

CSB 182/1983  
DGR/SH

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Janis Jeffreys (Mrs)

*Household v non  
- dependant*

Supplementary Benefit Appeal Tribunal: Barking

Case No: 07/245

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 16 November 1982 is erroneous in point of law, and accordingly I set it aside. Furthermore, being satisfied that it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is a householder within regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980 and that her entitlement to supplementary benefit is to be calculated on this basis.

2. This is an appeal brought with my leave against the decision of the supplementary benefit appeal tribunal of 16 November 1982.

3. On 2 August 1982 the claimant, a married women with a dependent son, claimed supplementary benefit but was subsequently awarded it on the basis that she was a non-householder. She appealed against this decision to the supplementary benefit appeal tribunal, contending that she was a boarder or a householder. The tribunal rejected the contention that the claimant was a boarder, nor is this any longer in issue. However, as regards the alternative submission that the claimant was a householder, the tribunal in repudiating this suggestion, gave as their reasons the following:-

"The tribunal are satisfied that the appellant is not a householder within the meaning of reg 5. It appears to the tribunal that the appellant is neither responsible for rent - (Miss Clery [the person with whom the claimant was staying] is the sole tenant of the accommodation - she has not legally sublet to the appellant and the appellant does not have a rent (book)) neither does the appellant have major control of the household expenses. The tribunal consider that the appellant and her son are in Miss Clery's household and pay a contribution towards living expenses and are non-householders".

4. Regulation 5(2) of the Supplementary Benefit (Requirements) Regulations 1980, read, prior to 9 August 1982, as follows, and although there have been subsequent amendments, these are not material to the present case:-

"5(2) For the purposes of the table a householder is a person, other than a partner, who:-

- (a) under Part IV of these regulations (housing requirements) is treated as responsible for expenditure on items to which any of the regulations other than regulation 23 (non-householder's contribution) relates 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 whose absence is for a period which has not yet continued for more than 13 weeks".

5. Regulation 14, which occurs in Part IV reads, as far as is relevant for the present purposes, as follows:-

"(1) The items to which housing requirements relate are

- (a) rent;
- (b) mortgage payments;
- (c) repairs and insurance;
- (d) interest on loan for repairs and improvement;
- (e) miscellaneous outgoings;
- (f) items applicable in special cases;
- (g) non-householders' contribution.

(2) ....

(3) Except in relation to the item specified in paragraph (1)(g) (non-householder's contribution) an amount shall be applicable under this Part of the regulations only where a member of the assessment unit is responsible for the expenditure to which the amount relates and:-

(a) a person shall be treated as responsible for expenditure -

(i) for which he is liable, in particular as owner/occupier or party to the lease or tenancy agreement of the home, other than to a person who is a member of the same household".

Regulation 14 above is quoted in its original form, and although it has subsequently been amended, such amendments are immaterial to the decision. Now, if a claimant falls within regulation 14(3)(a)(i), then he is a householder within regulation 5(2). It must be remembered in this connection that "'rent' includes corresponding payments in respect of a licence or permission to occupy the home and 'let' and 'letting' and 'tenancy' shall be correspondingly construed" (see regulation 2(1)).

6. The terms on which the claimant occupies the relevant premises are set out in a letter of Miss Clery dated 20 August 1982, and I do not think that the accuracy thereof is in dispute. The claimant shares a house with Miss Clery, who is a local authority tenant. She has the sole use of 2 bedrooms and in addition has the use of all other amenities of the home, for which she pays Miss Clery £50 a week. This £50 includes £40 for rent, £3 for electricity and the use of the telephone, £3 for the use of the cooker and kitchen equipment, and £4 for laundry services. She buys and cooks her own food for herself and her son.

7. The tribunal reached the conclusion that the claimant was not a tenant. They have been criticised on the grounds that they based this conclusion merely on the absence of a rent book, when this is not conclusive of the existence or otherwise of a tenancy. I am not sure that this criticism is fair. It may well be that the absence of a rent book was only one factor, but not the determining factor, in the tribunal's mind. However, it is unnecessary for me to enter into this matter, in that on any footing the claimant was, if not a tenant, a licensee, and as is clear from the definition contained in regulation 2(1), for the purposes of the Requirements Regulations, it is immaterial whether a claimant is a tenant or a licensee. The tribunal erred in point of law in disposing of the matter on the simple ground that the claimant was not a tenant. That was not enough, and clearly their decision must be set aside.

8. However, rather than remit the appeal to a new tribunal with appropriate directions as to how to deal with the matter, I think it is expedient in this case that I give the decision which the tribunal ought to have given. For I am satisfied that the evidence which was before the tribunal leads inevitably to one conclusion and one conclusion only.

9. Although both Miss Clery and the claimant live in the one house, the evidence clearly establishes that they each have separate households. The claimant is the tenant or licensee of 2 bedrooms and in addition has the right to use the amenities of the home. Miss Clery, on the other hand,

is the tenant of the remaining rooms and likewise enjoys the amenities of the premises. Certainly they are not members of the same household, and in consequence there can be no question of the claimant's paying 'rent' 'to a person who is a member of the same household' within the concluding words of regulation 14(3)(a)(i). As regards the premises which the claimant occupies, she is required to pay 'rent' (as that term is understood in the regulations) and she clearly falls within the definition contained in regulation 14(3)(a)(i). The effect of this is that she is a householder within regulation 5(2), and in consequence she is entitled to have her benefit calculated on this basis.

10. My decision is as set out in paragraph 1.

(Signed) D G Rice  
Commissioner

Date: 5 October 1985

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Region: London North