

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Karen Thrasher

Supplementary Benefits Appeal Tribunal: Pontypridd

Case No: 4/67

[HEARING]

*Stamped from parents**living in sister*

1. My decisions are that
 - (a) the decision of the supplementary benefits appeal tribunal of 9 November 1981 is erroneous in point of law and is set aside;
 - (b) supplementary benefit is not payable to the claimant in respect of the claim made by her on 14 September 1981.
2. The claimant made a claim to supplementary benefit on 14 September 1981 when she was aged 17 years. The supplementary benefit officer decided that she was not entitled to benefit. However, following an appeal by her, the supplementary benefits appeal tribunal gave the following decision on 9 November 1981: "Supplementary benefit of £15.25 payable to [the claimant] from 14.9.81, subject to the £4.75 child benefit payable to her sister". The benefit officer then appealed to the Commissioner on a question of law, having been granted leave to do so by me. The appeal was heard on 22 March 1982. The claimant attended and was represented by Mr. J.P. Lenaghan (a member of the Social Services department of a local authority). Mr. R.A. Birch, a member of the solicitor's office of the Department of Health and Social Security, appeared for the benefit officer.
3. The tribunal's findings were "[The claimant] is aged 17 and has lived as a member of her sister's household since the age of 9. She is in full time education at P... Technical College. Her father made a contribution of £7 weekly up until February 1981. Child Benefit is paid directly to her sister Mrs K.. from February 1981, although her parents were giving her this amount prior. [The claimant's] brother was called as a witness and confirmed that [the claimant] was totally estranged from her parents. Mr and Mrs K.. have acted as parents for the last 9 years and the financial link with her parents ceased in February 1981". They gave the following reasons for their decision: "The Tribunal were satisfied that [the claimant] is totally estranged from her parents and there is no financial contribution at all. She is therefore entitled to Supplementary Benefit under Regulation 12(d) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980. The tribunal were of the opinion that the question of backdating was not the subject of this appeal". There is no dispute that the claimant's entitlement to an

allowance was for determination by reference to the provisions of this regulation (now regulation 11(d) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981) which lay down that -

"11. A claimant who is receiving relevant education whose resources are insufficient to meet his requirements shall be entitled to supplementary benefit if he is a person to whom one or more of the following paragraphs apply:-

- (a)
- (b)
- (c)
- (d) he is living away from and is estranged from his parents or a person acting in the place of his parents;"

There was never any dispute that the claimant at the relevant time was living away from and was estranged from her parents. Mr. Birch submitted that if the claimant was to be regarded as a person to whom paragraph (d) applied, then she had also to be living away from and estranged from a person acting in the place of her parents if such a person existed. He submitted that on the findings of the tribunal there was such a person, namely her sister Mrs.K, that the inference to be drawn from the tribunal's findings was that she was neither living away from nor estranged from Mrs.K and that, accordingly, the claimant could not be regarded as a person to whom paragraph (d) applied. He asserted that it followed that in maintaining that she was entitled to benefit by reason of the provisions of regulation 12(d), they erred in law. Mr. Lenaghan vigorously asserted that this approach was entirely erroneous on the grounds that there was no justification for regarding Mrs.K as a person acting in the place of the claimant's parents.

4. Mr. Birch drew attention, in particular, to the tribunal's finding that Mr. and Mrs.K had "acted as parents for the last 9 years". Mr. Lenaghan drew my attention to the contents of the statement of Mrs.K and the submission by him, which had been supplied prior to the hearing. In addition, he called Mrs.K to give evidence. In her statement, Mrs.K provided details of the circumstances in which the claimant came to live with her and had continued to do so. She stated, "Neither I nor my husband have acted as a parent with regard to [the claimant] but as a concerned and caring elder sister and brother-in-law". She provided the following illustrations, namely the fact that the claimant had had to go to her father to get her passport signed and would have required his permission to marry and the fact that her own son went to a Catholic school (her husband was a Catholic) while the claimant went to a state school (the claimant and her parents are Non-conformists) until she left to go to the technical college. In his written submission, Mr. Lenaghan gave a number of illustrations of the legal rights and duties of a parent and pointed out that those rights were not vested in Mrs.K and she was not required, as a matter of law, to perform those duties. (Mr. Birch indicated that he did not dispute that, in so far as the claimant was concerned, Mrs.K was not in a position to exercise the legal rights of a parent and could not have been called upon to perform the legal duties of a parent). Mrs. K's evidence and his further submissions were to substantially the same effect as their written observations. Mrs.K stated in her evidence

that initially she provided a home for her sister, the claimant, then aged 9 years, and also her brother, who was then aged about 20 years, and who left her home subsequently. (These 3 were the only children of the parents' marriage). At the time, she was aged 24 years and had a baby boy, who was now aged 10½ years.

5. I have come to the conclusion that the tribunal erred in law in at least 2 respects, namely (a) their reasons for decision cannot be reconciled with their findings of fact. Having found that Mr. and Mrs.K had acted as the parents of the claimant for 9 years, they nevertheless considered that the requirements of regulation 12(d) were fulfilled and (b) their decision awarding benefit to the claimant on the ground that the requirements of regulation 12(d) were satisfied involved coming to a conclusion which was contrary to the evidence, that is to say the evidence was to the effect that Mrs.K was acting in the place of her parents at the relevant time and she was not living away from and estranged from Mrs.K. In coming to this conclusion, I have interpreted the phrase "acting in the place of his parents" as meaning a person who carries out the normal responsibilities of parents in relation to the care and control of their children, even though the legal rights of a parent have not been vested in the person and he is not required by law to perform the legal duties of a parent. For all practical purposes, Mrs.K had taken on the mantle of the claimant's parents and had acted for many years in the same way as the claimant's parents would have done if circumstances had been normal. For these reasons, I set aside the tribunal's decision. I am satisfied that it is expedient, in the circumstances, for me to give the decision the tribunal should have given. My decision is that, for the reasons I have outlined above, the claimant is unable to satisfy the requirements of regulation 12(d) and that, accordingly, supplementary benefit is not payable to her in respect of the claim made by her on 14 September 1981. I wish to add that I much regret having to come to this decision in the light of my unqualified admiration of the way in which Mrs.K "came to the rescue" in so far as the claimant was concerned following the development of tragic circumstances in relation to their parents.

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

(Signed) E. Roderic Bowen
Commissioner

Date: 30 March 1982

Commissioner's File: C.W.S.B.5/82
S.B.O. File: S.B.O.127/82