

SUPPLEMENTARY BENEFIT

Aggregation—meaning of “living together as husband and wife” when unmarried couple are separated.

The claimant had been living with Mr. G as his wife. She claimed supplementary benefit when he moved some 200 miles away. The arrangement was said to be temporary, the intention being that she would join him at a later date when suitable accommodation which would meet her need for renal dialysis was obtained. The adjudication officer decided that her requirements and resources should be aggregated with Mr. G's on the basis that they were temporarily separated but not estranged, and that she was not entitled to benefit. On appeal the tribunal confirmed this decision. The claimant appealed to a Social Security Commissioner.

Held that:

distinguishing R(SB) 30/83, the expression “living together as husband and wife” was to be applied in its natural and ordinary meaning and not as having an extended or a special meaning when used in the context of statutory language and the claimant and Mr. G. (paragraphs 11 and 12) could not in common sense be said to be living together at the material time.

The appeal was allowed.

1. My decision is that the decision of the Manchester S.B.A.T., dated 17 May 1983, is erroneous in law and is set aside.
2. I directed an oral hearing of this appeal. At the hearing, the claimant was represented by Mr. H. Mason of the Manchester Welfare Rights Centre and the adjudication officer was represented by Mrs. A. M. Stockton of the Solicitors' Office of the Department of Health and Social Security.
3. The claimant's appeal is brought with leave granted by me on 3 July 1984, over a year after the decision has been notified to the claimant. The reason for the delay was because, owing to a mistake at the Failsworth local office, the form LT300 was filed away and was not sent to the Commissioner's Office, although the application for leave to appeal was made within the prescribed time. The matter thus becomes rather ancient through no fault of the claimant.
4. The claimant, at the date of her claim for supplementary allowance on the 11 March 1983, was a single woman who has since married the man with whom she was living as his wife. She received invalidity benefit of £39.26 weekly and mobility allowance at the weekly rate of £18.30. She had a bank overdraft of £747.02 and had the facility to increase it to £1,000. She also had a Visa credit card and savings of £29.68.
5. The claimant and the man who became her husband (referred to as “Mr. G”) were admittedly living together as husband and wife. Mr. G was transferred to London in connection with his employment and the claimant would have moved with him had it not been for the fact that, because of a kidney disorder, she was undergoing renal dialysis on a kidney machine three times weekly. The claimant stated that at that time there were no places available for her at London hospitals. She explained that their arrangement was temporary, that they were on the housing list and, when suitable accommodation with a machine installed was available, she would be joining him. In her grounds of appeal, the claimant has stated that in October 1983 she was taken seriously ill and Mr. G was transferred back to Manchester to be able to look after her. She is applying for benefit from 4 April until an unspecified date in October 1983.

6. The benefit officer applied paragraph 3(1) of Schedule 1 to the Supplementary Benefits Act 1976, as amended, and regulation 2(2) of the Supplementary Benefit (Aggregation) Regulations 1981 [SI 1981 No. 1524] (the "Aggregation Regulations") on the basis that the couple were temporarily separated but were not estranged and would resume living together when suitable housing and other arrangements could be made in London. The reasons accorded with the admitted facts but regulation 2(2) then applied to two persons who were married to each other who were not to be treated as having ceased to be members of the same household by reason of any temporary absence the one from the other. The benefit officer, however, refused a weekly supplementary allowance under the Urgent Cases Regulations. On appeal by the claimant, the appeal tribunal confirmed the refusal of a supplementary allowance with effect from 4 April 1983 and recorded their reasons as follows—

"The Tribunal agreed with the SBO's view that the appellant's requirements and resources should continue to be aggregated with those of Mr. (G) and treated as those of his. Para. 3(1) Schedule 1 is specifically applied to Reg. 2 Aggregation Regs and the Tribunal's view was that the parting of the couple, admittedly temporary although likely to be prolonged, did not stop them being an "unmarried couple" within S 34 of the Act. Their intention was to continue to live together and only the special and unfortunate lack of suitable accommodation and a dialysis machine made their separation a long one. It was nevertheless temporary."

7. Regulation 2 of the Aggregation Regulations at the material time applied to married couples and no ingenuity of interpretation can make it applicable to unmarried couples who are temporarily absent the one from the other. That was the first ground of appeal which is conceded by the adjudication officer dealing with the appeal. I agree that regulation 2 of the said regulations has no application to the present case. The adjudication officer, in paragraph 7 of his submission on the appeal, has submitted the reasons why it is not applicable, which is accepted by the claimant's representative. A new regulation 2 of the Aggregation Regulations has been substituted by regulation 2(4) of S.I. 1984 No. 938 as from 6 August 1984, which applies that regulation both to married and unmarried couples.

8. The relevant facts are not in dispute. The tribunal, in their findings of fact and reasons, decided that the temporary separation of the couple did not break the continuity of their living together as husband and wife. Decision R(SB) 30/83, on which the adjudication officer relies, deals with the meaning of "home" where there is more than one unit of accommodation and with the temporary absences of couples living together as husband and wife. In that case, the claimant, who was unemployed, lived in rented accommodation. His fiancée was a university student who lived with the claimant in his accommodation during vacation periods but rented a bed-sitting room adjacent to the university during term times because it was impracticable to travel daily from the claimant's accommodation. That decision dealt with plurality of units of "the home" or living accommodation and decided that "the home" does not extend to comprise a plurality of units of accommodation in different locations, but that was not intended to prejudge cases, for example, of two adjacent but physically separate cottages. In paragraphs 4 and 5, the learned Commissioner dealt with couples living together as husband and wife and referred to established case-law authority. He concluded in that case that the concept of living together as husband and wife involves living together in the same household while not excepting temporary absences.

9. The claimant's representative submitted that the facts of Decision R(SB) 30/83 are clearly distinguishable from those of the present case and that is so. The Commissioner in that case was concerned primarily with the meaning of "the home" in relation to "housing requirements" in the Supplementary Benefit (Requirements) Regulations 1980. Nevertheless, consideration of whether the claimant and his fiancée were living together as husband and wife required consideration in relation to "the home". Mr. Mason contended that, after the claimant and Mr. G separated, there was no common or shared home, that the claimant's former partner had moved to a new home in London with no intention ever to return to live at the claimant's address, and that the claimant's address could no longer be considered to be his home and he was not temporarily absent from it. It is contended, on the other hand, that the claimant's home remained unchanged: she had never lived at her ex-partner's London home, could not do so and had no intention of moving to London to any address until certain matters outside her control were settled. The submission continued that the pre-conditions for her moving to London were such that no date could be set for the move, the intervening period was likely to be a long one and there was no common home so that two unmarried people, whatever their previous relationship, could not be living together as husband and wife at a time when there was no home common to both. Mr. Mason referred to Decisions R(SB) 17/81 and R(G) 3/81. He said that it was demonstrated, in paragraph 18(3) of Decision R(SB) 30/83, that the learned Commissioner did not accept that the claimant's fiancée's bed-sitting room could be regarded as the home of the claimant and his fiancée as an unmarried couple because he never lived there. Likewise, the claimant in the present case never lived at Mr. G's home in London and was never likely to live there. He had a separate household which she did not share. She had no right to maintenance from him and his absence was indefinite. He submitted that their relationship was that of an engaged couple. He said that the claimant had not claimed, and did not claim, that she would be entitled under the Urgent Cases Regulations and he took no point that the tribunal did not deal with those regulations. He submitted that there was no dispute as to the relevant facts and asked me to reverse the tribunal's decision as a matter of law.

10. Mrs. Stockton said that *prima facie* she would concede that people living 200 miles apart are not living together but mere distance may not be a bar. She submitted that the tribunal had not made findings on all the facts such as whether Mr. G had left any of his belongings at the claimant's home. She said that the whole of their relationship had to be considered and that the Department of Health and Social Security should take a neutral stand. She asked that the appeal be remitted to another tribunal to find further facts.

11. The case law as to whether a man and a woman are living together as husband and wife is well settled. Decision R(G) 3/71 dealt with the criteria to be considered when such a relationship is in issue. At that time the statutory language was "cohabiting with a man as his wife" but the change to "living together as husband and wife" is synonymous. Decision R(G) 3/81 applied the expression "living together as husband and wife" in the supplementary benefits legislation to the same effect as the corresponding expression in the proviso to section 26(3) of the Social Security Act 1975. Decision R(SB) 17/81 decided that the same essential approach was being applied for both supplementary benefit and national insurance benefit purposes. In my judgment, the expression is to be applied in its natural and ordinary meaning and not as having a special meaning in the context of statutory language. There may be circumstances of absence

which may not sever the relationship of the parties, such as temporary absences of short duration owing to employment or for business reasons, a period as an in-patient in hospital, a holiday or a visit to relatives. On the other hand, there may be circumstances in which a man and a woman living in the same household are not living together as husband and wife (see, for example, *Crake, Butterworth v Supplementary Benefits Commission* [1982] 1 All ER 498, Woolf. J. at p502, f—h). In the ordinary course when a man and a woman cease to live together as husband and wife in the same accommodation, the relationship ceases. I respectfully agree with Decision R(SB) 30/83 but it is distinguishable from the present case. It would, I think, be wrong if adjudication officers and appeal tribunals were to attach a gloss to the expression on the basis of a Commissioner's decision which could be interpreted as extending the meaning or giving it a special meaning. I do not agree with Mrs. Stockton that such matters as to whether the man or the woman have left belongings in one home or another is a relevant consideration. The supplementary benefit scheme is complicated without adding to the complication by giving a special or artificial meaning to ordinary words and expressions which are not understood in ordinary parlance.

12. The present case is perhaps exceptional in that the parties intended to resume living together when practicable and no doubt intended to be married, as subsequently happened. The claimant has been commendably frank. In my view, Mr. Mason's submission that the parties should be regarded as a couple engaged to be married to each other is apposite. I am not prepared to extend the legal meaning of the expression "living together as husband and wife" to the circumstances of this case. In common sense they were not living together at the material time. In the circumstances it is expedient that I should give the decision the tribunal should have given and I decide that the claimant and Mr. G were not living together as husband and wife and that the decision of the tribunal is erroneous in law in that there was no evidence to support a finding that they were so living at all material times (see Decisions R(I) 14/75 and R(SB) 11/83, paragraph 13). It will therefore be for the adjudication officer to determine the requirements and resources of the claimant for the period of the claim.

13. The claimant's appeal is allowed.

(Signed) J. S. Watson
Commissioner
