

Water charges not analogous to service charge
for IS

NACAB

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Review
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Region: London North

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Romford and Grays social security appeal tribunal dated 26 May 1988 is erroneous in point of law. Accordingly I set it aside. I give the decision that they themselves should have given namely that water charges may not be treated as analogous to a service charge and I reinstate the decision of the adjudication officer issued on 4 March 1988 which is as follows:-

"To award [the claimant] Income Support of £42.48. This is made up of Income Support of £42.05 and a transitional addition of 43p from week commencing 12.4.88."

2. This is an appeal by the adjudication officer to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal reversing the decision of the adjudication officer issued on 4 March 1988 and set out above.

3. The claimant is aged 35. She has been in receipt of a supplementary allowance since before 20 February 1984, included in which was an amount in respect of water charges provided for under regulation 18(1)(a) of the Supplementary Benefit (Requirements) Regulations 1983 payment of the supplementary allowance continued up to and including 10 April 1988. On 4 March 1988 the adjudication officer assessed the claimant's requirements for income support and determined that she would be entitled to £54.00 per week less her resources of child benefit and one-parent benefit but in addition to a transitional addition of 43p.

4. The following statutory provisions are relevant to the appeal:-

Section 86 of the Social Security Act 1986

Section 11 of the Social Security Act 1986

Regulation 17(e) of the Income Support (General) Regulations 1987

Schedule 3 of the Income Support (General) Regulations 1987

Regulation 10 of the Housing Benefit (General) Regulations 1987

Schedule 1 of the Housing Benefit (General) Regulations 1987

Section 86(2) of the Social Security Act 1986 provides as follows:-

"The enactments mentioned in Schedule 11 to this Act (which includes enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule."

Schedule 11 provides that the relevant provisions of the Supplementary Benefits Act 1976, which gave entitlement to supplementary benefit, are repealed. The repeal took effect from 11 April 1988 and the claimant's entitlement to a supplementary allowance, inclusive of an amount in respect of water charges, ended from that date. From 11 April 1988 Income Support replaced Supplementary Benefit and the claimant's entitlement to an allowance was based upon different statutory provisions.

5. In my judgment the decision of the appeal tribunal was erroneous in point of law on the grounds given in this paragraph of my decision. The issue in dispute is whether or not water charges may be treated as analogous to a service charge. The decision of the adjudication officer was that they were not so analogous. The tribunal decided that they were analogous to a service charge and the adjudication officer now appeals to me. On the face of the appeal tribunal's record in their findings of fact it is stated as follows:-

".. it appeared to the tribunal that the water rates payable since the 11 April 1988 are a payment analogous to a service charge, and therefore an amount should be added to the Income Support Calculation to meet the water charge."

On the face of their record in giving the reasons for their decision the appeal tribunal state as follows:-

".. because of the fact that water charges are linked to very specific services, and that in the case of Local Authority tenants they are paid together with the rent and any other charge, they are indeed analogous to a service charge. The tribunal is supported in this view by reference to paragraph 9 of Schedule 3. This indicates that any charge in the weekly rent made in respect of fuel costs must be deducted, and any charge for water rates paid by Crown Tenants must be deducted. It seems to the tribunal that had the legislation intended to exclude the payment of water rates for other tenants, then this paragraph would have said so explicitly. It would not make sense for Crown Tenants to be specifically excluded unless there were a general presumption that water rates would be paid."

Regulation 17(e) of, and Schedule 3 of, the Income Support Regulations provide for an "applicable amount" in respect of housing costs and for their determination respectively. Water charges are not an item included among the "eligible housing costs" provided under paragraph 1 of Schedule 3. The tribunal determined that they satisfied sub-paragraph (h) of Schedule 3(1) in that they are analogous to "service charges" which are provided for under sub-paragraph (f) of the same paragraph (1). The term "service charge" is not defined under the Income Support Regulations. In the construction of the relevant current legislation applicable to the instant case I derive no assistance from regulation 18(1)(e) of the Former Supplementary Benefit Requirements Regulations.

On the face of their record the tribunal have inferred that because the water charges are paid with the rent to the local authority they constitute, by analogy, a "service charge". This is a question of construction and the relevant legislation is erroneous. Supply of water is provided by a Water Authority and does not constitute a "service" provided by a landlord. The procedure by which some local authorities collect water charges on behalf of the Water Authorities is no more than a matter of administration. The appeal tribunal on the face of their record cites paragraph 9 of Schedule 3 to the Income Support (General) Regulations but

fails to state which provision, or provisions, comprise support for their decision.

6. Paragraph 9 is of assistance in the issue before me but not in the manner adopted by the tribunal. Paragraph 9(1) provides that housing costs mentioned in sub-paragraphs (c) to (h) of which "service charges" and those which are "analogous" are included, are subject to certain deductions; and paragraph 9(2) provides for those deductions. Paragraph 9 so far as relevant to the issue before me provides as follows:-

- "9. - (1) Subject to sub-paragraph (5), there shall be met under this paragraph the amounts, calculated on a weekly basis, in respect of the housing costs specified in paragraph 1(c) to (h) subject to the deductions specified in sub-paragraph (2).
- (2) Subject to sub-paragraph (3), the deductions to be made from the weekly amounts to be met under this paragraph are -
- (a) ..
- (b) where the costs are inclusive of ineligible service charges within the meaning of paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations 1987 (ineligible service charges) the amounts attributable to those ineligible service charges .."

The appeal tribunal further considered paragraph 1 of Schedule 1 to the Housing Benefit (General) Regulations which so far as relevant to the issue before me provide as follows:-

- "1. The following service charges shall not be eligible to be met by housing benefit -
- (a)-(f) ..
- (g) charges in respect of any services not specified in sub-paragraphs (a) to (f) which are not connected with the provision of adequate accommodation."

The appeal tribunal then further referred to drop the other "charges" and in consequence to a consideration of regulation 10 of the Housing Benefit (General) Regulations which provides in paragraphs (3), (6) and (7) so far as relevant to the issue before me as follows:-

- "(3) Subject to any apportionment in accordance with paragraphs (4) and (5) and to regulations 11 and 12 (restrictions on unreasonable payments and rent increases), the amount of a person's eligible rent shall be the aggregate of such payments specified in paragraph (1) as he is liable to pay less
- (a) except where he is separately liable for rates or charges for water, sewerage or allied environmental services, an amount determined in accordance with paragraph (6); and
- (b) where payments include service charges which are wholly or partly ineligible, an amount in respect of the ineligible charges determined in accordance with Schedule 1."

"(6) The amount of the deduction referred to in paragraph (3) shall be -

- (a) ..

(b) in respect of charges for water, sewerage or allied environmental services -

(i) except in a case to which head (iii) applies. If the dwelling occupied by the claimant is a single rateable unit, the amount of the charges,

(ii)-(iii) .."

"(7) In this regulation and Schedule 1 -

"service charges" means periodical payments for services whether or not under the same agreement as that under which the dwelling is occupied, or whether or not such a charge is specified as separate from or separately identified within other payments made by the occupier in respect of the dwelling; and

"services" means service provided for facilities (including the use of furniture) provided for, or rights made available to, the occupier of a dwelling."

In my judgment water charges are not charges which are connected with the provision of adequate accommodation and accordingly fail to satisfy the relevant provisions of regulation 10 whereby they may be treated as "service charges" which are not ineligible. It is manifest from the face of their record that the tribunal gave inadequate consideration to paragraph 9(2) of Schedule 3 to the Income Support (General) Regulations. Had it accorded adequate consideration to paragraph 9(2) it would then have referred to paragraph 6(b) of regulation 10 of the Housing Benefit (General) Regulations which provides that "water charges" are ineligible "service charges" for both housing benefit purposes and for income support purposes. The appeal tribunal erred in law by failing to give adequate consideration to paragraph 9(2) of Schedule 3 and by their failure to give reasons as to the non-applicability of paragraph 9(2). The appeal tribunal's reasoning is not founded on the relevant statutory provisions referred to above.

7. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are before me and I give the decision that the appeal tribunal should themselves have given which is set out in paragraph 1 of this decision. I would add that I have given careful consideration to the claimant's observations to me dated 17 February 1989. The Commissioner's task is to construe the relevant legislation as he understands it and I have no dispensing power in respect thereof.

8. Accordingly the adjudication officer's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

Date: 15 June 1989