SUPPLEMENTARY BENEFIT

**Aggregation—"in the care of a local authority".**

The claimant's son was severely mentally handicapped and lived from Monday to Friday in a special school, funded and staffed by the local authority. He was not subject to any type of Order made by the Courts. The supplementary benefit officer decided that the child was in the care of the local authority and that supplementary benefit was only payable for him for the period he was at home at the weekend. On appeal, the tribunal decided that the child should not be deemed to be in the care of the local authority. The supplementary benefit officer appealed to a Social Security Commissioner.

*Held* that:

1. in regulation 4(2)(d)(i) of the Supplementary Benefit (Aggregation) Regulations 1981, the words "in the care of a local authority" are to be given their ordinary literal and wide meaning. The provisions of that regulation are not to be read as subject to, or in the technical sense given to them by, the Child Care Act 1980 the subject matter of which was different from that of social security legislation (paragraph 7);

2. dictionary aid can be sought in construing statutory provisions (see the observations of Cozens-Hardy MR in *Camden v I. R.C.* [1914] 1KB 641, 648) (paragraph 7);

3. explanatory notes issued by Government departments regarding the working of an Act are inadmissable for the purposes of construing the Act (see *Libertys v I.R.C.* [1924] 12 Tax Cases 630 and *London County Council v Central Land Board* [1958] 3 All E.R. 676) (paragraph 7);

4. under regulation 4(3) of the Aggregation Regulations, the child was to be treated as a member of the claimant's household during the period he lived with him, ie Friday to Monday—days of travel being treated as days home (paragraph 8).

The appeal was allowed.

1. My decision is that the decision of the North Tyne Supplementary Benefit Appeal Tribunal dated 17 December 1982 is erroneous in point of law. Accordingly I set it aside. I am satisfied that it is expedient in the circumstances to give the decision the tribunal should have given. Accordingly my decision is to award supplementary allowance of £87.71 determined and paid weekly from the prescribed pay day, Monday, in week commencing 20 September 1982; rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40.

2. This is an appeal by the supplementary benefit officer from the unanimous decision of the appeal tribunal "that the supplementary benefit officer's determination is revised, that is [the claimant's son] is not deemed to be in the care of the local authority" reversing the decision of the benefit officer issued on 21 September 1982 "Supplementary Allowance of £87.71 determined and paid weekly from the prescribed pay day Monday in week commencing 20 9 82".

3. The facts may be stated as follows. The claimant lives with his wife Violet and their three children Jane, Daniel and Sean. Their fourth child Linton aged 10 at the time under consideration is severely mentally handicapped and from Monday to Friday lives in a special school, B_____ School, funded and staffed by the local authority. The benefit officer decided that Linton was in the care of the local authority and supplementary benefit was only payable for him for the period when he was at home at the weekend. The benefit officer appealed with my leave, against the decision of the appeal tribunal reversing his decision, and requested an oral hearing of the appeal. To this request I acceded and accordingly held an oral hearing on 3 February 1984. Mr. E. O. F. Stocker represented the

supplementary benefit officer. Mr. N. Heuchan of the Meadow Well Community Rights Centre represented the claimant. To both of them I am indebted. The claimant was not present.

4. The relevant statutory provisions are the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) Schedule 1, paragraph 3(2) and the Supplementary Benefit (Aggregation) Regulations 1981, regulations 3 and 4. The regulations so far as relevant provide as follows:

"Circumstances in which a person is to be treated as being responsible for another person.

3.—(1) This regulation shall apply for the purposes of paragraph 3(2) of Schedule 1 to the Act (aggregation of requirements and resources of dependants).

(2) A claimant (in this regulation referred to as A) shall be treated as responsible for another person (in this regulation referred to as B) where—

(a) B is a child or a pupil or a person to whom paragraph (5) applies;

(b) B is a member of the same household as A; and

(c) A and B are not a married or unmarried couple.

(3) ....

(4) ....

(5) ....

Dependants who are not to be treated as members of the household.

4.—(1) This regulation shall apply for the purposes of pargraph 3(2) of Schedule 1 to the Act (aggregation of requirements and resources of dependants) where—

(a) a claimant (in this regulation referred to as A) is responsible for and would, but for this regulation, be a member of the same household as another person (in this regulation referred to as B); and

(b) by virtue of that paragraph B's requirements and resources would, but for this regulation, fall to be aggregated with and treated as A's.

(2) B shall be treated as not being a member of the same household as A where—

(a) B has been absent from Great Britain for a continuous period of more than 4 weeks;

(b) B is a prisoner;

(c) B has been a patient or has been in residential accommodation by virtue of any mental disorder or physical or mental handicap or illness for a continuous period of more than 12 weeks and the benefit officer is satisfied that neither A nor any other member of A's household maintains regular contact with him, by visiting him or otherwise;

(d) B is not living with A and—

(i) he is in the care of a local authority, or

(ii) he is maintained under a legally enforceable obligation by a person other than A, or

(iii) A is not treated as a person responsible for him for the purposes of section 3 of the Child Benefit Act

(meaning of "person responsible for child" for purposes of entitlement to child benefit);

(e) B is a child or pupil or person to whom regulation 3(5) applies who is boarded out with A by a local authority or voluntary organisation within the meaning of the Child Care Act 1980;

(f) B is a child or pupil or person to whom regulation 3(5) applies who is placed in the care and possession of A and whom A proposes to adopt.

(3) In any case to which paragraph (2)(a) to (d) applies, B shall be treated as a member of the same household as A for any period during which he is living with A."

The question at issue before me is one of interpretation of regulation 4(2)(d)(i) of the Supplementary Benefit (Aggregation) Regulations 1981 set out above, that is whether Linton was in the care of the local authority when he was residing at the special school, namely B_____ School.

5. I set out in this paragraph the submissions made by Mr. Stocker at the hearing. Mr. Stocker adopted the submission of the benefit officer dated 3 March 1983. He read paragraph 2 of the submission setting out the facts. Mr. Stocker then referred me to the record of the decision and the reasons for the decision of the appeal tribunal. As to their findings of fact he submitted that there was no determination made by them under what statutory power the special school was established or under what power the local authority had care of the child. Mr. Stocker referred me to a letter dated 15 December 1982 from the North Tyneside Social Services Department stating that Linton is "not subject to any type of Order made by the Courts". The final paragraph of the letter states that "[the claimant and his wife] are in receipt of child benefit and attendance allowance for Linton, these benefits not being payable when a child is in local authority care". Mr. Stocker submitted that the regulations dealing with child benefit and attendance allowance are more detailed and there are no such detailed provisions applicable under the Regulations referred to in paragraph 4 above. In reference to regulation 3(2)(b) of the Supplementary Benefit (Aggregation) Regulations 1981 quoted in paragraph 4 above Mr. Stocker referred me to the reported decision of Woolf J. in *England and England v Secretary of State for Social Services,* [1982] 3 F.L.R. 222 as to the meaning of the above sub-paragraph. In particular he referred me to the conclusion of Woolf J.'s judgment which reads as follows:

> "By using the word 'household' instead of providing a requirement of 'living with', Parliament intended that in appropriate circumstances, if a sufficient tie remained, children should still qualify even if away from home as long as the separation was temporary."

Mr. Stocker submitted that Linton was a member of the same household as his parents even though he was away 5 days a week. Turning to regulation 4(1)(a) of the Supplementary Benefit (Aggregation) Regulations 1981 Mr. Stocker submitted that but for this regulation Linton would be a member of the same household. Mr. Stocker referred to regulation 4(2)(c) and submitted that this supported the claimant. Mr. Stocker then referred me to regulation 4(2)(d)(i) and (ii) and (e). As to paragraph 4(3) set out in paragraph 4 of my decision above Mr. Stocker submitted that this was a curious provision but it means that even if a person is disentitled by the preceding provisions nevertheless there is an entitlement during the "living with" period and that that was the authority for awarding the benefit here for part of the week. Mr. Stocker referred me to the definition of "care" in the current edition of the Shorter Oxford English Dictionary which is as

follows "Charge, oversight with a view to protection, preservation or guidance" Mr. Stocker referred me to the Child Care Act 1980 (replacing the Children's Act 1948) and stated that the phrase "in the care of the local authority" was commonly used in connection with child care proceedings. Mr. Stocker distinguished between the child care legislation and supplementary benefit legislation—in regard to supplementary benefit one is talking about the means of living, food and lodging—in that context there was no reason to cut down the words in paragraph 4(2)(d)(i). On a literal interpretation Linton is in the care of the local authority within this regulation. Mr. Stocker referred me to the decision of the Commissioner in R(A) 3/73. That case however refers to the more detailed statutory provisions for attendance allowance. "In care", so submitted Mr. Stocker, properly extends to this case the fact of care is involved. In regard to the child care legislation Mr. Stocker submitted that a child is received in care or ordered to be in care—the legislation is not confined to cases where a child is taken away by force. In concluding his opening address to me Mr. Stocker stated he placed no reliance on the handbook, that is the Supplementary Benefits Handbook page 30, paragraph 2.7 at 3 and referred me to the Supplementary Benefit (Requirements) Regulations 1981 as amended in particular regulation 9(15) for the proposition that certain more recent statutory provisions are more specific.

6. In this paragraph I refer to the submissions made at the hearing by Mr. Heuchan. Mr. Heuchan referred me to regulation 4(2)(d)(i) of the Supplementary Benefit (Aggregation) Regulations 1981 and submitted that in other social security legislation Parliament has attempted to define the words "in the care of a local authority" and that social security legislation does exclude children under similar provisions to that contained in paragraph 4(2)(d)(i) in certain circumstances. Mr. Heuchan referred me to regulation 16(5) of the Child Benefit (General) Regulations 1976 and submitted that this indicates the sense of the Aggregation Regulations. In reference to regulation 4(2)(d)(i) in a literal sense Linton is, so submitted Mr. Heuchan, in the care of the local authority but that was only in the sense of receiving a special education—he was not there under any Court Order. He was there to be taught social skills and both his head teacher in a letter dated 14 December 1982 and the local social services department did not consider he was in care under the above quoted regulation. The phrase "in the care of a local authority" should, so submitted Mr. Heuchan, be applied only where there is a Court Order or similar provision and where there was no such provision supplementary benefit should continue to be paid. If the words were taken in their literal sense it would prevent children whose parents were in receipt of supplementary benefit enjoying a range of experience they might not have if benefit is to be stopped—in this regard Mr. Heuchan referred to school activities for example taking pupils away from their home area to another part of the country for periods of up to a fortnight at a time. On a literal construction of the Aggregation Regulations Mr. Heuchan submitted that parents would lose benefit for their children in such circumstances.

7. In reply Mr. Stocker submitted that I could make the decision the appeal tribunal should have made myself, although there was no finding of fact as to under what statutory provision the special school was established. I accept Mr. Stocker's submissions. The words "in the care of the local authority" should be given their ordinary literal and wide meaning. I see no grounds to read the provision of regulation 4(2)(d)(i) as subject to the provisions of the Child Care Act 1980 or in the technical sense they are used in the Child Care Act 1980. The Child Care Act 1980 and the Supplementary Benefit Regulations deal with different subject matter. In argument I indicated that an earlier statute may help where it is *in pari*

*materia* or being an earlier statute not precisely *in pari materia* but in some way relates to or affects the same subject matter. Lord Shaw of Dunfermline giving the judgment of the Privy Council in *Lennon v Gibson and Howes Ltd* [1919] AC 709 at 714 states "Where legislation has given words a statutory definition in one statute and has used the same words in a similar connection in a later statute dealing with the same subject matter it may be presumed in the absence of any context indicating a contrary intention that the same meaning attaches to the words in the later as is given to them in the earlier statute". However the Child Care Act 1980 (and its 1948 predecessor) on the one hand and the supplementary benefit legislation with its numerous regulations on the other hand are not "the same subject matter". I would add two other matters. First (as I was referred to the dictionary definition of "care" here) the observations of Cozens-Hardy MR in *Camden v I.R.C.* [1914] 1 K.B. 641 at 648 are authority for the proposition that dictionary aid can be sought in construing statutory provisions. Secondly it has long been established that explanatory notes regarding the working of an Act issued by Government departments for the assistance of their officials are inadmissible for the purposes of construing the Act. I need only refer in support of this to two decisions of the Court of Appeal those of *Libertys v I.R.C.* [1924] 12 Tax Cases 630 and *London County Council v Central Land Board* [1958] 3 All E.R. 676. Indeed the current Supplementary Benefits Handbook (Revised 1983) expressly states "It is not, however, a complete and authoritative statement of the law".

8. In accordance with my jurisdiction set out in rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40 my decision is as set out in paragraph 1 of this decision. I would add that the effect of paragraph (3) of regulation 4 set out in paragraph 4 of this decision is that Linton shall be treated as a member of his father's household for any period during which he lives with his father and therefore four-sevenths of Linton's requirements are payable for the weekends when he is home that is from Friday to Monday—days of travel being treated as days home.

9. Accordingly the benefit officer's appeal is allowed.

(Signed) J. B. Morcom
Commissioner