

Hearing charge for benefits
CSB 699/1984

DGR/MC

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Robert George Jones

Social Security Appeal Tribunal: Hereford

Case No; 4/8

ORAL HEARING

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 15 May 1984 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have regard to the matters set out below.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 15 May 1984. The claimant asked for an oral hearing, a request to which I acceded. However, in the event, neither the claimant nor his representative appeared at the actual hearing. The adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office of the Department of Health and Social Security. As exactly the same issues were in point as those arising in the appeal on Commissioner's File CSB 220/1984 I considered both cases together at one and the same hearing.

3. The claimant, who was at the material time living in a local authority board and lodging hostel and was in receipt of supplementary benefit by reason of his unemployment, requested an increase in benefit to cover his heating costs; otherwise he could not afford to run his electric fire. On 28 March 1984 the benefit officer (now the adjudication officer) decided that no increase could be allowed as part of the claimant's board and lodging costs. Furthermore, he decided that no additional requirement for heating was payable because the claimant was unable to satisfy the relevant statutory provisions.

4. In due course, the claimant lodged an appeal to the tribunal who in the event upheld the benefit officer. In his appeal the claimant contended that the charge for heating which was paid "via a coin slot meter which is owned by his landlord" should

be treated as part of the cost of his board and lodging. The tribunal found that the heating in his room - there was a hot water pipe running through it - and the availability of a heated lounge were not adequate for the claimant's needs. Accordingly, they went on to consider whether there should be added to the weekly expense of board and lodging a weekly sum which would meet the cost of his heating requirements. However, they decided that there was no provision for this in the relevant regulations.

5. Now, it is quite true that there is no specific reference in the Social Security (Requirements) Regulations 1983 [S.I. 1983 No. 1399] dealing with the situation where a claimant is paying a specific charge for board and lodging, which does not include heating, and in order to obtain an acceptable level of heating he is obliged to make an additional payment therefor, whether by means of a slot meter or otherwise. Accordingly, if the cost of heating is to be recovered as part of the claimant's normal requirements, this can only be achieved if the word "lodging", for the cost of which it is not in dispute that provision is made in the relevant regulations, is construed as incorporating the provision of heating. So far, I understand, there has been no Commissioner's decision directed to this point.

6. In the Shorter Oxford English Dictionary "lodging" is defined as "accommodation for rest at night or for residence; now only, accommodation in hired rooms or in a lodging house". "Accommodation" is in turn defined as "anything which supplies a want or affords aid or refreshment; especially lodgings and entertainment at an inn etc". In my judgment, what constitutes accommodation or lodging is something which is not absolute, but rather something which fluctuates with and responds to the current standard of living. I am satisfied that in the 1980s a person seeking lodging or accommodation even at the modest level envisaged by the supplementary benefit legislation would expect to find the premises adequately heated or the means available to achieve this objective. Accordingly, as the Requirements Regulations enable a claimant within the restrictions imposed by the relevant statutory provisions to receive by way of supplementary benefit a payment to cover the cost of lodging, it necessarily follows that he is entitled to a payment for appropriate heating expenses, where the same are not included in the basic charge for board and lodging.

7. The effect of the foregoing is that the tribunal, having found the heating provision inadequate, should have gone on to consider the amount of weekly expenditure which the claimant was likely to incur to ensure that his room was adequately heated. The tribunal failed to do this, and accordingly they erred in point of law. I must set aside their decision and direct that the appeal be reconsidered by a differently constituted tribunal, who will have regard to the matters referred to above.

8. The claimant has also claimed an additional requirement in respect of heating. To succeed in this respect the claimant has to satisfy regulation 12 of the Requirement Regulations and one or more of the provisions set out in Part 1 of Schedule 4 thereto. The particular paragraphs of regulation 12 which are relevant in this case are paragraphs (3)(b) and (4) which read so far as is relevant as follows:

"(3) Where paragraph 4 of Schedule 4 applies to a person -

(a)

(b) to whom regulation 9 or paragraph 1, 2 or 6 of Schedule 3 applies;

the amount applicable shall be instead of the excess referred to in column (2) of that paragraph 4, the full amount of the separate charge in respect of the items referred to in column (1) of that paragraph, but no amount shall be applicable under paragraph 1 to 3 or 6 to 8 of Schedule 4.

(4) In relation to a person to whom regulation 9 (normal requirements of boarders) applies -

(a) if he is a person to whom regulation 9 applies, an amount shall be applicable under paragraph 1 or 7 of Schedule 4 only if and to the extent that the charge for board and lodging, or for lodging, does not provide for the heating required".

9. For the claimant to derive any advantage from regulation 12(3) he must satisfy paragraph 4 of Schedule 4, i.e. he must show

(i) that he is a householder as defined in regulation 12(5) of the Requirements Regulations;

(ii) that he is a person in respect of whom an amount of benefit is applicable under regulation 18(1) because he has a long tenancy, Crown tenancy orcrofting tenancy, or is a co-owner; and

(iii) that he pays as a condition of this type of tenancy or ownership a separate charge for (in this particular case) heating.

It will be for the new tribunal to determine whether the claimant can satisfy the above provisions. The tribunal of 15 May 1984 found that the claimant was on the evidence not a householder, and

and they were, in my judgment, fully entitled so to do. This finding was fatal to any reliance by the claimant on regulation 12(3).

10. As regards regulation 12(4), the tribunal of 15 May 1984 found that the claimant was in good health, and in the light of such finding, I do not see how they could have done otherwise than conclude that he could not derive any assistance from paragraphs 1 or 7 of Schedule 4. Moreover, for the reasons already given, paragraph 4 did not apply. Furthermore, the express wording of paragraphs 2, 3, 5, 6 and 8 precluded their application to the claimant.

11. Accordingly as regards the claimant's claim for an additional requirement the tribunal of 15 May 1984 rightly disallowed it. The new tribunal will, of course, have to consider this claim afresh, but they may derive some help from my confirmation of the earlier tribunal's disallowance on the evidence before them.

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

(Signed) D G Rice
Commissioner

Date: 6 November 1984

Commissioner's File: C.S.B 699/1984
C A O File: AO 9001/84
Region: Midlands