

CSB 83/1983

Heating

- 'All the necessary heating
of the home'

MJG/BC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Brian John Williams

Supplementary Benefit Appeal Tribunal: North West Kent

Case No: 06/379

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal, dated 24 September 1982, and I set that decision aside as erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted tribunal: Supplementary Benefits Act 1976, section 15A and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605 as amended by S.I. 1982 No. 40], rule 10(8).

2. This is an appeal to the Commissioner by the claimant a married man living in local authority accommodation with his wife and their two children, aged 4 and 2 at the relevant time. Both the claimant and his wife have the misfortune to be blind. The appeal is against the decision of a supplementary benefit appeal tribunal dated 24 September 1982 upholding the decision of the local benefit officer dated 30 July 1982, which in effect refused to grant to the claimant an additional heating allowance under the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No. 1299], Schedule 3, paragraph 3(b) (additional allowance for a house consisting of 5 or more rooms and being centrally heated). In the tribunal's view, paragraph 3 was inapplicable as the result of regulation 12(2)(g)(i)(aa) of the Requirements Regulations which provides in effect that if the claimant is paying a separate charge "for all the necessary heating of the home" then the relevant heating addition is not payable. The claimant is in fact being reimbursed the difference between the amount he is actually paying as a separate charge for heating and hot water, namely £7.61 per week, and the standard charge applicable (see Schedule 3, paragraph 4 of the Requirements Regulations), which in the present case amounts to a heating addition of £1.91 per week.

3. The question for determination by the tribunal was therefore whether or not the central heating provided by the local authority for the claimant's home, provided "all the necessary heating of the home" (regulation 12(2)(g)(i)). The tribunal, in a carefully recorded decision, made the following findings of fact:-

"The appellant, who is registered blind, lives with his wife and two dependant children in local authority centrally heated accommodation. Included in the appellant's weekly rent is an element of £7.61 for heating and hot water. The supplementary benefit officer, in calculating his weekly supplementary allowance deducted £7.61 from the weekly rent to arrive at the net housing costs. He also allowed a heating addition of £1.91 weekly. The appellant considered that he should receive a heating addition of £3.30 weekly, because he considered the central heating provided is partial and needs supplementing. The heating system is operated between September and April each year and the heating manager who has control over it, has discretion to extend the operation of the system between May and September in cold weather. The appellant has control over the temperature when the system is on in so far as an electrically operated fan can be used at the appellant's expense. Heating is not supplied to the main bedroom."

4. In a letter dated 11 August 1982 to the Manager of the local office of the Department, the claimant's representative gave the following information relating to the central heating, which he described as "partial":-

"(1) The system is switched off from 1 May to 30 September. Although the District Housing Manager has discretion to continue the supply until 20 May and resume it after 20 September, in bad weather, this still leaves a period when central heating is unavailable. I then have to heat my house using a fan-heater or calor gas stove at my own expense.

(2) Central-heating is not supplied to the main bedroom. I again have to use a fan-heater or calor gas stove, at my own expense, for this room. This is particularly necessary as I have two children under 5.

(3) Central heating is supplied at 65°F in the living room and bathroom, and 55°F in hall, bedrooms and kitchen. This compares to the British Standards Institute's recommendations of 70°F for the living room and 65°F for the bedroom. I have to use the booster fan to bring the heating up to an acceptable level and I pay for the electricity to operate the fan myself. In fact, the landlord fits a wall-mounted electric fire in the living room, in houses of this kind, to supplement the heating. In my case, however, the fire has been removed for safety reasons and I use a fan-heater or calor gas stove instead".

5. The tribunal gave detailed reasons for its decision, and in my view they are admirably stated, the tribunal having a clear grasp of the law, and placing emphasis on the expression "necessary heating of the home". However, the concluding part of the tribunal's reasons shows the tribunal's decision to have been erroneous in law. It said:-

"The tribunal had regard to the many points raised by the appellate's representative in relation to badly fitting windows, large glazed windows, and low heating temperature of the heating system which the tribunal considered was the responsibility of the local authority to correct and not that of the Department of Health and Social Security. The question of the practice of local authorities turning off heating systems during Summer months was discretionary and the tribunal considered that residents as a whole could and should make representation to the appropriate authority".

In my view, that sentence vitiates the tribunal's decision, because it shows that the tribunal may well have taken into account extraneous and irrelevant consideration in coming to their conclusion that the central heating provided for "all the necessary heating of the home". That question had to be answered judicially on the evidence before the tribunal and without regard to the possible responsibilities of other authorities, including the local authority. For that reason, and that reason alone I must set aside the tribunal's decision. I do not consider that this is a case where it is "expedient", within the meaning of the amended rule 10(8) of the above cited Appeals Rules, to give the decision myself which the tribunal should have given, I therefore remit the case for rehearing and redetermination to a differently constituted tribunal. That tribunal will have to decide quite simply whether or not on the facts the central heating provided in the claimant's home provided "for all the necessary heating of the home".

6. The benefit officer now concerned, in a written submission dated 20 June 1983, submits (paragraph 6):-

"In my submission the tribunal erred in law in that on the evidence before them no tribunal acting judicially could have come to the conclusion that the charge paid by [the claimant] for his heating and hot water provided all the necessary heating of his home"

I do not agree and do not accept that submission. This is essentially a question of fact for the new tribunal, but I would have thought that a tribunal acting judicially could perfectly well have come to the conclusion that this tribunal did. Regulation 12(2)(g)(i) of the Requirements Regulations refers to "all the necessary heating of the home" (my underlining). The word "necessary" is not defined in the legislation, but in my view in law it has a restricted meaning. In a written submission dated 28 November 1983, the claimant's representative submits that the word "necessary" in the regulation does not mean simply "indispensable" but means only "requisite". I do not agree. In my view the meaning of the word "necessary" in its context is indeed "indispensable". Moreover, whether or not the heating is "necessary" must be decided by reference to the "the home" and not to subjective requirements of the claimant or his family. Such requirements are provided for separately in the Requirements Regulations, where applicable. The original tribunal also went wrong, because they apparently disregarded evidence about large glazed windows and ill fitting frames etc, whereas those should be taken into account because the regulation speaks of "the necessary heating of the home" (my underlining). I ought to add that in my view, although this is a matter for the new tribunal, it may be a difficult proposition to sustain to say that it was "necessary" for a home to be heated between 20 May and 20 September, even in the British climate or "necessary" for a main bedroom to have heating.

7. The claimant's representative, in a written submission of 28 November 1983, draws attention to paragraph 9 of reported Commissioner's decision R(SB)10/81, where the Commissioner was concerned with construing the word "essential" as applied to interior redecoration by regulation 19 of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528]. In that paragraph, the learned Commissioner said that he used the word "essential" to mean " 'necessary', in the sense in which luxuries are differentiated from 'the necessities of life' and as importing a requirement of substantial need, judged by the modest general standard of living to the provision of which the award of supplementary benefit is directed; but falling short of a requirement of being 'indispensable' if life is to be sustained or of so rigorous a test as is imposed by regulation 30 of the [Single Payments] Regulations [referring to serious risk to health or safety]".

8. The Commissioner was careful to indicate that he construed the word "essential" in its context in the regulations and the uses of the word elsewhere in the Single Payments Regulations. In my view his use of the word "necessary" in paragraph 9 of R(SB)10/81 did not amount to a definition of that word. Even if it did, it is not a definition which is applicable to regulation 12(1)(g)(i) of the Requirements Regulations, part of a regulation which (together with Schedule 3) contains a detailed code as to heating allowances. In my view when regulation 12(1)(g)(i) refers to "all the necessary heating of the home" it means the minimum heating that is indispensable for a home and no more.

9. If the new tribunal should decide that, even in the light of the narrow definition of the word "necessary", that an additional heating allowance is payable to the claimant, then the question will arise as to what date the additional heating allowance should be 'retrospectively awarded'. That depends on whether the request for the additional heating allowance made on 3 June 1982 was to be regarded as a "claim" or as an application for a "review". If it were the latter, then revision cannot be beyond 52 weeks' before the review was requested (see regulation 4(2) of the Supplementary Benefit (Determination of Questions) Regulations 1980 [S.I. 1980 No 1643]. If it is to be regarded as a claim, then "good cause" for the failure to make the claim earlier must be proved (see R(SB)6/83). No time limit is however imposed for a late claim, (see regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No. 1525]. The benefit officer now concerned submits that the request on 3 June 1981 was not a claim but was an application for a review and thus governed by the 52 weeks' limit. I understand that a Decision of a Tribunal of Commissioners will shortly be given on this particular point, and the new tribunal that hears this case should, if it becomes relevant, ask for information as to the decision of the Tribunal of Commissioners on this particular point. I will therefore say no more about it.

Signed M J Goodman
Commissioner

Date: 7 February 1984

Commissioner's File: CSB/83/1983
C SBO File: 45/83
Region: London South

CSB 83/83

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