JM/II

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

CSB 535/1981

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

[ORAL HEARING]

1. This is a benefit officer's appeal, brought by my leave, against a decision of the appeal tribunal dated 3 July 1981 which reversed a decision of the benefit officer issued on 1 June 1981. I held an oral hearing of the appeal. The benefit officer was represented by Miss L Shuker, of the Solicitor's Office of the Department of Health and Social Security. The claimant appeared and presented his own case.

2. At the material time the claimant had been off work sick since May 1979 and was in receipt of invalidity benefit. Supplementary allowance had been in payment since 4 June 1979. He lived in Salford. His ex-wife lived in Lincolnshire with the 3 young daughters of the marriage. Custody of these daughters had been awarded to the claimant's wife. The claimant states, however, (and it is not challenged) that the High Court took the view that it was in the interests of both the claimant himself and of his 3 daughters that he should see and remain in touch with them. Indeed, at a time when there was a possibility of his ex-wife's taking the children to settle in the United States of America, the Court ordered that the claimant's ex-wife's fiance should deposit with solicitors the sum of £750 to be used by the claimant for the purpose of visiting his children. In the event, however, the claimant's ex-wife returned to England and, at the time material to this appeal, was living in Stamford, Lincolnshire, at an address unknown to the claimant. It appears that a rendezvous must have been arranged between the claimant and his ex-wife, for he made monthly visits to Lincolnshire in order to see his young daughters.

3. By May of 1981 the claimant had exhausted his available money and was £100 in overdraft. He could no longer afford the return fare (£12.40) and the cost of bed and breakfast (£5.00) involved in each visit. On 21 May 1981 he made a claim in respect of the expenses which would be involved in future visits. On 1 June 1981 the benefit officer rejected that claim.

4. At the relevant time single payments in respect of travelling expenses were the subject of regulation 22 of the Supplementary Benefit (Single Payments) Regulations 1980, as amended by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1980. So far as material to this appeal that regulation provided as follows:

> "22-(1) A single payment shall be made in respect of travelling expenses within Great Britain in the following circumstances:-
>
> (a) ....
>
> (b) the journey is undertaken, because of a domestic crisis, by -
>
> (i) a dependant to enter or to return from the care of a relative, or
>
> (ii) a member of the assessment unit to visit a child of whom he is the parent and who is in the care of a relative, or
>
> (iii) a claimant or partner to care for a child who is related to him, where by reason of that crisis the child's parent or parents are unable to do so;
>
> (c) the journey is undertaken by a parent in order to visit his child who is with the other parent pending a decision by a court as to the custody of the child;
>
> (d) to (k) ....."

(With minor and insignificant variations these words are repeated in regulation 22 of the Supplementary Benefit (Single Payments) Regulations 1981.)

5. It is clear from his written submission to the appeal tribunal that, in rejecting the claimant's claim, the benefit officer had regard only to sub-paragraph (c) of regulation 22(1). He made the point that custody of the 3 children had already been awarded by a court to the claimant's ex-wife. Accordingly, the claimant could not avail himself of sub-paragraph (c). This was obviously right, so far as it went. I do not think, however, that the claimant has ever contended (and he certainly does not now contend) that he could make good any claim under regulation 22(1)(c). If he is to succeed at all it must be under regulation 22(1)(b)(ii).

6. The claimant appealed to the appeal tribunal. He was represented thereat by an officer of Shelter. Unanimously the appeal tribunal allowed his appeal. On the relevant form LT235 its decision and its reasons for that decision were entered as follows:

"A single payment to be awarded for fares and accommodation for one night for the Appellant to visit his children."

"The Tribunal was satisfied that this award could be made under Reg 22(1)(b)(ii), and Reg 22(3)."

(Regulation 22(3) is directed to the cost of overnight accommodation where it is impracticable to make the return journey in one day.)

7. As Miss Shuker submitted to me, the reasons set out by the appeal tribunal are something less than explicit. She drew my attention to what I had myself said in paragraph 14 of Decision R(SB)6/81. I there referred to Rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 which provides as follows:

"(2) The tribunal shall -

(a) record every determination in writing; and

(b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and

(c) if a determination is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting."

I then quoted from what the Commissioner had said in Decision R(A)1/72 in respect of a somewhat similar provision in the then current Attendance Allowance Regulations:

"The obligation to give reasons for the decision in such a case imports a requirement to do more than only to state the conclusion, and for the determining authority to state that on the evidence the authority is not satisfied that the statutory conditions are met, does no more than this. It affords no guide to the selective process by which the evidence has been accepted, rejected, weighed or considered, or the reasons for any of these things. It is not, of course, obligatory thus to deal with every piece of evidence or to over elaborate, but in an administrative quasi-judicial decision the minimum requirement must at least be that the claimant, looking at the decision should be able to discern on the face of it reasons why the evidence has failed to satisfy the authority. For the purpose of the regulation which requires the reasons for the review decision to be set out, a decision based, and only based, on a conclusion that the total effect of the evidence fails to satisfy, without reasons given for reaching that conclusion, will in many cases be no adequate decision at all."

The foregoing passage was, of course, directed to a case in which the relevant tribunal had found against the claimant. Identical considerations apply, however, where an appeal is being decided in favour of the claimant. The other party (in this case the benefit officer) ought not to be left guessing as to the process of reasoning

pursuant to which the matter has been decided against him.

8. There are cases, of course, in which the reasons as entered in the appropriate box on form LT235 can legitimately be supplemented and interpreted by entries in other boxes upon that form. (Rule 7(2) says nothing about boxes.) I turn, accordingly, to the only other entry on page 2 of the relevant form 235, that in the box devoted to findings on questions of material fact. That entry reads as follows:

> "Facts as stated, with the additional information from the Appellant's representative (see note of evidence)."

The chairman's note of evidence, after recording the fact that the claimant was represented by an officer from Shelter, reads as follows:

> "A letter from a Social Worker who was visiting the Appellant's children in Stamford, stated that the children needed to be reassured that their father would visit them, because they felt he was neglecting them, and she also said that one of the children had broken her wrist.
>
> [The claimant's representative] stated that he was trying to house [the claimant] in the Stamford area so that travelling to see his children would not be necessary."

9. The Social Worker referred to was in fact a Senior Social Worker for the Lincolnshire Social Services. Her letter was dated 25 June 1981 and addressed to the claimant. I must quote it in full:

> "As agreed when you last called at this office I have continued to keep an eye on your children and can report that I have no cause for concern about their welfare.
>
> When I visited the family last week Laura and Imogen told me that they had not seen you since April 4th and they asked me why you had not visited them. They seemed genuinely distressed, which is not surprising as their increasing affection for you and dependence on the regularity of your visits was becoming apparent prior to April.
>
> It would be helpful if you could let me know what your plans are regarding access to the girls so that I can reassure them and enable them to understand what they feel is your neglect of them.
>
> You will be sorry to hear that Imogen broke her other wrist while at school this week. She seems to be accident prone. It was of course painful at first but now she is enjoying the extra attention which the plaster attracts!
>
> Imogen gave me the enclosed Fathers Day Card and pictures on Thursday and asked me to send them to you. Laura has also done some but she was not at home when I called. Perhaps she will send them on herself."

10. I have, somewhat reluctantly, come to the conclusion that the relevant form LT235 does not adequately set out the process of reasoning by which the appeal tribunal came to allow the claimant's appeal. Its conclusion necessarily imports that it had found that at the relevant time there was "a domestic crisis". It cannot be confidently ascertained, however, what elements in the evidence it regarded as establishing that crisis. (It will be noted that there is not on the form LT235 any explicit reference to crisis at all). Was it to the fracture of Imogen's wrist that attention was primarily directed? Or was regard had to the overall, and continuing, need for the children to maintain personal contact with their father? I cannot say - and neither can the benefit officer.

11. Neither Miss Shuker nor the claimant was disposed to essay any comprehensive definition of the phrase "domestic crisis". In this they were wise. It is most undesirable that any such attempt should be made. "Domestic crisis" is not a term of art. It is one of those phrases which Parliament has obviously intended should be given its ordinary, everyday meaning - and that is the function of the appeal tribunal. In such cases no point of law can arise unless the tribunal gives to the phrase a meaning which could not be given to it by anyone with a reasonable command of the English language. (See, eg, Cozens v Brutus [1973] AC 854, at p 861.) The difficulty in this case, however, is that it is not possible to tell what meaning the appeal tribunal did give to "domestic crisis".

12. The upshot is that I must set aside the decision of the appeal tribunal as being erroneous in law. This is not, however, a case in which I feel that it is expedient that I should myself give the decision which the appeal tribunal should have given. Where that course is adopted the Commissioner can take account only of such evidence as was before the appeal tribunal. He has no power to hear evidence by way of supplement thereto or explanation thereof. The evidence in the record is not such as to permit me to make with any confidence a finding of whether there was or was not at the material time a "domestic crisis". The issue must be fully re-canvassed before another appeal tribunal. Before me the claimant adverted to a number of matters of fact which bear upon that issue. As I have just explained, however, I cannot myself properly take account of those matters. The claimant will be at liberty to deploy them in full before the fresh appeal tribunal - and the benefit officer will, of course, also be at liberty to re-deploy his case as he sees fit.

13. For the assistance of the fresh appeal tribunal I conclude this decision with my observations in respect of certain further submissions which were made by Miss Shuker and (in writing) by the benefit officer now concerned.

14. In the first place, Miss Shuker submitted that it is inherent in the notion of crisis that the relevant state of affairs should be temporary; and she prayed in aid sub-sub-paragraphs (i) and (iii) of regulation 22(1)(b). I readily agree that the word "crisis" is not normally apt in the context of a long continuing state of affairs. I do not think, however, that a crisis necessarily ceases to be a crisis because it may recur from time to time. Separation from one of its parents may, after a certain time, bring a child to the point of crisis - but this is eminently a matter to be decided by an appeal tribunal in the light of the evidence before it.

15. Miss Shuker, without, I think, seeking to take any firm stand either way, very properly invited me to consider the meaning to be given to the word "relative" where it appears in sub-sub-paragraph (ii). For convenience I repeat that sub-sub-paragraph here:

> "(ii) a member of the assessment unit to visit a child of whom he is the parent and who is in the care of a relative".

Does that mean a relative of the parent or a relative of the child? For my part, I doubt if the distinction ever entered the head of the draftsman. Relatives of parents are normally relatives of those parents' children. The question does arise in this case, however, because a husband and wife who have been divorced are not normally regarded as being still relatives one of another. I am not myself able to see the thinking behind the restriction of the sub-sub-paragraph to children who are "in the care of a relative"; and Miss Shuker was unable to assist me in this. Why a distinction should be drawn between a child who is in the care of, for example, an aunt and a child who is in the care of, for example, a close friend of the family, I cannot think. Be that as it may, however, I consider that the natural construction of "a relative" in sub-sub-paragraph (ii) is "a relative of the child". Accordingly, I find as a matter of law that in this case the claimant's children were at the relevant time "in the care of a relative".

16. In his application for leave to appeal to the Commissioner, the benefit officer now concerned wrote as follows:

> "I submit that a domestic crisis is a crisis within the household. [The claimant] and his children are normally members of separate households and therefore any crisis which might be held to exist (but for which there appears to be no evidence and is not admitted) is not domestic."

I reject this submission without hesitation. Regulation 22(1)(b) would be rendered largely nugatory if the relevant crisis had to be in the household of the claimant - and the wording offers no foundation for such a construction.

17. My decision is as follows:

(1) The appeal of the benefit officer is allowed.

(2) The appeal tribunal's decision dated 3 July 1981 is erroneous in law and is set aside.

(3) The case is referred to a differently constituted appeal tribunal for re-hearing and determination in accordance with the principles of law set out in this decision.

(Signed) J Mitchell
Commissioner

Date: 1 February 1983

Commissioner's File: CSB/535/1981

C SBO File: 744/81