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SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: Blackpool

Case No: 3/23

ORAL HEARING

1. My decision is that the decision of the supplementary benefit appeal tribunal ("the appeal tribunal") dated 2 March 1982 is erroneous in point of law and is set aside. I direct that the matter be re-heard by a differently constituted tribunal; Supplementary Benefit and Family Income Supplements (Appeals) Rules [SI 1980 No. 1605 as amended by SI 1982 No. 40], rule 10(8).
2. This is an appeal on behalf of the claimant, who was represented at the oral hearing before me on 8 June 1983 by Mr R R Heywood. The benefit officer was represented by Mr D James of the Solicitor's Office of the Department of Health and Social Security.
3. The claimant, a widow then aged 66 years, lived alone in a local authority flat consisting of lounge, kitchen and 2 bedrooms. It was not centrally heated. The claimant was in receipt of supplementary pension from 1975. Following a visit to her home on 6 February 1981 in response to a letter asking for a heating addition on the grounds that the home was difficult to heat, the benefit officer decided to award an addition at the rate of £1.40 on the grounds that the claimant suffered with heart trouble and slight restricted mobility. The benefit officer decided that the flat was not difficult to heat.
4. On 3 November 1981 Mr Heywood wrote to the Department requesting that the decision be reviewed with effect from 24 November 1980. The benefit officer decided that there were no grounds for review and on 30 November 1981 Mr Heywood appealed against that decision to the appeal tribunal.
5. The appeal tribunal found that the benefit officer had been correct in allowing the claimant's heating addition on health grounds under regulation 11 and paragraph 1(b) of Schedule 3 of the Supplementary Benefit (Requirements) Regulations 1980 [SI 1980 No. 1299] from 6 February 1981,

7. Regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No. 1643] provides that a determination may be reviewed by a benefit officer if he is satisfied that the determination was based on a mistake as to the law and made in ignorance of some material fact or that there has been a relevant change of circumstances since the determination was made. The benefit officer reviewed the question of additional heating requirement on account of restricted mobility on 6 February 1981 and on the facts revised the award from 26 January 1981. No further medical evidence was submitted to the appeal tribunal and on the evidence before them they decided as fact that the conditions for review were not satisfied prior to 6 February 1981. My jurisdiction is limited to questions of law and I cannot determine questions of fact irrespective of fresh evidence being submitted. In my judgment the appeal tribunal's decision on the facts found by them was not erroneous in law.

8. Similarly Mr James submitted that the question of heating addition under paragraph 2(b) of Schedule 3 to the Requirements Regulations was a question of fact for determination by the appeal tribunal and it was for them to decide what evidence to accept or reject and whether to require further investigation for production of additional evidence. Mr James submitted that unless it could be said that the decision was manifestly unreasonable then as a decision on a question of fact it could not be impugned. He contended that the tribunal were entitled to rely on and prefer the evidence and assessment of visiting officers who had inspected the premises. Mr Heywood strongly argued that the decision of the appeal tribunal was clearly unreasonable because they had based their findings of fact on the presenting officer's submission at the hearing that a number of visits had been made to the premises and that the officers concerned did not think the flat was difficult to heat. Mr Heywood stressed that there was no direct oral or documentary evidence in support of the statement and nothing to indicate whether the same or different visiting officers had inspected the property and on what basis they had made their assessment. I agree with Mr Heywood that it is totally inadequate and contrary to the rules of natural justice to base a finding of a material fact on a presenting officer's submission unsupported by any evidence. Although I appreciate it is not always administratively feasible for visiting officers to attend and give evidence at appeal tribunals, it nevertheless effectively precludes a claimant from cross-examining the visiting officer to establish precisely the particulars of the inspection carried out. At the very least a visiting officer should submit a signed and dated written report of his inspection and assessment of premises. In a numbered Decision CSB/13/82 (unreported) the Commissioner held at paragraph 6:-

"The rules of evidence do not apply to proceedings before an appeal tribunal but there must be some elementary statement to support a submission, such as a letter from the local authority or, in other instances, from the source of the fact which it is desired to submit as evidence. A mere statement by a benefit officer is not evidence even in the very wide sense of evidence to support a fact before an appeal tribunal ... The question of weight to be

attached to evidence is essentially a matter for the tribunal and is not a point of law unless there is no evidence to support a finding or the facts are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question. (Global Plant Ltd v Secretary of State for Social Services [1972] 1 QB 139 and Decisions R(A)1/72 and R(I)14/75)".

9. In the present case the appeal tribunal based their findings of material facts purely on the submission of the presenting officer. There was no direct evidence to support these findings either from the visiting officers or the local authority, who allegedly had been consulted by the local office. In this respect I find the decision of the appeal tribunal erroneous in law. I direct that the claimant's appeal be re-heard by a differently constituted tribunal to find the facts material to the claim under paragraph 2(b) of Schedule 3 to the Requirements Regulations. The claimant, in her appeal to the Commissioner has produced further evidence which I am not entitled to consider as my jurisdiction precludes the consideration of facts not before the appeal tribunal. The claimant is now at liberty to submit such evidence to the new tribunal that rehears the case.

10. The claimant's appeal is allowed.

(Signed) R F M Heggs
Commissioner

(Date) 14 July 1983

Commissioner's File: CSB/635/1982
C SBO File: 666/82
Region: Merseyside