

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 20 May 1988 is erroneous in point of law. Accordingly I set it aside. My decision is that house insurance and water charges may not be treated as an analogous to a service charge and I reinstate the decision of the adjudication officer which is as follows:-

"To award [the claimant] Income Support of £35.65 per week from 14.4.88 in week commencing 11.4.88. This is made up of income support of £33.40 and a transitional addition of £2.25 a week."

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 (set out above) and issued on 19 January 1988.

3. The claimant is aged 55. She has been in receipt of a supplementary allowance since 22 May 1987 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. Also in payment to her under regulation 16 of the same set of Regulations, was an amount in respect of "maintenance and insurance". On 25 March 1988 the claimant appealed against the adjudication officer's decision awarding income support of £35.65 from 14 April 1988. She states that this is not enough to meet her needs, which include household insurance. The appeal tribunal reversed the decision of the adjudication officer and the adjudication officer now appeals to the Commissioner. The following statutory provisions are relevant to the issue before me:-

Section 86 of the Social Security Act 1986

Schedule 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:-

"The enactments mentioned in Schedule 11 to this Act (which include enactments already obsolete or unnecessary) are repealed to the extent specified in the third column of that Schedule."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 gives 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, and maintenance and insurance, ended from that date. Income support replaced supplementary benefit from 11 April 1988 and the claimant's entitlement to an allowance was based upon different statutory provisions.

4. In my judgment the decision of the appeal tribunal was erroneous in point of law on the grounds given in this paragraph. The issue of principle before me is whether or not house insurance and water charges may be treated as analogous to a service charge. The decision of the adjudication officer was that they were not. The decision of the tribunal was that they were analogous to a service charge.

On the face of their record the tribunal in their findings of fact state as follows:-

"The tribunal found.. that her water rates are a payment analogous to a service charge, but her house insurance of £50.97 per annum (£0.98 per week) is also analogous to service charges, and therefore the housing costs under Schedule 3 are £0.98 per week plus water charges."

On the face of their record their reasons for decisions are as follows:-

"In deciding that the housing costs were analogous to this charge, the tribunal took into account the fact that there is no choice but to pay the water charges, and this in respect of a service to the property of a kind not dissimilar from that which might be provided by a landlord or head leaseholder, and that in practice very similar considerations applied to the building's insurance."

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 determination of the tribunal was that they satisfy -

"11(a) 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. The appeal tribunal inferred that because the water charges are inescapable they are analogous to a service which might be provided by a landlord. That in my view is an erroneous construction of the relevant statutory provisions. The supply of water is provided by a Water Authority and, albeit that it is inescapable, it is not similar to a service provided by a landlord. Household insurance is a matter of choice as to whether or not to insure."

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. Apart from Schedule 3, paragraph (h) of the Income Support (General) Regulations the tribunal has failed to refer to any other relevant statutory provisions and this failure accordingly amounts to an error of law. Paragraph 9 of Schedule 3 is of assistance. 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. So far as relevant to

the instant case paragraph 9 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 to Schedule 1 of 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 present appeal provides as follows:-

- "1. The following service charges shall not be eligible to be met by housing benefit -
- "(a) to (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 considered what the other "charges" referred to are. Regulation 10 of the Housing Benefit (General) Regulations provides so far as relevant in paragraphs (3), (6) and (7) 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 payment 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) shall be -
- (a) ..
- (b) in respect of charges for water, sewerage or other 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 services performed or 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 provisions of adequate accommodation and therefore fail to satisfy the relevant provisions of regulation 10 whereby they may be treated as "service charges" which are not ineligible. From the face of the record of the appeal tribunal it is clear that it gave no consideration to the provisions of paragraph 9(2) of Schedule 3 to the Income Support (General) Regulations. Had the appeal tribunal considered that statutory provision they would then have been led to consider 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 to consider paragraph 9(2) of Schedule 3 to the Income Support (General) Regulations for income support purposes.

5. The expenditure voluntarily incurred by the claimant in respect of household insurance does not constitute a "service charge" within the meaning referred to above because it is not expenditure made in respect of the claimant's occupation of the home. The "service" obtained is not provided within the meaning referred to above because it is not provided as a result of the claimant's occupation of the home. In consequence household insurance does not constitute a service charge which is exempt from the provisions of paragraph 1(g) of Schedule 1 to the Housing Benefit (General) Regulations because it is not connected with the provisions of adequate accommodation. The relationship between the relevant housing benefit provisions and those of income support is the same as that referred to above in respect of water charges. Accordingly the appeal tribunal in failing to apply the provisions of paragraph 9(2) of Schedule 3 and in failing to give reasons which would explain why paragraph 9(2) did not apply erred in law.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are not in dispute and accordingly I am able to give (which I do in paragraph 1 of this decision) the decision which the tribunal should themselves have given. I would add that I have given careful consideration to the claimant's observations to me dated 8 February 1989. However it is my task to construe the relevant statutory provisions as I understand them and the Commissioner has no dispensing power in respect thereof.

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

(Signed) J.B. Morcom
Commissioner

Date: 15 June 1989