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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Christine W

Supplementary Benefits Appeal Tribunal: Newport, Gwent

Case No: 8/51

Boarder v

non householder

1. My decisions are that

(a) the decision of the supplementary benefits appeal tribunal of 6 August 1981 is erroneous in point of law and is set aside;

(b) the claimant's normal requirements are to be assessed as those of a boarder.

2. On 6 August 1981 a supplementary benefits appeal tribunal upheld a decision of a supplementary benefit officer to the effect that the claimant was correctly assessed as a person other than a householder or relevant person, that is to say as a non-householder and not as a boarder. The claimant's application for leave to appeal from this decision on a question of law was granted by me. She has now appealed to the Commissioner and has requested a hearing. Having considered the record of the case, I am satisfied that the appeal can properly be determined without a hearing. Her appeal is now supported by the supplementary benefit officer in his submission to the Commissioner on substantially the same grounds as those advanced by the claimant when making her application for leave to appeal.

3. The claimant, who is now aged 22 years, was placed by the local authority when aged 7 years as a foster child with a Mrs.P. She has continued to live with her. When she reached the age of 21 years in December 1980 payment of the fostering allowance to Mrs.P ceased. The claimant then claimed that her entitlement to supplementary benefit should be assessed on the basis that she was a boarder. However, the supplementary benefit officer gave the decision referred to in paragraph 2. Briefly, the grounds on which I am invited to come to the conclusion that the supplementary benefits appeal tribunal erred in law in upholding this decision are (a) that the facts presented to the tribunal were to the effect that the status of the claimant's stay in Mrs.P's household has been at all times dependant on payment being made for her board and lodging and that, in the light of these facts, no tribunal acting reasonably could come to any conclusion other than that the claimant's normal requirements should be assessed as those of a boarder, and (b) that, in any event, the tribunal failed to consider whether the claimant was a "boarder" as defined by the relevant regulation, namely regulation 9(9)(b) of the Requirements Regulations 1980 [S.I.1980 No.1299] (the relevant parts are set out in the supplementary benefit officer's submission to the Commissioner) as they were required to do in view of the evidence presented to them and their own

findings of fact.

4. I am satisfied that the tribunal erred in law in the respects referred to in (a) and (b) of paragraph 3 for the reasons given. I am also satisfied that it is expedient in the circumstances that I should give the decision that the tribunal should have given in accordance with rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I.1980 No.1605] as amended by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I.1982 No.40], namely that the claimant's normal requirements should be assessed as those of a boarder. Should there be any dispute in relation to the application of my decision as to either the amount payable to the claimant or as to the relevant period, the claimant or the supplementary benefit officer may refer the matter in dispute to me.

5. The claimant's appeal is allowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 5 May 1982

Commissioner's File: C.W.S.B.3/82
S.B.O. File: S.B.O.965/81