ERB/RC CIV SB 32/81 Capital + maintenance

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Heulwen Morgan (Mrs.)

Supplementary Benefits Appeal Tribunal: Pontypridd

Case No: 4/37

[HEARING]

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1. My decision is that the decision of the supplementary benefits appeal tribunal of 17 August 1981 is erroneous in point of law and is hereby set aside.

2. On 26 June 1981 the supplementary benefit officer decided that "The appellant is not entitled to supplementary benefit because her capital exceeds £2,000". The claimant's appeal from this decision to the supplementary benefits appeal tribunal, which she attended and at which she was accompanied by her brother and represented by Councillor Williams, was disallowed. The claimant has now appealed to the Commissioner having been granted leave to do so by me. The appeal was heard by me on 3 February 1982. The claimant attended and was represented by Ms J.Albeson, who was accompanied by Mr. J. Gass. Mr. R.A. Birch, a member of the solicitor's office of the Department of Health and Social Security, represented the supplementary benefit officer.

3. The findings of the tribunal on question of fact material to the decision were "[The claimant] is a one parent family with one child. She has been in receipt of supplementary benefit since 8.1.76. The court order stood in arrears and on 10.1.81 [the claimant's former husband] was ordered to pay £1008 to the DHSS, plus a settlement payment of £2,000. [The claimant] has capital of £922 and [the claimant] placed the £2,000 which was contended was maintenance for her daughter in Lloyds Bank current account, pending decision to invest". Their decision was "Appeal refused", and the reasons given by them for their decision were "The Tribunal were satisfied that at the date of the appeal [the claimant] held capital of £922 plus £2121.96 in her Lloyds Bank current account. Her capital thus exceeded £2,000 and she was not entitled to supplementary Benefit".

4. What is stated by the tribunal in the "Reasons for Decision" given by them appeared to me to indicate that they approached the case on the basis that the merits of the claimant's appeal had to be determined by reference to the position at the date of her appeal, namely 7 July 1981. Mr. Birch accepted that what they had stated was to this effect and that, on the face of things, this approach gave rise to an error in law. However he maintained that the remainder of the record indicated they had not in fact adopted this approach and had not intended to say what they

had said. I admire his ingenuity but, in view of the categorical statement in the reasons given, I am not impressed by his argument.

5. It was also maintained by Ms Albeson, on the claimant's behalf, that the tribunal had failed to comply with the requirements laid down in Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I.1980 No.1605] in that the record did not include an adequate statement of the reasons for their decision or their findings on material questions of fact. She asserted, in particular, that the indications from the record (see, in particular, the "Reasons for Decision") were that the tribunal considered that once it was accepted that there existed a bank account in the claimant's name with a credit balance which exceeded £2,000, disentitlement by reason of the provisions of regulation 7 of the Resources Regulations was automatic and that it was not necessary to come to specific findings of fact as to whether £2,000 in that account was part of the claimant's capital resources or to set out the reasons for those findings, including the reasons for rejecting what had been maintained by the claimant and her representative in this context. She asserted that, accordingly, the record revealed a substantive error of law in addition to a failure to comply with the requirements of Rule 7(2)(b).

6. It was maintained on the claimant's behalf that the tribunal had before them evidence to the following effect: On 22 January 1976 a magistrates' court had ordered the claimant's former husband, Mr. M, to pay to the claimant the weekly sum of £10 "on behalf of one child" (the only child of the marriage, who is now aged approximately 14 years). Payment was in arrears and the claimant was in receipt of supplementary benefit in respect of the child as well as herself. In a letter to her dated 27 January 1981 Mr. M.'s solicitors stated "he would be prepared to pay you a lump sum of £2,000 in full and final settlement of the maintenance payable to the child with no more weekly payments thereafter". What eventually transpired was that an agreed application was made to the court to vary the existing order. The court varied the order on 17 February 1981 in accordance with what had been agreed by providing for the reduction of the weekly payment on behalf of the child to one of 10 pence until the child attained the age of 16 years, and ordering Mr. M to pay £2,000 to the claimant within 7 days. The letter from the solicitors and the order made on 17 February 1981 were handed in to the tribunal. In addition, Mr. M had been ordered by the court on 20 January 1981 to pay £1008.00 to the Department of Health and Social Security, which would appear to relate to supplementary benefit paid to the claimant in respect of her child. For some reason there was delay in the receipt by the claimant of the £2,000 from the court. As soon as it was received, the claimant disclosed to the Department that it had been received. She paid it into her current account with the intention that arrangements should be made for it to be invested as soon as possible for the benefit of her child. Before this could be done the decision I have quoted was given and matters were left in abeyance pending the hearing of her appeal from that decision. Immediately after the tribunal's decision had been given, the supplementary benefit officer at the hearing advised the claimant to transfer the £2,000 to a deposit account in her child's name. She did so the next day and was promptly awarded supplementary benefit in respect of herself (but not in respect of her child). Arrangements were made for the withdrawal of £50 a month from the account which she spends on maintaining the child. She asserted that she and her representative had made it clear to the tribunal that the £2,000 had been paid by Mr. M on the basis that it was to be used solely for

the benefit of the child and that this was the basis on which there had been an agreed application to the court and on which she had accepted the money. The variation of the weekly amount payable "on behalf of" the child from £10 to 10 pence had also been made on the basis that the £2,000 was paid "on behalf of" the child. She had never sought any money on behalf of herself from Mr.M since the marriage had broken up and relationships were such that Mr.M would never dream of paying any money to her for her own benefit. It will be noted that, apart from a reference to a settlement payment of £2,000 and it being contended by the claimant that the £2,000 was maintenance for her daughter which was placed in a current account pending decision to invest, there is no reference in the record to the account given by the claimant as to how the £2,000 came to be paid and the basis on which she maintained it was paid to and retained by her. Regrettably, the chairman made no record of the evidence that was given or of the documentary evidence which was placed before the tribunal and made no record of the submissions made on the claimant's behalf. The papers before me include the "clerk's notes" which have been signed by the chairman. However, these notes make no reference to the evidence of any named witness or to any documentary evidence, and appear to consist solely of a summary of the submissions made to the tribunal by the supplementary benefit officer.

7. Having carefully considered the submissions made to me, I have come to the conclusion that the assertions set out in paragraph 5 are well founded and that the tribunal erred in law in the respects outlined therein, in addition to having committed the error referred to in paragraph 4. Accordingly, I set aside the tribunal's decision and direct that the claimant's appeal from the decision of the supplementary benefit officer be heard and determined afresh by a differently constituted tribunal. It will be noted that I have deliberately refrained from expressing any views as to whether the £2,000 should or should not have been regarded as part of the claimant's capital resources if the claimant's version of how it came to be in her bank account was accepted. It will be for the members of the tribunal who give fresh consideration to the case to make up their minds as to the facts and then apply what they consider to be the law. I consider that the issues involved are complicated and find it difficult to understand how the tribunal of 17 August 1981 considered that they could deal adequately with them in 25 minutes (the total time taken to hear the appeal according to the clerk). I wish to add a comment in relation to the advice tendered, the action taken and the payment of benefit following the tribunal's decision. If the course followed (which I consider to have been an eminently sensible one) was in order, then it would appear to me that it should have been followed before the initial decision was given by the supplementary benefit officer. If it had been, there would have been a considerable saving of time and money. On the other hand, Mr. Birch expressed the view that the advice given might well be regarded as an incitement of the claimant to deprive herself of a resource for the purpose of obtaining benefit (regulation 4 of the Resources Regulations) and open to the strongest objection!!

8. The claimant's appeal is allowed.

Commissioner's File: C.W.S.B.32/81
S.B.O. File: S.B.O.849/81

(Signed) E. Roderic Bowen
Commissioner
Date: 9 February 1982