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CWSB
55/85

The Library
Rhosddu Road
Wrexham
Clwyd LL11 1AU
1 July 1986

I am enclosing a copy of a recent Social Security Commissioners Decision (CWSB 55/85) for your files. The case was taken by a local solicitor and was quite complicated because of a series of DHSS errors over the last few years. However, the point considered by the appeal to the commissioner was quite straightforward. It concerns the non-householder rent contribution payable under Supplementary Benefit (Requirements) Regulation 23.

Prior to the introduction of Housing Benefit it was possible for a claimant to receive more than the standard addition in certain circumstances. This was abolished in April 1983 although existing claimants were awarded an anomaly addition to replace the additional benefit.

It appears to me that the practice since then has been to reduce the level of the anomaly addition at each uprating in line with the increase in other rates. This maintains the total level of benefit at a fixed point until it is overtaken by the general rise in benefit for standard cases. This seems to be confirmed by:

National Welfare Benefits Handbook 1985 p40 and omission from 1986 ed. p46, and
Mesher 1986 p162.

However, this decision and the payments made to the claimant seem to suggest that this may be incorrect. The award states that the full anomaly addition is payable regardless of the value of uprating (because uprating does not count as a change in circumstances which is the only point at which the addition can be altered). In addition, this appears to be confirmed by the S-manual Appendix 24 paragraph 7 in which this particular anomaly is excluded from such reduction.

I am therefore not very clear on where the position stands. In particular, Mesher cites Reg. 23(4)(b) as the authority for the lowering

of the anomaly addition at uprating and yet at no point was this even mentioned in the case before the commissioner. My laymans reading of 23(4)(b) suggests that it is only saying the anomaly addition stops when you come off benefit or would no longer qualify for it under the old rules.

I hope that this is of some interest to you,

Yours,

A handwritten signature in black ink, appearing to read 'Mike Wilkinson', with a long horizontal stroke extending to the right.

Mike Wilkinson

Welfare Rights Information Officer
Clwyd Library & Museum Service

copies to: Child Poverty Action Group
Tribunal Representation Unit (NACAB), Wolverhampton

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Robert Tapp

Social Security Appeal Tribunal: Wrexham

Case No: 020/09

1. My decisions are that (a) the decision of the social security appeal tribunal of 4 July 1985 is erroneous in point of law and is set aside and that (b) there are no grounds on which the additional amount of non-householder's contribution which had been awarded to the claimant under regulation 23(3)(b) of the Requirements Regulations may be reduced.

2. On 15 October 1984 an adjudication officer gave this decision in relation to the claimant "Supplementary allowance of £27.10 per week determined and paid fortnightly from the prescribed pay day (Wednesday) in week commencing 26 11 84." The claimant's appeal from the decision to the social security appeal tribunal, which he attended, was disallowed on 4 July 1985. The tribunal's findings were "The claimant contends that there was no change of circumstances in his case within the meaning of Requirements Regulations 23(3)(b) and that a change in the Regulations did not constitute a change of circumstances. Having regard to Adjudication Regulation 87(5) the Tribunal find that any increase in the claimants total income by way of supplementary benefit is a change of circumstances consequently any increase shall be reduced by the amount of that increase under Regulation 23(3) of the Requirements Regulations. The Tribunal therefore found that the claimants supplementary allowance has been correctly assessed at £27.10." Their decision was "Appeal disallowed. Supplementary Allowance of £27.10 per week is payable fortnightly from the prescribed pay day Wednesday in week commencing 20 11 84." They recorded the following reasons for their decision. "Supplementary benefit of £27.10 has been correctly assessed as the increase in the total income by way of supplementary benefit would be reduced by that increase namely £1 per week. Regulation 23(3) (b) Requirements Regulations." The claimant then appealed to the Commissioner having been granted leave to do so by the chairman of the tribunal. In his submission to the Commissioner the adjudication officer supports the claimant's appeal.

3. There was no dispute that the claimant was entitled to a housing requirement in excess of the standard rate prior to 4 April 1983, and there was also no dispute as to the amounts of such requirement payable before that date. However after 4 April 1983 in so far as any new claim was concerned there was no longer a provision to pay a housing requirement in excess of a set statutory amount in respect of non-householders housing requirements (see regulation 2(7) of the Housing Benefits, Requirements and Resources (Consequential Amendments) Regulations 1983 which amended regulation 23 of the Requirements Regulations 1980 by removing sub-paragraphs 1(a) and (b) and adding sub-paragraphs (3) and (4)). Regulation 23(3)(b) provided, in so far as is relevant, that -

"(3) Where the claimant was entitled to an allowance in the benefit week beginning in the calendar week beginning 28th March 1983 ("the first benefit week") and in the benefit week beginning in the calendar week beginning 4th April 1983 ("the second benefit week") [the claimant satisfied these requirements] and-

(a)

(b) in the first benefit week an amount was applicable to him under paragraph (1)(b) of this regulation as then in force, that amount shall, for the period of entitlement, continue to be applicable to him, except that if in any benefit week following the second benefit week there is any increase in the claimant's total income by way of supplementary benefit which is attributable to a change of circumstances, the amount so applicable shall be reduced by the amount of that increase."

Thus the effect of regulation 23(3)(b) was to reduce any excess amount by the amount of any increase in supplementary benefit which was attributable to a change of circumstances. The adjudication officer in this case has submitted that "a change of circumstances is a change in the condition of the claimant which would lead to a review of his award, under section 104 of the 1975 Act. It is evident (and, I submit, not in contention) from paragraphs 6 and 7 of the submission of the adjudication officer's submission to the tribunal, (pages 4 and 5 of the bundle) that no determinations have been made to change the claimant's rate of benefit other than those which brought into effect that annual uprating of benefit (in 1982 and 1983). It is those determinations which, on 15 10 84 the adjudication officer purported to review." He went on to assert that "the uprating of benefit is not a relevant change of circumstances which would lead to a review under Section 104 of the Act, but is in fact governed by Adjudication Regulation 87(5)". Regulation 87(5) provides that -

"(5) A determination under the Supplementary Benefits Act made by an adjudicating authority may be reviewed by an adjudication officer for the sole purpose of giving effect to any change in-

(a) any amount specified in Schedule 1 to the Supplementary Benefits Act or in the Requirements Regulations in connection with the determination of requirements;

(b)

but any such change shall be deemed not to be a change of circumstances for the purpose of section 104 of the Act."

The adjudication officer submitted that by reason of the provisions of this regulation the adjudication officer "had no grounds on which to reduce the additional amount which had been awarded under Regulation 23(3)(b) of the Requirements Regulations," and that in doing so he had erred in law. I am satisfied that this is so for the reason he has given. I am also satisfied that it is expedient in the circumstances for me to give the decision the tribunal should have given. My decisions are set out in paragraph 1.

4. The claimant's appeal is allowed.

(Signed) E Roderic Bowen
Commissioner

Date: 14 January 1986

SUPPLEMENTARY BENEFITS ACT 1976

SUBMISSION BY AN ADJUDICATION OFFICER ON APPEAL BY A CLAIMANT

Name of claimant: Mr Robert Tapp

Our ref: AO 2993/85

SS Appeal Tribunal: Wrexham

Your ref: CWSB 55/85

Date of Tribunal Decision: 4 7 85

Notified to claimant on: 5 7 85

1. The chairman has granted, on 19 9 85, the claimant leave to appeal against the above unanimous decision of the Wrexham Appeal Tribunal. I wish to make the following submissions in respect of that appeal.

2. Mr Tapp is a single man who lives as a member of his father's household. He has continuously in receipt of supplementary benefit since 1981. On 16 12 82 an appeal tribunal decided that Mr Tapp's housing requirement should be increased to £3.47 per week. This was subsequently increased to £3.87 per week by the Supplementary Benefit Officer (now adjudication officer). This amount was in excess of the standard non householders housing requirement because it was decided that the standard amount of £2.55 was insufficient having regard to the claimants actual contribution to the housing expenses of the household; his entry into the household was on the understanding that a housing contribution in excess of the standard amount would be made and if an increased sum was not allowed hardship to the household as a whole would occur. The supplementary benefit officer allowed the sum of £3.87, (being the amount of the claimants actual contribution to the household for housing costs) and in addition also incorrectly allowed the standard amount for housing requirements. From 5 4 82 the claimant was allowed £5.42 plus the standard amount; from 14 4 83 he was allowed £5.67 plus the standard amount, and from 4 4 84 he was allowed £5.99 plus the standard amount. In October 1984 the adjudication officer reviewed his decisions on the grounds that his decisions in respect of housing requirements had been made in error of law. The result was that from 27 10 83 the claimant was allowed £5.65 as a housing requirement and from 26 11 84 this reduced to £4.65. The claimant appealed against this decision on 5 2 85 (pages 1 & 2) and at a subsequent hearing on 4 7 85 the tribunal upheld the decision of the adjudication officer (page 11). On 15 8 85 the claimant applied for leave to appeal to the Commissioner (page 15) and leave was granted by the chairman on 19 9 85 (Page 17). The appeal was made on 18 10 85 (pages 18-19).

3. In my submission the following statutory provisions relate to this appeal:-

- a. The Social Security Act 1975, Section 104(1A)
- b. The Supplementary Benefit (Requirements) Regulations 1980 (SI 1980/1299), Regulation 23, as amended by the Supplementary Benefit (Housing Benefits) (Requirements and Resources) Consequential Amendment Regulations 1983 (SI 1983/505) Regulation 2(7)
- c. The Supplementary Benefit (Requirements) Regulations 1983 (SI 1983/1399) Regulation 23.
- d. The Social Security (Adjudication) Regulations 1984 (SI 1984/451) Regulations 37 and 27.

(2)

4. It is my submission that the central issue in this case is whether or not a general uprating of benefit is a change of circumstances within the provisions of regulation 23 of the Requirements Regulations. I submit that it is not in dispute that the claimant was entitled to a housing requirement in excess of the standard rate prior to 4 4 83 and also that the amounts of such requirements payable before that date are not in dispute. I do not therefore propose to make any submission on that aspect unless the claimant makes any case to the contrary or the Commissioner directs otherwise.

5. From 4 4 83 Regulation 2(7) of the Housing Benefits, Requirements and Resources (Consequential Amendments) Regulations 1983 amended regulation 23 of the Requirements Regulations 1980 to the extent that sub paragraphs (1)(a) and (b) of the said regulation 23 were removed. In my submission, the effect of this amendment was such that in any new claim after 4 4 83 there was no longer a provision to pay a housing requirement in excess of a set statutory amount in respect of a non householders housing requirement. The amendment of regulation 23 did however add sub paragraphs (3) and (4) to that Regulation. Regulation 23(3) so far as is relevant, provided:-

"Where the claimant is entitled to an allowance in the benefit week beginning in the calendar week beginning 28th March 1983 ("the first benefit week") and in the benefit week beginning in the calendar week beginning 4th April 1983 ("the second benefit week") and -

(a) (i) ...) not applicable to this case

(ii) ...)

(b) in the first benefit week an amount was applicable to him under sub paragraph (1)(b) of this regulation as then in force, that amount shall, for the period of entitlement, continue to be applicable to him, except that if in any benefit week following the second benefit week there is any increase in the claimant's total income by way of supplementary benefit which is attributable to a change of circumstances, the amount so applicable shall be reduced by the amount of that increase.

I submit that the claimant was entitled to an allowance in the "first benefit week" and also the "second benefit week". In addition he was entitled to a housing requirement under regulation 23(1)(b) of the Requirements Regulations in the "first benefit week". I therefore submit that under regulation 23(3)(b) the claimant was entitled to continue receiving the same amount in respect of housing requirements from the "second benefit week" as he received in the "first benefit week". The same regulation 23(3)(b) is contained in the 1983 Requirements Regulations.

6. The effect of Regulation 23(3)(b) is to reduce the excess amount by the amount of any increase in supplementary benefit which is attributable to a change of circumstances.

7. In my submission, a change of circumstances is a change in the condition of the claimant which would lead to a review of his award, under section 104 of the 1975 Act. It is evident (and, I submit, not in contention) from paragraphs 6 and 7 of the submission of the adjudication officer's submission to the tribunal, (pages 4 and 5 of the bundle) that no determinations have been made to change the claimant's rate of benefit other than those which brought into effect that annual uprating of benefit (in 1982 and 1983). It is those determinations which, on 15 10 84 the adjudication officer purported to review.

8. I submit that the uprating of benefit is not a relevant change of circumstances which would lead to a review under Section 104 of the Act, but is in fact

governed by Adjudication Regulation 87(5), which provides -

"A determination under the Supplementary Benefits Act made by an adjudication authority may be reviewed by an adjudication officer for the sole purpose of given effect to any change in -

a. any amount specified in Schedule 1 to the Supplementary Benefits Act or in the Requirements Regulations in connection with the determination of requirements;

b. (Not relevant);

but any such change shall be deemed not to be a change of circumstances for the purpose of section 104 of the Act"

In decision R(G) 1/80 the Commissioner said inter alia "It has not been disputed at any stage that the coming into operation of the 1977 Act represented a relevant change of circumstances justifying review of the Commissioner's decision under section 104 of the Social Security Act 1975. I agree with that".

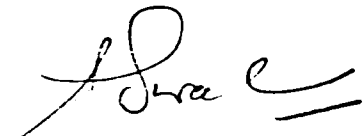
I respectfully submit that that decision does not apply to the instant case, being concerned as it was with primary legislation. The regulations made under the legislation contain no equivalent to the precise provisions of Adjudication Regulation 87(5).

I submit therefore that, whilst the adjudication officer was correct to revise the determinations of 22 11 82 and 21 11 83 on the grounds that they were made in error of law in so far as the basic rate of non householder addition had been awarded erroneously, he had no grounds on which to reduce the additional amount which had been awarded under Regulation 23(3)(b) of the Requirements Regulations, and that the tribunal's decision is in consequence an error in law.

9. I further submit that if the Commissioner accepts my submission, he will be able to exercise his powers under Adjudication Regulation 27(a)(i) and substitute his own decision for that which the tribunal should have made.

10. Should the Commissioner require further information I shall seek legal advice. Should he direct an oral hearing I shall be legally represented.

24 December 1985


Adjudication Officer