

SUPPLEMENTARY BENEFIT

Normal requirements—Board and lodging—close relative

The claimant paid £23 a week for board and lodging to Mrs. N. who was his half-sister by birth. The adjudication officer interpreted the definition of close relative as including half-sister, and decided to exclude the claimant from boarder status because his accommodation and meals were provided by a close relative.

The claimant appealed. The tribunal found that the claimant had been adopted as a child, decided that there was no legal relationship between the claimant and Mrs. N., that she was not a close relative of the claimant and that therefore the claimant was entitled to be treated as a boarder. The adjudication officer appealed to a social security Commissioner.

Held that:

1. on legal adoption, an adopted child's parents are his adoptive parents and not his natural parents; the children of his natural parents cease to be his brothers or sisters. It is the legal not the blood relationship which determines whether a person is a close relative (para 9);
2. in response to the tribunal's request for clarification, in regulation 2(1) the meaning of 'sister' includes half-sister, and the meaning of 'brother' includes half-brother (para 5).

The appeal was dismissed.

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 9 June 1986 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the adjudication officer, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 9 June 1986.

3. The facts of this case are simple and not in dispute. The claimant, who was in receipt of supplementary benefit, made a statement on 22 March 1986 to the effect that he was living as a boarder with his sister, Mrs. N. and that he paid £23 weekly for his board and lodging. The adjudication officer awarded supplementary benefit at the rate appropriate to a non-householder. On 4 April 1986 the claimant appealed to the tribunal, and in his letter of appeal declared that Mrs. N. was his half-sister. He contended that, as such, Mrs. N. was not a close relative within the definition contained in regulation 2(1) of the Supplementary Benefit (Requirements) Regulations 1983 [S.I. 1983 No 1399]. Accordingly, he was not caught by regulation 9(14) and was entitled to be treated as a boarder.

4. The tribunal found in the claimant's favour. Whilst they left open the matter of whether or not a half-sister could properly be regarded as a close relative within regulation 2(1), they decided the appeal on the basis that the claimant had been legally adopted when he was five or six years old and therefore there was no legal relationship subsisting between him and Mrs. N.

5. Although it was unnecessary to their decision, the tribunal expressed doubts as to whether a half-sister fell within the definition of close relative contained in regulation 2(1) of the Requirements Regulations, and asked for clarification on this point. Accordingly, it is appropriate that I consider this aspect of the matter. Close relatives are defined in regulation 2(1) as meaning "parent, son, daughter, step-parent, step-son, step-daughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother, sister, brother-in-law, or sister-in-law". It will be seen that the definition embraces persons who are linked only by marriage, and have no blood connection. This in itself suggests that mere genetic affinity is not of paramount importance and that a relationship will not be taken out of the definition in regulation 2(1), simply by its being of the half-blood rather than the whole blood. But, in any event, in my judgment, the word sister (or for that matter brother) includes a half-sister (or half-brother). Where Miss A and Miss B are children of a common parent, they are in everyday parlance regarded as sisters, and the point that they are only of the half-blood is something which is not normally mentioned, unless, of course, it is of importance. In the definition in regulation 2(1) the generic term "sister" (and "brother") is used, and no attempt is made to confine it to a person who is of the whole blood. In my view, if the draftsman had thought that it was important to distinguish between a full sister and a half-sister (or a full brother and a half-brother) and it had been intended to exclude those of the half-blood, express provision would have been made.

6. However, in the present case the above problem does not arise in any event, the claimant being legally adopted when he was five or six, and as a result there being in law no continuing relationship with Mrs. N. This is clear from the provisions of the Children Act 1975 (as amended by the Legitimacy Act 1976, section 11(2) and Schedule 2).

7. Section 8(3) and (9) provides as follows:—

"8.— (3) The making of the order [an adoption order] operates to extinguish—

- (a) any parental right or duty relating to the child which—
 - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order...
 - (9) Schedule 1 contains for England and Wales further provisions about the effect of adoption
8. Paragraph 3 of Schedule 1 to the above Act reads as follows:—
- “3.— (1) An adopted child shall be treated in law—
- (a) where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized);
 - (b) in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).
- (2) An adopted child shall be treated in law as if he were not the child of any person other than the adopters or adopter.
- (3) ...
- (4) This paragraph has effect—
- (a) in the case of an adoption before 1 January 1976, from that date, and
 - (b) in the case of any other adoption, from the date of the adoption.
- (5) Subject to the provisions of this Part, this paragraph applies for the construction of enactments or instruments passed or made before the adoption or later, and so applies subject to any contrary indication.
- (6) Subject to the provisions of this Part, this paragraph has effect as respects things done, or events occurring, after the adoption, or after 31 December 1975, whichever is the later.”

9. Now, it is clear from the above provisions that, as at the date of claim, the claimant, having been legally adopted, was the child of his adoptive parents and had ceased to be the child of his natural parents. It follows that those who were connected with him by reason of his natural parents had ceased in law to have any such connection. Indeed, the whole philosophy lying behind adoption is to substitute for the claimant's natural family a completely new family. The adopted child will acquire through his adoptive parents new brothers and/or sisters, if such adoptive parents have children, and will cease to have as his brothers and/or sisters the children, if any, of his natural parents. In his submissions the adjudication officer now concerned suggests that I should only take into account blood relationships and have no regard for any new purely legal relationships. I see no justification for any such approach. What constitutes a close relative is a person defined in regulation 2(1), and whether a person falls within such definition depends upon his *legal* status.

10. Accordingly, the tribunal applied the correct principles and were entitled to reach the conclusion that the claimant was a boarder. There

would appear to have been no suggestion that the accommodation and meals were being provided other than on a commercial basis.

11. It follows from this that the tribunal did not err in point of law, and accordingly I dismiss this appeal.

(Signed) D. G. Rice
Commissioner
