

SUPPLEMENTARY BENEFIT

Requirements—excessive housing costs—notice of impending restriction.

The claimant and his wife live in a 7-roomed house on which there is a mortgage outstanding. The adjudication officer ascertained that there was suitable alternative accommodation available half a mile away. On the basis that the existing housing requirements were excessive because the home was unnecessarily large for the assessment unit he restricted the sum awarded in respect of housing requirements. On appeal the tribunal confirmed the adjudication officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. the requirement to notify a claimant in advance that the restriction of housing costs is likely to take place is implicit in paragraph 21(4) of the Supplementary Benefit (Requirements) Regulations 1983 (paragraph 8);
2. the availability of suitable accommodation in regulation 21(5)(a) involves consideration of whether or not suitable properties are being offered for sale in the area, not whether they would be obtainable by the claimant (paragraph 16);
3. the instances of circumstances of the assessment unit in regulation 21(5)(b) are examples only and neither exhaustive nor complete. The claimant's ability to obtain other accommodation must be included in those circumstances (paragraph 15).

The appeal was allowed.

NB: At paragraph 3 the Commissioner comments on the fact that the provisions of regulation 21 (1), (3) and (5) of the Supplementary Benefit Requirements Regulations 1983 are substantially repeated in paragraph 10 (3), (5) and (7) of Schedule 3 to the Income Support (General) Regulations 1987. At paragraph 11 the Commissioner commends an earlier unreported decision (CSB 1016/1982) on the meaning of "area" in regulation 21(5)(a) of the Requirements Regulations and the clear analysis of the relevant legislation in R(SB) 6/89.

1. My decision is that the decision of the Cleveland social security appeal tribunal given on 9 January 1987 is erroneous in point of law. Accordingly I set it aside and remit the matter for rehearing by an entirely differently constituted tribunal.

2. The claimant appeals to and with leave of the Commissioner against the unanimous decision of the tribunal confirming the decision of the adjudication officer, issued on 26 September 1986, that a restricted amount of £37.53 per week was to be allowed for the claimant's housing costs. The adjudication officer's decision was given, having regard to regulation 21 of the Supplementary Benefit (Requirements) Regulations 1983 [S.I. 1983 No. 1399] ("the Requirements Regulations"), on the grounds that the claimant's home was "unnecessarily large for him and there is no reason why he should not be expected to look for alternative cheaper accommodation".

3. Regulation 21 of Part IV ("Housing Requirements") of the Requirements Regulations, as it stood at the relevant time (i.e. prior to its amendment with effect from 26 January 1987), provided that—

"21.—(1) Where the amounts applicable under regulations 15 to 18 and, subject to any reduction applicable under regulation 22, are excessive, they shall be subject to restriction in accordance with this regulation.

(2) Subject to paragraphs (3) and (4), the amounts so applicable shall be regarded as excessive and shall be restricted and the excess not allowed, if and to the extent that the home, excluding any part which is let or is normally occupied by boarders, is unnecessarily large for the assessment unit and any other non-dependants or is located in an unnecessarily expensive area.

(3) Where, having regard to the relevant factors, it is not reasonable to expect the assessment unit to seek alternative cheaper accommodation no restrictions shall be made under this regulation.

(4) Where paragraph (3) does not apply and the claimant (or other member of the assessment unit) was able to meet the financial commitments for the home when these were entered into, no restriction shall be made under this regulation during the first six months of any period of entitlement to a pension or allowance nor during the next six months if and so long as the claimant uses his best endeavours to obtain cheaper accommodation.

(5) In this regulation 'the relevant factors' are—

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the assessment unit including in particular the age and state of health of its members, the employment prospects of the claimant and the effect on the education of any dependants were a change in accommodation to result in a change of school."

I should mention that regulations 15 to 18 (referred to in paragraph 1), dealt with "Interest on loans to acquire an interest in the home", "Maintenance and insurance", "Interest on loans for repairs and improvements" and "Miscellaneous outgoings" respectively, and regulation 22 with reductions in amounts payable in circumstances which do not apply in the instant case. I note also, in passing, that Part IV of the Income Support (General) Regulations 1987 [S.I. 1987 No. 1967] deals with "Applicable Amounts" and, in particular, that regulation 17(e) therein is concerned with "... amounts... applicable... in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule". The Schedule in question being Schedule 3 to the regulations, and paragraph 10 thereof dealing with "Restriction on meeting housing costs...". Sub-paragraphs (3), (5) and (7) substantially repeat (with minor variations which do not materially alter the sense) paragraphs (1), (3) and (5) of regulation 21 of the Requirements Regulations. It is therefore apparent that adjudicating authorities will continue to be faced with the same, or similar, problems of interpretation.

4. At the material time the claimant, a married man aged 40, who had been in receipt of supplementary benefit since July 1985, was living with his wife in a 7-roomed house which he was buying with the assistance of a mortgage, the outstanding capital sum then being nearly £38,500.00. Mortgage interest at 11 per cent amounted to £81.34 per week and the adjudication officer formed the view that the house was unnecessarily large for the claimant and his wife (their 19 year old daughter having left in September 1985 although, as I will mention, she later returned) and was located in an unnecessarily expensive area. He ascertained that 2-bedroomed semi-detached houses were available less than half a mile away for £23,750.00, and he accordingly decided that instead of £81.43 per week a reasonable requirement for mortgage interest would be £37.53 per week.

5. How that figure was arrived at is not explained, but it was presumably on the basis of the sale of the claimant's house and his purchase, again on mortgage, of alternative accommodation. £39.17 per week represents interest, at 11 per cent, on a mortgage of about £17,750.00, so that, after making allowances for the costs of and incidental to the sale and purchase, it was anticipated that he would sell his present house for about £48,500.00, leaving him with about £6,000.00 capital towards the purchase of a new house.

6. The tribunal apparently uncritically accepted the adjudication officer's submission without requiring any clarification of the way in which the calculations had been carried out. In my judgment their failure to make any or any sufficient findings of fact as to how the "restricted" figure was calculated is in breach of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451] and consequently their decision is erroneous in point of law. Further, among the tribunal's reasons for their decision were that the claimant's

"...housing requirements are excessive because the home is unnecessarily large for the assessment unit...";

"...[the] assessment unit is himself and his wife and a two bedroomed semi detached house available nearby would be suitable";

and that they had

"...considered the fact that the appellant's daughter now lives as a member of the appellant's household but does not form part of his assessment unit..."

7. One of the adjudication officers now concerned with the case, in her submission dated 17 August 1987, supports the claimant's contention that the tribunal erred in law in failing to take into account the needs of the claimant's non-dependant daughter. That is plainly correct; regulation 21(2) specifically requires regard to be had both to the assessment unit "and any other non-dependants". It is further submitted, and I also accept, that the tribunal erred in law in failing to explain why they considered the claimant's house was unnecessarily large and was in an unnecessarily expensive area. While there may well be cases in which such conclusions would be self-evident from the size of the house and the number of occupiers where, as in this appeal, there was an issue about the number of available bedrooms, it was incumbent upon the tribunal to give reasons for their decision, but no doubt those further errors flowed from their initial error of failing properly to consider the claimant's daughter. Accordingly, I set aside the tribunal's decision and, as there are insufficient findings of fact to enable me to give the decision which they should have given, the matter will have to be reheard by another tribunal.

8. However, those are not the tribunal's only errors of law. The claimant's complaint throughout has been that he was not given any notice of his benefit being reduced, or of the possibility that it might be, and that the first he knew of it was the adjudication officer's decision of 26 September 1986. In appropriate circumstances, regulation 21(4) of the Requirements Regulations 1983 provides for no restriction to be imposed during the first six months of entitlement to benefit, or during a subsequent period of six months provided "the claimant uses his best endeavours to obtain cheaper accommodation". It is true that the regulation contains no express provision for notice to be given to the claimant of any impending restriction but, while I am unaware of what the usual practice may be, it seems to me plain that such notice is implicit in the paragraph. Where a claimant has been awarded benefit which includes a sum in respect of housing costs then, bearing in mind that, by regulation 6(a)(i) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527], the value of "the home" is to be disregarded, the claimant must be made aware at some stage (even if not necessarily at the inception of benefit) that he will or may be required to find alternative accommodation. To hold otherwise would be to fly in the face of common sense, let alone common justice. In the instant case there is evidence that the claimant received no such notice. The tribunal failed to address this point and their failure to find when, if at all, the period began during which the claimant should have used

his best endeavours to obtain cheaper accommodation is an error of law which goes to the root of the issues in this case.

9. A further submission dated 19 April 1988 by another adjudication officer now concerned with the case deals with a number of specific matters raised by the Commissioner in his direction of 8 March 1988 regarding, *inter alia*, the calculation of the "restricted" sum, the effect of the decision on Commissioner's file R(SB) 6/89 and the construction of regulation 21. I have dealt with the calculation of the restricted sum in paragraph 6 above and it will be convenient to mention any other matters by way of directions to the new tribunal.

10. The new tribunal will hear the matter afresh, and their first task will be to determine whether and if so on what date any restriction on the claimant's housing requirements came into effect. Only in the event of their deciding that a restriction was properly imposed will they need to go on to consider the other aspects of this appeal.

11. I have no doubt that the tribunal would be assisted in their deliberations by the clear analysis of the relevant legislation in R(SB) 6/89; however, that appeal was concerned with a different and, I venture to think, somewhat exceptional set of circumstances. In the instant case the new tribunal will make findings of fact regarding the size of the claimant's existing house and whether, in relation to the number of people occupying it, it is unnecessarily large. Whether it is situated in an unnecessarily expensive area will depend, in this context, upon whether housing of a similar size is obtainable in the vicinity at a lower cost, but so far as both those questions are concerned the new tribunal will be assisted by Commissioner's decision on file CSB1016/1982 and, in particular, paragraphs 8 and 9 thereof. Provided the tribunal were satisfied that one or both of those elements had been established they would then need to make the appropriate findings of fact regarding the value of the claimant's house and the cost of suitable alternative accommodation, and accordingly determine whether, in principle, the restricted sum is correct.

12. I say "in principle" because that is by no means the end of the matter, which is essentially a practical one. Assuming that the new tribunal have arrived at that stage they will then need to consider the crucial question of whether, in accordance with regulation 21(3), "having regard to the relevant factors, it is not reasonable to expect the assessment unit to seek alternative cheaper accommodation".

13. The claimant contends—and says that he contended before the tribunal although, unfortunately, there is no record of it in the chairman's notes of evidence—that if he were obliged to sell his house the mortgagees, the bank in his case, would not be prepared to lend him any sum by way of further mortgage. The effect of that would be to leave him with a capital sum too small to provide accommodation for himself and his family and yet—and I mention it incidentally—, if it were not applied to obtaining housing, possibly large enough to disqualify him, at any rate for the time being, for receiving benefit.

14. At paragraph 11 of R(SB) 6/89 the Commissioner says that "the purpose of regulation 21 is not to force a claimant to sell the existing home" and that "the intention of the regulation . . . is that supplementary benefit is to be limited to what is necessary to cover the outgoings on accommodation which is reasonable for the claimant's needs". If I may say so, that is plainly correct. Equally it is plain that the regulation requires a realistic assessment to be made under paragraph 5(b) of the claimant's circumstances, the

instances given there being examples and by no means exhaustive or complete.

15. In my judgment the circumstances in regulation 21(5)(b) must include the claimant's ability to obtain other accommodation, in the present case by purchasing another house which of necessity would entail his obtaining a mortgage. The new tribunal will accordingly have to decide whether they were satisfied that he would obtain a mortgage or whether, as he says, that would be impossible. That will be a question of fact to be determined in the light of evidence and, in my opinion, the mere production by the claimant of a letter of refusal from his bank would not suffice; it is incumbent on him to make all reasonable enquiries, possibly through a reputable broker, and produce documentary proof of the situation.

16. So far as regulation 21(5)(a) is concerned, "the availability of suitable accommodation" in my judgment must be viewed objectively, that is to say regard must be had to whether suitable properties are being offered for sale in the area, not whether they would in fact be obtainable by the claimant. However, in practice, the availability to him of any particular property is, in my view, adequately covered by the provisions of regulation 21(5)(b), as being one of the possible consequences of the "circumstances of the assessment unit".

17. The claimant's appeal is allowed.

Commissioner's File No: CSB 605/87

(Signed) M. H. Johnson
Commissioner

