

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social

Case No

1. My decision is that the unanimous decision of the Hull social security appeal tribunal given on 10 March 1989 is erroneous in point of law. Accordingly I set it aside and remit the matter for rehearing.
2. The claimant, who I shall refer to as Mrs B, appeals with leave of the Commissioner, against the decision of the tribunal confirming the decision of the adjudication officer that "The claimant is living with [JB] as husband and wife", which is impossible and is obviously meant to mean that she was living with JB as his wife or that the claimant and JB were living together as husband and wife. That decision was apparently issued on 18 September 1988, although from the letter notifying Mrs B of the decision I think that is a typographical error for 18 August 1988.
3. The facts, which are not in dispute, are that Mrs B, who was then aged 70, completed form A1 on 20 June 1988, claiming income support. Humberside Social Services Department, who represent Mrs B, had previously informed the Department of Social Security, by letter dated 25 May 1988, that Mr and Mrs B were not married, cohabited from 1949 until about 1968, since when they had been leading separate lives under the same roof and Mrs B had managed financially on her own earnings and, since her retirement, on her pension.
4. The adjudication officer decided that Mr and Mrs B had "been members of the same household since 1949, when they started living together" and, having regard to R(SB) 17/81, he decided that on the balance of probabilities Mr and Mrs B were living together as husband and wife. The tribunal's first 6 paragraphs of their findings of fact is virtually a verbatim repetition of the adjudication officer's recital of the facts and they then went on to consider section 34(1) of and paragraph 3(1) of Schedule 1 to the Supplementary Benefits Act 1976 and paragraphs 7 and 9 of R(SB) 17/81. They went on to find, as a crucial fact, that -

" ... these 2 people ... are members of the same household. [Mr B] must be living in the same household as the woman and does not have any other home where he normally lives. [Mr B] returns to the home after his visits from the home."

5. An obvious error by the tribunal lies in their purporting to deal with this case under provisions of the Supplementary Benefits Act 1976 which were repealed by section 86 of and Schedule 11 to the Social Security Act 1986. The benefit in issue is and always has been income support and plainly fell to be dealt with under section 20(3) and (11) of the 1986 Act. Section 20(3) (not (5), as is submitted by the adjudication officer now concerned with the case in the submission dated 16 February 1990) is concerned with entitlement to income support (section 20(5) deals with family credit); and section 20(11) repeats the definition of an "unmarried couple" formerly in section 34(1) of the 1976 Act.

6. In addition, and of more practical significance, I agree with the submission of 16 February 1990 that the tribunal erred in treating "household" as if it meant "building". Certainly to be living together as husband and wife a couple must be living in the same household, but it is also certainly possible for there to be two separate households in the same house; indeed, as anyone with experience of matrimonial law will know, circumstances sometimes oblige divorced couples to continue to live under the same roof, albeit entirely apart and leading separate lives. As Woolf J held at page 502C of Crake v Supplementary Benefit Commission [1982] 1 All ER 498 -

" ... it is not sufficient to establish that a man and woman are living together as husband and wife, to show that they are living in the same household."

A fortiori it is necessary first to establish that they are living in the same household. In my judgment the tribunal's finding that because Mr B has no other home he "must be living in the same household" as Mrs B accords neither with the law nor the realities of everyday life.

7. The new tribunal to whom this matter is remitted will be entirely differently constituted and will hear the case afresh. They will bear in mind what I have said above and will give their decision in accordance with the facts as found by them. They will of course record their findings of fact and their reasons with sufficient particularity to satisfy the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986.

8. The claimant's appeal is allowed.

(Signed) M H Johnson
Commissioner

Date: 15 October 1991