

CSB 486/1984

MJG/SH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Mohammed Aslam

Supplementary Benefit Appeal Tribunal: Slough

Case No: 17/39

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal of 10 January 1984 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [SI 1984 No. 451], regulation 27.

2. This is an appeal to the Commissioner by the claimant, a married man living with his wife and family, who at the material time was aged 38 years. The appeal is from a decision of a supplementary benefit appeal tribunal of 10 January 1984, at which that tribunal held that the claimant was not a "householder" and was not therefore entitled to any housing requirements other than the non-householder's contribution of £3.10 per week, though the claimant asserted that he was having to pay £20 per week 'rent'.

3. However as the adjudication officer now concerned points out in a written submission dated 29 June 1984, the tribunal failed to deal with a preliminary issue that arose from the fact that the benefit officer's decision dated 18 August 1983, which was the subject of the appeal, was not a decision at first impression but was a decision refusing a review of earlier decisions of supplementary benefit appeal tribunals on 23 November 1982 and 15 February 1983, holding that the claimant was to be treated as a non-householder. Although this fact was apparent from the correspondence before the tribunal and from the benefit officer's statement of facts to that tribunal, the tribunal failed to deal with the non-review point. That is an error in law and I must set their decision aside.

4. In particular, the error in law consisted in a failure to consider the provisions of regulation 4(1) of the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No 1643]. That regulation has since been replaced by regulation 87 of the Social Security (Adjudication) Regulations 1984 [SI 1984 No. 451] but because the benefit officer's

decision was given before the Adjudication Regulations came into operation (on 23 April 1984), the question is still governed by regulation 4(1) of the Determination of Questions Regulations. The tribunal must therefore ascertain in accordance with that regulation whether or not when the benefit officer on 18 August 1983 refused to review the earlier decisions of the appeal tribunals, he was right in so doing under the terms of regulation 4(1), under which the benefit officer could not review the earlier tribunal decisions unless either:-

"4(1)(a) - He [was] satisfied ... that the determination[s] [were] made in ignorance of, or [were] based on a mistake as to, some material fact"

or

"4(1)(b) - There [had] been [a] relevant change of circumstances since [those determinations were] made."

The new tribunal should note that the benefit officer would have had no power to review the tribunal decisions on the ground that they were erroneous in law.

5. If the new tribunal comes to the conclusion that neither of those grounds for review existed, then it must dismiss the claimant's appeal on that ground and the earlier tribunal decisions must stand. If however, the new tribunal is satisfied that there was a ground for review, it should then review the earlier tribunal decisions (in the light of the particular ground for review) and determine (with relevant dates) the substantive issue of whether or not the claimant was to be treated as a householder or as a non-householder. On the particular circumstances of this case, it would not be right for me to express an opinion one way or the other on the facts as to whether the claimant was or was not a householder. I leave that matter entirely to the new tribunal.

(Signed) M J Goodman
Commissioner

Date: 10 October 1984

Commissioner's File: CSB/486/1984
C SBO File: 563/84
Region: London South