

Ref. ... *C.S.S.B.66/81*

*h.w. Wells*

..... *copy* copies of the Decision of the Commissioner are attached.

*R. Beattie*

*Single payment  
- person whom  
SB has been aggregated  
with another*

Office of the Social  
Security Commissioners,  
23 Melville Street,  
EDINBURGH,  
EH3 7PW.

*25 AUG 1982*

Date .....

*h.w. Wells*

JGML/MM

Reference: C.S.S.B.66/81 - ~~XXXXXXXXXX~~

This decision is starred because it holds that a person whose requirements and resources have for a period been aggregated with those of another person for supplementary benefit purposes cannot be regarded as having been "in receipt of an allowance" for that period within the meaning of regulation 9(2)(c) of the Single Payments Regulations 1980 (now regulation 10(1)(a)(iii) and (b)(ii) of the 1981 Regulations). Paragraphs 3-5 deal with the point.

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION OF SUPPLEMENTARY BENEFIT  
APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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1. My decision is that the decision of the supplementary benefit appeal tribunal dated 22 May 1981 is erroneous in law and is set aside. My substituted decision is that the claimant's appeal against the refusal of a claim for a single payment for furniture and for pots and pans is refused.
  2. On 9 February 1981 the claimant, then a married woman aged 50 recently separated from her husband, claimed supplementary allowance for herself and also supplementary benefit by way of a single payment for certain items of furniture and pots and pans. Prior to the separation the claimant's husband had been receiving supplementary benefit for himself and the claimant for some years. Supplementary allowance was awarded to the claimant but on 16 February 1981 the supplementary benefit officer disallowed the claim for benefit by way of a single payment for the items above mentioned. The claimant appealed to a supplementary benefit appeal tribunal. The tribunal unanimously allowed the appeal on 22 May 1981. The award of a single payment for the items mentioned consequent upon the decision of the appeal tribunal has been implemented. The supplementary benefit officer contends that the decision of the appeal tribunal was erroneous in law and having obtained leave has brought the present appeal.
  3. The tribunal dealt with the claimant's appeal under the provisions of regulation 9 of the Supplementary Benefit (Single Payments) Regulations 1980 in force at the date of their decision. Under the provisions of that regulation the tribunal required, in order to deal with the claim for furniture under paragraph (3), to consider whether the claimant could satisfy one of the conditions of paragraph (2). The only condition of possible application was that contained in paragraph (2)(c):-  

" The claimant has been in receipt of an allowance for a continuous period of six months or more and has, in the opinion of a benefit officer, no immediate prospect of employment;".

In relation to the first part of that condition the tribunal found that the claimant had claimed supplementary allowance during a three month period from September 1980 when separated from her husband. In holding that the claimant had been in receipt of an allowance for a continuous period of six months in terms of the first part of that condition however the tribunal relied upon the fact that the claimant's

/husband

husband had been in receipt of supplementary benefit as a married man for six years and took the view that the claimant, as part of his assessment unit, could be regarded as having been herself "in receipt of an allowance".

4. In my opinion in proceeding on that basis the appeal tribunal fell into an error of law. In terms of paragraph 2(1) of the Supplementary Benefit (Single Payments) Regulations 1980 "allowance" means supplementary allowance under Section 1(1)(b) of the Act. Section 1(1) of the Supplementary Benefits Act 1976 clearly relates supplementary allowance to the entitlement of a person to benefit. Under Section 1(2) of the Act, where the requirements and resources of any person fall to be aggregated with those of another person that other person only is to be entitled to supplementary benefit. That provision of course applies in the case of a wife whose requirements and resources are aggregated with those of her husband, who is the only person entitled to supplementary benefit in such circumstances. The husband's receipt of supplementary benefit does not enable the wife to be regarded as a person "in receipt of an allowance" within the meaning of regulation 9(2)(c) of the Single Payments Regulations.

5. The foregoing conclusion is reinforced by a consideration of other statutory provisions. The expression "in receipt of an allowance" is also used in regulation 7 of the Supplementary Benefit (Requirements) Regulations 1980 and it is clear from the definition provisions in paragraph (6) of the regulation that the expression is used with reference to persons entitled to such an allowance. There is in my opinion nothing to indicate a contrary intention in the use of that expression in regulation 9 of the Single Payments Regulations. Furthermore Section 15(1) of the Supplementary Benefits Act 1976 provides that "a person claiming, or in receipt of, supplementary benefit may appeal to the appeal tribunal against any determination of a benefit officer .....". The right of appeal given to "a person .... in receipt of supplementary benefit" conferred in that section is in my opinion clearly restricted to a person who has been found entitled to supplementary benefit and does not extend to other persons such as a wife whose requirements and resources have been aggregated with those of the actual claimant. For these reasons also I am satisfied that the expression "in receipt of an allowance" refers and refers only to a person who has been found entitled to such an allowance. In these circumstances the appeal tribunal in the present case were not entitled to hold that the claimant was a person who could satisfy the provisions of paragraph (2)(c) of regulation 9 of the Single Payments Regulations as being a person who had been in receipt of an allowance for the requisite period.

6. In allowing the claimant's appeal the appeal tribunal also reversed the decision of the supplementary benefit officer refusing a single payment for pots and pans. Such items are dealt with as items of essential household equipment under paragraph (4) of regulation 9 of the Single Payments Regulations but in terms of sub-head (1) of that paragraph a single payment is only to be made for such items where paragraph (1) of the regulation applies. The scope of paragraph (1) is however expressly restricted to the situation where a claimant "has recently become the tenant or owner of an unfurnished or partly furnished home". In the present case the tribunal recorded that the

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claimant had had the tenancy of her house all the time that she had occupied it and it had never been in her husband's name. In those circumstances the claimant was clearly unable to satisfy the preliminary condition of paragraph (1) and accordingly could not properly be found entitled to a single payment for cooking utensils under paragraph (4)(1). In this respect also the tribunal fell into an error of law.

7. The decision of the appeal tribunal must be set aside. Because the tribunal upheld the claimant's appeal under the provisions of regulation 9 of the Single Payments Regulations it did not require to deal with the alternative contention advanced on behalf of the claimant that she was entitled to a single payment for the items in question under the provisions of regulation 30 of the same regulations. Since the decision of the appeal tribunal has already been implemented and since I am satisfied that the claimant would not be able to satisfy the requirements of regulation 30 as there was no evidence that a single payment represented "the only means by which serious damage or serious risk to the health or safety of" the claimant might be prevented I consider that it would be inappropriate to remit the claimant's appeal for a fresh hearing by a different appeal tribunal. It is in my opinion expedient in the circumstances that I give the decision which the appeal tribunal should have given and this is contained in the second sentence of paragraph 1 of this decision.

8. The appeal of the supplementary benefit officer is allowed.

(signed) J.G. Mitchell  
Commissioner  
Date: 19 August 1982

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