by the SSAT to question (1) referred to in paragraph 8 above was that they considered that all the repairs and improvements agreed by the parties as relevant fell within the scope of regulation 18(3) of the Requirements Regulations 1980 (regulation 17(3) of the 1983 regulations from 22 November 1983) and that therefore without considering any amounts of outstanding capital or interest rates, and making the assumption that a loan existed, the claimant was entitled to receive interest in respect of the period after 24 November 1980. I agree with the written submission on behalf of the adjudication officer that in reaching that conclusion the SSAT did not err in law.

10. The SSAT then turned their attention to question (a) referred to in paragraph 8 above. The relevant passage in the note of evidence reads as follows:-

"It was at this stage necessary to adjourn so that another date could be set for the same Tribunal to hear submissions and decide the amount of interest, if any, which would be due. It was pointed out by [the presenting officer] and generally agreed that there were at this time no known figures as to capital outstanding (at any time) nor the amount of interest which was due week by week, nor indeed what interest rates applied at all times. [The claimant] was asked and undertook to bring with him to the resumed hearing a statement from Barclays Bank showing, preferably each week, but at any rate each month (over the whole period) (1) the amount of capital outstanding (2) the amount of interest due (3) the rate of interest." (My underlining).

I find the underlined part of the above passage somewhat surprising. As mentioned in paragraph 7 above, the adjudication officer had made calculations of interest due which were recorded on the form AT 2 and had referred to an amount outstanding at 24 November 1980 on which the calculations were partly based. I do not know upon what information that reference was based and there is nothing in the record of the SSAT hearing to indicate that the adjudication officer's calculations had been considered. In the circumstances I have no alternative but to say that, despite the great care with which the SSAT considered the case, they clearly erred in law by failing to consider the calculations made by the adjudication officer or, if they did consider them, failing to give their reasons for rejecting them. The case will therefore have to be remitted for rehearing to a differently constituted tribunal.

11. The new tribunal will have to reconsider the whole matter afresh. If they decide to reject the adjudication officer's calculations - and I offer no observations on that subject as I do not know the justification for the basis on which they were made - they will have to consider whether the claimant has established that there was a loan outstanding. This may well involve different questions of identification. In my view they are clearly not bound in any way by the findings of the tribunal of 13 January 1984. It is true that that tribunal made a finding that there had been a loan of £4,000 reduced to £1,421 by the date of the application for an allowance for interest but the actual amount of any outstanding loan was not material to their decision which, as I have said above, was really incomplete and did not deal with the question of amounts of interest at all. In reaching that conclusion I have had regard to section 117(2) of the Social Security Act 1975 which is made effective in relation to supplementary benefit questions by section 2 of the Supplementary Benefits Act 1976 and regulation 65 and Schedule 4 of the Social Security (Adjudication) Regulations 1984. Section 117, so far as relevant provides:-

"117.- (1) Subject to the provisions of this Part of this Act, the decision of any claim or question in accordance with these provisions shall be final; and subject to the provisions of any regulation under section 114, the decision of any claim or question in accordance with those regulations shall be final.

(2) Subsection (1) above shall not make any finding of fact or other determination embodied in or necessary to a decision, or on which it is based, conclusive for the purpose of any further decision.

(3)....."

The finding by the tribunal of 13 January 1984 that there was a loan outstanding was not necessary to the tribunal's decision but was embodied in it. However, by force of section 117(2) it is not conclusive as regards the matters being decided by the SSAT and the new tribunal will be entitled to give it only such weight as they consider it merits.

12. Whether or not there was at any time a loan outstanding will be a question for decision by the new tribunal on all the evidence. The onus of proof lies on the claimant and in my view there was nothing unreasonable about the request for supporting information called for by the SSAT. However, it must be borne in mind that what is required is not necessarily compliance with such a request but evidence to indicate a balance of probability in favour of the claimant's contentions.

13. Finally, in relation to the question of interest due on any loan outstanding, in my view interest on unpaid interest is allowable (see the unreported decision on Commissioner's file CSB/817/85) and the fact that a loan has become a judgment still does not mean that the interest thereon cannot be allowed in a case such as the present although I acknowledge the authority of Decision R(SB) 19/82 in its context.

14. The only question remaining for consideration is whether interest found payable to the claimant could properly be paid to Barclays Bank. The SSAT did not consider this question because it did not arise in view of the conclusions they had reached on other matters. Should it arise before the new tribunal I direct their attention to regulation 23(b) of the Supplementary Benefit (Claims and Payments) Regulations and to the findings of fact required to support a decision to make payment to a third party.

15. For the foregoing reasons the appeal is allowed and my decision is as set forth in paragraph 1 above.

(Signed) J N B Penny
Commissioner

Date: 18 December 1986