Requirements—whether a single claimant can be a householder on commencing a tenancy of a home not yet occupied as the home.

The claimant, a single parent with a one year old child and in receipt of a supplementary allowance, lived as a member of her parent's household. On 23 April 1984 the claimant entered upon a tenancy of a local authority accommodation and became liable to pay rent in respect of that accommodation. The claimant was however unable to enter into actual occupation of the accommodation until 7 May 1984. The adjudication officer refused to treat the claimant as a householder until she occupied the new accommodation. The claimant appealed to a Social Security Appeal Tribunal which allowed her appeal. The adjudication officer appealed to a Social Security Commissioner. The appeal was heard by a Tribunal of Commissioners.

Held by Mr. Bowen QC and Mr. Edwards-Jones QC, Mr. Goodman dissenting that:

1. the word "householder" is defined by paragraph 2(3) of Schedule 1 to the Act, and the prescribed conditions mentioned therein are those provided by regulation 5(6) of the Supplementary Benefit (Requirements) Regulations (paragraph 3);

2. the meaning of "home" unless the context requires is prescribed by regulation 2(1) of the Requirements Regulations, and the material phrase for consideration in this appeal was "normally occupied" (paragraphs 4 and 5);

3. a person could be said under the general law to occupy premises only where he physically resided there, albeit he also resided in other accommodation. *Herbert v Byrne* [1964] 1 WLR 519 and *Elliott v Camus* 66 TLR referred to and applied (paragraph 5);

4. in the context of supplementary benefit, with the exception of express legislative provision, it is not possible for a person to have more than one "home" at a time R(SB)30/83 applied (paragraph 6);

5. that the words "other than regulation 23 (non-householder's contribution)" in regulation 14(5) of the Requirements Regulations (a provision excepting from the general rule that housing requirements will be met in respect only of a single home) did not exclude a "non-householder" from benefiting from the provisions of regulation 14(5) (CSB 292/1983 and CSB 399/1983 not followed) (paragraph 9);

6. the words "retain the accommodation" in regulation 14(4) of the Requirements Regulations did not cover a situation where a person sought to secure accommodation in advance by paying a retainer or entering into commitment to it (CSB 292/1983 and CSB 399/1983 disapproved). Actual residence was required (paragraphs 11 and 12);

7. that upon the proper construction of regulation 14(2), a person who has at a given time a housing requirement constituted by a non-householder's contribution is precluded from having any other housing requirement (paragraph 15).

The appeal was allowed.

1. (1) This is an appeal by an adjudication officer from the unanimous decision dated 10 May 1985 of a social security appeal tribunal ("the tribunal") brought by leave of a tribunal chairman and upon the contention that the tribunal's decision was given in error of law. By their decision the tribunal reversed the decision of an adjudication officer issued on 23 January 1985 refusing to revise the claimant's entitlement to a supplementary allowance of £23.15 determined and paid from 23 April 1984 to 6 May 1984, the tribunal holding that from 23 April 1984 to 6 May 1984 61 R-A- was the claimant's home for the purposes of Regulations 2 and 5 of the Requirements Regulations and that the claimant's entitlement to supplementary allowance should be revised on that basis.

(2) The adjudication officer's appeal was directed by the Chief Commissioner to be heard by a Tribunal of Commissioners and was the subject of an oral hearing before us on 5 November 1985 at which the claimant was not present but was represented by Ms. D. Jones, a welfare rights officer from the city in which the claimant lives, and the adjudication officer was represented by Mr. C. A. M. E. d'Eca of the Solicitor's Office, Department of Health and Social Security. We are indebted to Ms. Jones and Mr. d'Eca for their assistance to us at the hearing.

(3) The decision of the majority of the Tribunal of Commissioners, which will have effect as the decision of that Tribunal, is that the appeal be allowed, that the decision of the tribunal be reversed, and that the adjudication officer's decision be reinstated. Such majority decision stems from the conclusion of the majority of the Tribunal of Commissioners that the adjudication officer's decision was correct in law. That majority comprises Commissioners Bowen and Edwards-Jones, whose reasons for decision next follow a summary of the material facts, those being not in dispute between the parties or as between the majority and minority of the Tribunal of Commissioners. The views of the dissenting Commissioner, Commissioner Goodman, then follow, commencing at paragraph 16.

2. (1) The claimant, a young single woman with a one year old son, was prior to 7 May 1984 living in her parents' home, but as from 23 April 1984 obtained a tenancy of a local authority flat with a view to making her own independent home there. She did not in fact live there until 7 May 1984, and for the purposes of the present appeal we are, though the tribunal have made no express finding as to this, prepared to infer in her favour that there were practical grounds which rendered "unavoidable" the delay intermediately between her liability for rent commencing and her actual move to the flat as her home. The claimant was at all material times in receipt of supplementary allowance and at all material times down to 6 May 1984 the amount of such allowance reflected attribution to her of the normal and housing requirements of a "non-householder". She had on 17 April 1984 notified the Department as to her having obtained the tenancy of 61 R-A- and an adjudication officer's decision—not the one in issue upon the present appeal—reviewed an antecedent award on the basis we have just indicated and made an award reflecting the treatment of her housing requirements as being those of a householder as from 7 May 1984.

(2) The adjudication officer's decision issued on 23 January 1985 was given in response to a request instituted on 19 December 1984 by the claimant's representative, on the claimant's behalf, for a review of the claimant's award of benefit over the period from 23 April 1984 to 6 May 1984, which award reflected a continuing basis of assessment of the claimant as a non-householder, with only such housing requirement as attended that status—whereas, it was contended as the grounds for review, a proper determination should have recognized an entitlement on her part to be treated as a householder over that interim period (and thereby enabled, via the machinery in point under the Housing Benefits Act 1982, to obtain housing benefit in respect of her rent liability in reference to the flat for the period after she became liable to pay the rent but before actually moving into the flat fully

and making her home there). We would add as to that, and for clarity, that had the adjudication officer's material decision accorded the claimant "householder status" she would have then qualified for a certificate from the Secretary of State under regulation 9 of the Housing Benefit Regulation 1982 as a person entitled to "qualifying supplementary benefit" within the meaning of regulation 2 of those regulations.

3. (1) The word "householder" is defined by paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 as meaning:—

> "A person who is not one of a married or unmarried couple but who satisfies prescribed conditions with respect to living accommodation."

(2) The "prescribed conditions" are to be found in regulation 5(6) of the Supplementary Benefit (Requirements) Regulations 1983 ("the Requirements Regulations") and are materially as follows:—

> "*Normal requirements of... householders*
>
> 5. (6) For the purposes of the table "[which is to be found in paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976] "A householder is a single claimant who—
>
> (a) is responsible for housing expenditure or, if the household incurs no such expenditure, is the member of the household with major control over household expenditure;
>
> (b) does not share such responsibility or control with another member of the same household; and
>
> (c) is either not absent from the home or if absent is absent only—
>
> (i) otherwise than as a student on normal vacation, and
>
> (ii) for a period which has not yet continued for more than 13 weeks."

Regulation 5(6)(a) was amended (by S.I. 1984 No. 1102) as from 6 August 1984 (i.e. after the period in question in this appeal) by adding at the beginning the words "in respect of a home or, as the case may be, a household in Great Britain". But we do not consider that the addition of these words would make any difference to the effect of our decision or the bases of reasoning by which the majority and the minority respectively have arrived at their conclusions, since although the words "a home" had been added, the words "the home" already existed in paragraph (c) of regulation 5(6); and the concept of "home" would on that account (and in the view of us all) have to be read into regulation 5(6)(a) even before 6 August 1984.

4. (1) In respect of the new local authority flat of which she had obtained a tenancy but into which she had not yet moved the claimant clearly satisfied all the requirements of regulation 5(6) if—but only if—she could establish that the new flat was at the relevant time her "home". For if that was established notwithstanding that she had not yet moved into it, she was undoubtedly absent from it, and could fairly be said to be absent from it "only...for a period which has not yet continued for more than 13 weeks" (regulation 5(6)(c)(ii)); and she was at all material times responsible for expenditure in connection with the flat and did not

share that responsibility with any other member of the household (which consisted solely of herself and her baby son).

(2) The first question which therefore falls for determination is whether during the period over which she had the tenancy of the flat but had not yet moved into it (i.e. from 23 April 1984 to 6 May 1984) the claimant can show that the flat was her "home". Regulation 2(1) of the Requirements Regulations prescribes a meaning for "the home"—"unless the context otherwise requires"—, and that is:—

> "The accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home..."

Can it be properly be said of the claimant that as from the moment of taking the tenancy on 23 April 1984 the flat was "normally occupied by [the claimant] as [her] home"?

5. It is well established under the general law that a person may properly be said to *occupy* a dwelling house etc without actually physically residing therein. But the word "occupied" is only part of the definition of "the home" in regulation 2(1). That definition also requires that the accommodation must be "*normally* occupied...as [the claimant's] *home*". Those additional elements of the definition were considered by the learned Commissioner in the decision on Commissioner's Files: CSB 292/1983 and CSB 399/1983 (unreported) where at paragraph 7 the learned Commissioner stated:—

> "I was not referred ... to any authorities on the meaning of 'occupied ... as their home', but I have since the hearing read one or two cases under the Rent Acts, in which the question whether a person is occupying premises at his home (not by way of interpretation of the provisions of any enactment) has been considered. In *Herbert v. Byrne* [1964] 1 W.L.R. 519 a person who had acquired the end of a long lease went and slept in the premises at night for about a month while continuing in other respects to live with his family in other premises. It was his intention to move the whole family into the new premises when ready. The question as viewed by the Court was whether at the end of the 4 week period the person concerned was occupying the new premises as his home. It was held that he was. I think that the view was taken that he satisfied the 'as his home' part of the matter by reason of the fact that he intended shortly to make it his home, but that it was only on account of his sleeping there that he satisfied the 'occupying' part of the matter. At all events the Court seemingly approved the earlier decision in *Elliott v. Camus* referred to in 66 T.L.R. (Part 2) at page 375, where it concerned a clergyman who, when about to retire, acquired a lease and put some furniture into the premises in order that they might be ready when he wanted to move into them as his home, and he was not regarded as occupying the premises by putting [in] the furniture. If I apply these 2 decisions I should hold that the new premises acquired by the claimant [and a friend] to be their home was their home in the ordinary meaning of the term before they moved in, but they were not then occupying them as their home in the terms of the definition above cited."

We approve the learned Commissioner's ruling on that point and indeed similar rulings by Commissioners on Commissioner's Files: CSB 84/85 and CSB 380/85.

6. However, we do not consider that in the context of supplementary benefits it is possible for a claimant to have more than one "home" at a

time—save where the Requirements Regulations prescribe (as we will later indicate) limited exceptions to what is by necessary inference the general rule. See also the Commissioner's decision R(SB)30/83.

7. (1) Until, with effect from 7 May 1984, the claimant had moved into the flat and was actually living there as her home, her home was in our judgment at the home of her parents, in respect of her residing at which she was being correctly assessed for the purposes of her supplementary allowance as having as a housing requirement "non-householder's contribution" under regulation 23 of the Requirements Regulations, to which we will refer further below. And we do not consider that it is in relevant context possible for premises to be "normally occupied as [a claimant's] home" (regulation 2(1)) if they are premises in which the claimant has never actually resided. We do not accept that the context of regulation 5 or the bearing upon that context of any other provision of the supplementary benefits legislation requires a different meaning to be given to "the home" from that defined in regulation 2(1). In particular, no such conclusion falls properly to be derived from a recognition, correct enough in itself, that provision is made, by regulations 10 and 14 respectively of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] as amended, for the award of single payments for essential furniture and household equipment for recently tenanted premises and for a single payment to be made in respect of a deposit on account of advance rent. So also as to regulation 14(5) of the Requirements Regulations, which—contrary to the normal rule—allows a person to be regarded as having 2 homes for a limited overlap of 4 weeks when "moving home". See also decision R(SB)11/83 as to the Requirements Regulations bearing upon an existing state of fact at material times when determining whether or not a claimant satisfies stipulated qualifying requirements.

8. We have given anxious consideration to the provisions of regulation 14(5), and in particular regulation 14(5)(b) of the Requirements Regulations (regulation 14(5) being that which provides for the limited overlap on changing home to which we have already briefly referred) because, upon a broad appraisal of the circumstances of the claimant relevant to her request for review and revision of the decision of the adjudication officer which had the effect of denying her any assistance for the liability running against her in respect of the flat before she moved into it as her home, the claimant was quite clearly "moving home" from her home with her parents to a home of her own. And, we will not conceal, we would have welcomed as the product of our exploration and evaluation of that provision our arrival at a conclusion in her favour, since that well accords with commonsense. However, in the event we find ourselves constrained to hold that regulation 14(5) affords her no practical assistance.

9. Regulation 14(5) materially provides as follows:—

"Housing Requirements

14. (5) For the purposes of this Part of these regulations other than regulation 23 (non-householder's contribution)—

(a) ...

(b) Where the [claimant] changes [her] home, 'the home' shall include both the old and the new home—

(i) for a period of overlap not exceeding 4 weeks where the overlap of liability is unavoidable; or

(ii) where this is reasonable because the old home was left through fear of domestic violence."

[It can conveniently here be interposed that the provisions of (ii) last above have no bearing in the circumstances of the present case]. As we have already indicated we are prepared for the purposes of this appeal to take in our stride an inference in the claimant's favour that the "overlap" which would fall to be recognised, if the claimant could bring herself within regulation 14(5), was unavoidable. There are, however, substantial problems of construction in construing regulation 14(5) in a sense favourable to the claimant. Before coming to the crux of those it is, however, convenient to discard as ill-founded one contention advanced before us—and indeed advanced as common ground between Ms. Jones and Mr. d'Eca. As will be seen, regulation 14(5) opens with the words "for the purposes of this Part of these regulations other than regulation 23 (non-householder's contribution) (emphasis supplied). It was submitted to us that the underlined words have the effect that since the claimant was whilst living in her parents' home entitled to a non-householder's contribution under regulation 23 she is, by the force of those underlined words, excluded from benefiting from the exception to the general rule for which regulation 14(5) provides. And indeed that argument was accepted by the learned Commissioner in his decision on Commissioner's Files: CSB 292/1983 and CSB 399/1983 which we have already above referred. Nevertheless, we do not consider that the underlined words carry that meaning or effect. In our view they mean no more than that the "special provision" as to 2 homes to be found in regulation 14(5) is not to be relied upon *when applying regulation 23* to the circumstances of a claimant's case.

10. The next technical problem is that regulation 14(5)(b)(i) refers to an "overlap of liability" being unavoidable, but does not define or identify *what* liability. For, whilst it may readily be inferred that in its provision for "non-householder's contribution" regulation 23 is recognising that if a person is living in a household of which he or she is not a householder he or she should be treated as having a requirement to make a contribution to the expenses of running the household, there is nothing in regulation 23 (or elsewhere in the supplementary benefits code) to restrict the award of non-householder's contribution to circumstances of claimants who are under legal liability so to contribute, or even under any specific moral liability in the individual case. And, to carry the matter one stage further, there can clearly be no "overlap" of liability upon the occasion of moving home if there is only liability at the ingoing end and none at the outgoing end. In the light of a further, and in the majority view fatal, obstacle to the claimant in the present case it is not strictly necessary for our decision to express a conclusion upon this point. But we are by no means unsympathetic to a conclusion which draws the line short of requiring a *legal liability* at both ends as an ingredient giving rise to "overlap". But we recognise that there may be a material distinction between a claimant in fact under legal liability to contribute to the running expenses of the household from which he or she is moving and the case of a claimant who (perhaps, as in the present case, living in a parental home prior to the move) is under no such liability.

11. We must next deal with another contention advanced before us, and which found favour with the learned Commissioner who gave the decisions on Commissioner's Files: CSB 292/1983 and CSB 399/1983—but which we have all found ourselves unable to accept. It founds upon regulation 14(4) of the Requirements Regulations, which so far as material provides as follows:—

"14. (4) Notwithstanding that all members of the assessment unit are absent from the home, amounts may be applicable under this Part of these regulations—

(a) if the absence has not exceeded and, in the opinion of the benefit officer [for which now read "adjudication officer"] is unlikely to exceed, a period of substantially more than one year and in the circumstances it is reasonable that the assessment unit should retain the accommodation;

(b) ...

....."

12(1) In those 2 cases the learned Commissioner concluded that "should retain the accommodation" in regulation 14(4)(a) could properly be so construed as to cover the situation where a claimant had never actually lived in the accommodation in point but was paying a retainer in anticipation of so living in the future. He indicated in paragraph 8 of the decision:—

"But the word 'retain' is apt to cover the case of a person who seeks to secure property in advance by paying a retainer or entering into a commitment in respect of it. I hold therefore that under regulation 14(4) amounts could be awarded to a claimant in respect of the rent of the premises in respect of which he or she has entered into a commitment to pay rent for a period in advance of the time when it is first occupied."

(2) Before us both Mr. d'Eca and Ms. Jones submitted that the above construction of regulation 14(4) was too wide, and with great respect to the learned Commissioner we agree. For, in our judgment, in context "retain" bears the exclusive sense "keep on the accommodation nothwithstanding the absence from it," and is to be construed consistently with the principle to which we have already referred that, with limited exceptions of which the postulated circumstances under regulation 14(4) are not one, the assessment unit can only have one home.

13. That brings us without enthusiasm, but inexorably, to the point which we regard as fatal to the claimant's case on the present appeal. And we say "without enthusiasm" because it has the effect of accepting that there is anomaly as between a person who, being a householder "at both ends", moves from one home to another and a person who moves in circumstances in which he or she is a "householder" only at the ingoing end.

14. By the form in which the Requirements Regulations are cast "non-householder's contribution" under regulation 23 constitutes (see regulation 14(1)) one of the "items to which housing requirements relate". Prior to the taking out of the direct scope of the supplementary benefits scheme of provision of financial assistance to claimants in respect of their liabilities for such items as rent and rates, which was effected by the Housing Benefits Act 1982, those also fell to be classified as "housing requirements". And the "trigger" by which a person in receipt of supplementary allowance now comes under the umbrella of the housing benefits scheme in respect of such an outgoing is a certification by the Secretary of State (to which we have already referred) as to the claimant having "householder status". Such a certification rests in practical terms upon a determination in point as to the claimant's having the status of a householder for the purposes of the supplementary benefits scheme. Housing requirements under the supple-

mentary benefits scheme still include (see regulation 14(1) of the Requirements Regulations) such items as repairs and insurance, interest on loans for repairs and improvements, miscellaneous outgoings, and housing benefit supplement—but include non-householder's contribution. But regulation 14(2) is expressed as follows:—

> "(2) The housing requirements of a claimant, including the requirements of any partner or dependant of his, shall be—
>
> (a) except in a case to which paragraph 1(e) applies, the aggregate of any amounts which, in accordance with paragraphs (3) and (4), are applicable in his case under regulations 15 to 19 subject to any restriction or reduction applicable under regulations 21 to 22;
>
> (b) in a case to which paragraph (1)(e) applies, the amount applicable under regulation 23;
>
> And where any one or more, but not all, members of an assessment unit are affected by a trade dispute those requirements shall be treated as those of the other members of the unit."

15. The "paragraph (1)(e)" so referred to in regulation 14(2)(a) and (b) respectively is in each case clearly paragraph (1)(e) of regulation 14(1)—i.e. the case of a claimant having a housing requirement consisting in non-householder's contribution. There is a clear dichotomy, in our judgment, between the phrase "except in a case to which", with which regulation 14(2)(a) commences, and the phrase "in a case to which", with which regulation 14(2)(b) commences, and the 2 sub-paragraphs are in our judgment collectively descriptive of circumstances which are mutually exclusive. So regarded, regulation 14(2)(b) carries, in our construction of it, the sense which can be conveniently illustrated by postulating that there be found in it that which is not in fact expressed in it, namely that—in contrast to the concept of "the aggregate" referred to in regulation 14(2)(a)—"the amount" in regulation 14(2)(b) is to be read in the sense "only the amount" or "that amount alone which is".

And, so regarded, the effect of regulation 14(2) is, in the case of a claimant who has at a given time a housing requirement constituted by non-householder's contribution, precluded from having any other housing requirement. The point is a short one, and does not admit of great elaboration. But it is in our judgment fatal to the claimant's case, as we have indicated. She cannot, in our judgment, attain "householder status"—and thereby come within the scope of the housing benefit scheme as regards such matters as rent and rates—in respect of a period at which she has a housing requirement constituted by non-householder's contribution. And it follows from our conclusion that the adjudication officer was right in refusing to review and the tribunal were wrong in reversing the adjudication officer's decision.

The reasons and conclusion of Commissioner Goodman

16. I concur with everything that my colleagues Mr. Commissioners Bowen and Edwards-Jones have said in their majority decision with the sole exception of their conclusion that regulation 14(2) of the Requirements Regulations prevent the benevolent provisions of regulation 14(5) from applying to the present case (see paragraphs 13–15 of their decision).

17. As I understand it, to succeed in her claim for a review of her weekly requirements the claimant has had only to show that she was a "householder" within paragraph 2(3) of Schedule 1 to the Supplementary Benefits Act 1976 (see paragraph 3 of the decision of Mr. Bowen and Mr. Edwards-Jones). If she can do so then she is entitled to have her normal requirements

treated as those of a householder (see the table in paragraph 2(3) of Schedule 1 to the 1976 Act). That is governed by the definition in regulation 5(6) of the Requirements Regulations (see paragraph 3(2) of the decision of my colleagues) and the claimant complies with that definition if she can show that the new flat was her "home" during the period from 23 April 1984 to 6 May 1984. In my view regulation 14(5)(b)(i) (the 4 weeks overlap regulation) entitles her if "the overlap of liability is unavoidable" *both* to a non-householder's requirement in respect of her liability in her parent's household and a householder's normal requirement and any other appropriate housing requirements during the period in question. Regulation 14(2) in my judgment merely provides that in one's capacity as a non-householder one is entitled to nothing more than the non-householder's additional requirement under regulation 23—but in any other capacity one is entitled to the various housing requirements set out in Part 4 of the Regulations; it does not require that under regulation 14(5) a claimant cannot simultaneously be regarded as entitled to a non-householder's contribution and to householder requirements for the 4 weeks overlap period. Consequently I would remit the case to a differently constituted tribunal to ascertain whether in fact during the period in issue in this case (which did not exceed 4 weeks) the overlap of liability was "unavoidable" regulation 14(5)(b)(i).

18. I note that regulation 5(7) of the Requirements Regulations defines what is meant by a person being "responsible for housing expenditure" in the definition in regulation 5(6)(a) of a householder and provides that "a person is responsible for housing expenditure if, otherwise than by reason only of regulation 14(5) or 19 [housing benefit supplement], he is to be treated under sub-paragraph (a) of regulation 14(3) as responsible for expenditure but as if that sub-paragraph applied also to housing benefit expenditure (as well as to the items of housing requirements other than non-householder's contribution)" (my underlining). The words which I have underlined mean no more in my view in the present case than that in respect of her continued occupation of her parent's home, still regarded as her home by virtue of regulation 14(5), the claimant could not be regarded as a householder. But it of course does not prevent her having been a person responsible for housing expenditure in respect of the new local authority flat of which she was a tenant.

(Signed) E. R. Bowen
Commissioner

(Signed) I. Edwards-Jones
Commissioner

(Signed) M. J. Goodman
Commissioner