

JBM/SH/8/LS

Commissioner's File: CSB/0542/1986

C A O File: AO 2469/SB/86

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Bashira Begum (Mrs)

Social Security Appeal Tribunal: Croydon

Case No: 07/06/15

1. My decision is that the decision of the Croydon social security appeal tribunal dated 17 February 1986 is erroneous in point of law. Accordingly I set it aside and give the decision that they themselves should have given namely that the claimant falls to be assessed as a householder.
2. This is an appeal by the claimant to the Commissioner with the leave of the appeal tribunal chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 16 August 1985 set out in Box 1 of Form AT2.
3. The facts and history of the case are dealt with in paragraphs 1 and 2 of the submission dated 13 May 1986 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to in paragraph 3 of the submission dated 13 May 1986 of the adjudication officer now concerned. Nothing is to be gained by my setting out these references afresh here.
5. In my judgment for the reasons given below the appeal tribunal erred in point of law. The crux of the case is whether or not the claimant is entitled to householder status for the purposes of her normal requirements. Essential to that decision are the questions of whether or not she is responsible for housing expenditure and whether or not she and Mr S. are members of the same household. Regulation 5(6) of the Requirements Regulations 1983 defining "householder" is set out in paragraph 5 of the submission dated 13 May 1986 and I do not propose to set it out again here. Regulation 5(7) of the Requirements Regulations provides that a person is responsible for housing expenditure if he is to be treated under regulation 14(3)(a) of those regulations as responsible for housing expenditure but as if that sub-paragraph also applied to housing benefit expenditure. The Requirements Regulations, regulation 2(1) define "housing benefit expenditure" as expenditure of a kind for which housing benefit may be granted, and "housing benefit" has the meaning assigned to it in regulation 2(3) of the Housing Benefit Regulations. The effect of the above provisions is that if the "rent" which the claimant pays to Mr S. is expenditure of a kind for which a rent allowance could be given under the Housing Benefit Regulations 1982 then, for the purposes of regulation 5(6) of the Requirements Regulations, regulation 14(3)(a) applies to that expenditure in order to determine the claimant's responsibility for housing expenditure. The tribunal have erred in law in making no findings of fact with regard to housing expenditure and the claimant's responsibility for such expenditure. The tribunal's findings of fact on the

face of the record are insufficient to enable the tribunal to establish the claimant's status for normal requirements purposes. However the chairman's notes of evidence are ample. He records that the claimant has a rent book with a rent of £30 per week first paid on 29 March 1985. He also records that Mr S.. receives rent from the claimant. However in setting out their reasons for decision they fail to record why they did not consider this evidence in relation to the facts they found.

6. I turn now to the question of membership of the same household and need only refer to paragraph 19 of decision R(SB)4/83. It is trite law that a claimant living in a house which is in multiple occupation is perfectly capable of having a separate household even if he is contributing to the common expenditure of the other occupants of the house. The tribunal set out their findings in this regard as follows:-

"[The claimant] has her own room but shares common parts of the house and shares cleaning of these parts.

This finding in itself does not suffice to establish the existence of a separate household however the chairman's note of evidence clearly sets out the following:-

"[The claimant] has her own room, plus full use of kitchen, bathroom. She cooks her own meals and keeps her own food. [The claimant] has exclusive use of her room, she can lock her door."

In this regard the tribunal have further erred in law in that they have failed to make findings based on the above evidence.

7. In accordance with my jurisdiction as set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I find it expedient to substitute my decision for the decision that the appeal tribunal should themselves have given. Though the appeal tribunal failed to make adequate findings of fact the chairman's note of evidence is more than ample and on that basis I find that the claimant is responsible for housing expenditure, she maintains a separate household and falls to be assessed as a householder.

8. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom  
Commissioner

Date: 3 December 1986