

CSB 380/1983

IFJ/BC

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: South London

Case No: 11/29

*Heating addition
with particular
included in the
rent.*

1. (1) This is a claimant's appeal from the decision dated 1 February 1983 of a Supplementary Benefit Appeal Tribunal ("the tribunal") brought by my leave and upon the contention that the tribunal's decision is in error of law. The tribunal upheld the decision dated 22.11.82 of a benefit officer determining the claimant's supplementary allowance in the sum £58.15 weekly from the prescribed pay day in week commencing 22.11.82; and the substantive issue the subject of the claimant's appeal to the tribunal was in regard to her contention that the computation by which such sum had been arrived at had failed to give proper effect to her heating requirements.

(2) The claimant has requested an oral hearing of her appeal but I am refusing that request as I am satisfied that the appeal can properly be determined without one.

(3) The appeal succeeds. I set aside the tribunal's decision as given in error of law and direct that the claimant's appeal from the benefit officer's decision be re-heard by a differently constituted tribunal.

2. I will preface the body of my decision by indicating that the particular regulations later referred to, whilst remaining material to the re-hearing above directed, have in current application been superseded by regulations giving effect to the Social Security Housing Benefits Act 1982.

3. The claimant, a single parent, was at all material times in receipt of supplementary allowance and living in a privately rented flat with her child, aged 3 years at the date of the benefit officer's decision. That decision embodied a re-assessment of the claimant's supplementary allowance following a home visit on 28 October 1982 at which the claimant had notified a recent increase to £29.90 weekly in the amount she was paying her landlady. It is not in dispute that the occasion of such increase was (in part at least) due to the fact that the landlady had recently installed central heating in the flat.

4. The benefit officer was when giving the decision of 22.11.82 under the impression that although the £29.90 included the amenity of the central heating service it did not embody an identified component by way of central heating charge. It was, however, a decision given in understanding that the £29.90 did not cover the provision of hot water, cooking or lighting, in consequence of which the computation by which a weekly allowance of £58.15 was arrived at did not embody any deduction from housing requirements in respect of the provision of those services.

5. In her notice of appeal to the tribunal the claimant indicated:-

"I wish to appeal to the Supplementary Benefit Appeal Tribunal because of my heating bills,

1st I have to pay for central heating weekly,

2nd I also get a quarterly gas bill for my other gas appliances.

The point is that the central heating is not run off my meter, so I cannot vary the amount payable, that is included in my rent, but this does not include the heating of my hot water and gas cooker which still runs off my own meter, so I still have to find approximately £2.50 a week for my gas and £4 for the electricity.

Surely my hot water must come out of my heating allowance. I have no washing machine and have not enough money to go to the laundry twice a week, I have to do my washing in the bath. I am not being difficult, but I just cannot face another year of gas/electricity arrears, final demands threats of supplies being cut off..."

[She then continued with grounds for late appeal which I need not detail].

6. The tribunal chairman's note of evidence indicates that the increase in rent was £10.20 per week and that it was in respect of central heating "and other improvements". It then refers to "regulation 15" (which is readily identifiable as a reference to regulation 15 of the Supplementary Benefit Requirements Regulations 1980 as amended ("the Regulations")) and to "£5.60 heating" - which is identifiable as a reference to the amount which at the material time properly fell to be deducted from housing requirements in respect of heating in a case where the amount payable for rent was inclusive of heating. After that reference the note of evidence, in my reading, clearly continues "FULL Chtg - 7 am - 11 pm daily, but not June, July, August". It then refers to Regulation 12 (identifiable as a reference to Regulation 12 of the Regulations dealing with additional heating requirements) and refers to various medical conditions of the claimant - but also indicates "no doctor's evidence - no GP at present". Thereafter the note goes on to deal with the nature of the accommodation in the same context, indicating "VICT House - large front room - draughty windows - high ceilings" and concludes "Use of gas fires - size of bills before and after Chtg".

7. Apart from recording the decision of the tribunal upholding the benefit officer's decision, the record of the tribunal's decision includes the following material statements:

Findings:

"The appellant's rent was increased to £29.90p from 1.10.82 to take account of the central heating and other improvements. The central heating is on daily between 7 am and 11 pm. In the summer it is switched off from June to August. The appellant says that she sometimes needs heating during the summer months, but has not approached her landlady about this. It was maintained that due to health problems "[the claimant]" has to rest sometimes during the day. The accommodation was stated to be draughty and difficult to heat".

Reasons for decision:

"The Tribunal was satisfied that" [the claimant] "enjoyed the benefit of full central heating. Regulation 12 (2)(h) of the Requirements Regulations precludes any addition on account of health. The Tribunal accepted that the accommodation may be draughty and difficult to heat but noted that there is already a heating addition of £1.90p in payment".

I should here interpose that it is apparent from the case file that an additional requirement of £1.90 in respect of heating has been embodied in the material computation by the benefit officer pursuant to Regulation 12 of the Regulations and to paragraph 7(b) of Part I of Schedule 3 thereto, being an addition referable to the circumstance that the claimant's daughter was aged less than 5.

- 8(1) Having regard to the tenor of the claimant's grounds of appeal the tribunal were in my judgment quite correct in directing their consideration in the first instance to regulation 12 of the Regulations, as to additional requirements in respect of heating.
- (2) The general tenor of regulation 12 is to embody, in the computation of needs of a claimant otherwise qualified for entitlement to supplementary allowance, specified sums in respect of additional requirements for heating in specified qualifying circumstances. Amongst those are the circumstances of persons for whom extra warmth needs to be provided on medical grounds also there specified and also, as regards householders, where the home is difficult, or exceptionally difficult, to heat adequately.
- (3) However, Regulation 12(2) contains substantial restrictions in stipulated circumstances both as to successfully claiming such an addition under a plurality of heads and as to claiming under particular at all in certain stipulated circumstances.
- (4) Thus, where a householder pays a separate charge for heating as a condition of the tenancy of the home (and varying in effect according as to whether that charge provides for all or part only of the necessary heating of the home) there is a complex code as to what additions may not be claimed in conjunction; whilst Regulation 12(2)(h) provides that

where an amount is applicable under Regulation 15 "for rent which is inclusive of heating" no amount is to be applicable under Part I of Schedule 3 except under paragraph 6 (persons in respect of specified social security benefits and Forces benefits - eg mobility allowance) or paragraph 7 (aged persons and persons less than 5 years of age).

9. Regulation 15 provides, in its main tenor and subject to qualifications there embodied, for a claimant's housing requirement in respect of rent being the actual rent payable. One of the qualifications is as to deduction of a prescribed amount for heating where the amount payable for rent is inclusive of heating.

10(1) The close attention given in Regulation 12(2)(g) to the difference between a charge payable by a claimant which provides for all necessary heating of the home and one which provides for part only of such necessary heating suggests at first sight that the omission from regulation 12(2)(h) of any comparable differentiation according as to whether the heating included in the rent is all or part only of the necessary heating of the home might be an oversight giving rise to prospective anomaly.

(2) However, upon closer analysis of the Regulations, it will be found that Regulation 15(3) does not require an arbitrary deduction by way of "prescribed amount", for after tabulating certain amounts it continues:-

"So however that where the benefit officer is satisfied that the inclusive rent does not provide for all the necessary expenditure of the assessment unit on the item in question the amount of the deduction to be made under the relevant sub-paragraph shall be such lesser amount as he considers reasonable in the circumstances".

(3) By that somewhat complex route it is, in appropriate qualifying circumstances, thus possible in the case of a claimant with a child under 5 who does not pay an identifiable separate heating charge, but who pays a rent inclusive of heating, both as entitled to an additional requirement in respect of heating in right of the child's age and, according to the extent of the heating provided in accordance with the arrangements as to rent inclusive of heating, also to abate the otherwise applicable deduction under regulation 15(3) (to the limits of the otherwise deduction, but no further) to meet the practical circumstances as to the extent of the heating for which payment is included in the rent.

11. In order to steer a correct course through the Regulations it was in my judgment imperative for the tribunal to reach in the first place a clear conclusion as to whether the claimant did or not pay her landlady an identifiable separate charge in respect of heating. There were clearly materials before the tribunal from which the conclusion might have been drawn that she did not. On the other hand it is the claimant's contention that there were also materials before the tribunal that she did, and that she so contended before the tribunal. In the circumstances I am in no doubt that for want of a specific finding in point the tribunal's decision is in error in law, in that it fails to comply sufficiently with Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980.

12(1) I think it also open to question (to put it no higher) whether the tribunal truly "asked themselves the right questions"; but it is unnecessary for me to rule as to that.

(2) I would, however, stress the importance of a tribunal concerned with such closely inter-relating provisions as those of the Regulations dealing with rent and with heating requirements to pay very close attention to the specific terms of each regulation in point - it is a tenable view that in the present case the tribunal entirely overlooked the concluding qualification in regulation 15(3) which bears upon the precedently specified amounts of deduction for heating where rent inclusive of heating is payable; if indeed Regulation 15(3) bore at all.

13(1) In her submissions on her present appeal the claimant has included a submission to the effect (but the wording here is my own) that even in a case to which regulation 15(3) of the Regulations applies there is scope for interpreting Regulation 12(2)(h) with the "gloss" that if the heating included in the rent is less than the total necessary heating of the home regulation 15(3) is not to bear.

(2) Whilst it is not material to my own decision, itself, to express a conclusion as to that contention, it may well be necessary for the tribunal re-hearing the matter to do so, and I therefore declare that in my judgment the claimant's contention last above summarised is to be rejected as unsound in law, and direct the tribunal re-hearing the appeal that if it becomes material for them to reach a conclusion upon such contention they are to proceed on the footing that my conclusion is correct in law, unless by the time for their decision it has been displaced by higher authority.

(3) The tribunal re-hearing the appeal may also need, in the context of of regulation 15(3) and abatement thereunder, to have in mind that if a rent inclusive of heating, but with no identified heating charge, is in a constant weekly amount, but no heating is provided during the part of the year, any question as to such abatement may require separate treatment in reference to different times of year.

14. The benefit officer now concerned has submitted that the Tribunal's decision is erroneous in law because "in finding that the claimant had full central heating the tribunal reached a decision which no tribunal acting judicially and properly instructed to the relevant law could have made". I am not unsympathetic to the submission at large, but the tribunal did not in fact make a finding to that effect - they have merely embraced it in their reasoning; moreover, I do not read them as overlooking that central heating was not provided during June, July and August so much as taking the view that there was in this country a fairly general practice of discontinuing the provision of central heating during the summer months. I do not therefore found my decision on any acceptance of that submission, though, as I have already indicated, I recognise that it may be entirely proper for an assessment of supplementary allowance to reflect different factual circumstances as to the heating arrangements at different times of the year.

15. I further direct that amongst the matters upon which the tribunal re-hearing the appeal shall make express findings of fact shall be the extent, if any, to which in the course of a year the claimant had need to provide heating of the home over and above such, if any, as was from time to time provided by the central heating system.

16. I would in conclusion add this. It is easy enough to criticise with hindsight alleged shortcomings on the part of a tribunal adjudicating in this field. There are very clear indications in the present case file that the tribunal made most conscientious efforts to see that the claimant's case got all practical consideration. Had the tribunal had the quality of submissions of which I have had advantage I am satisfied that they would have couched their decision, whatever it might have been, in different terms. To expect of any tribunal that it shall steer a correct course through the Regulations with which this tribunal were faced with such limited guidance as was available to them is to place on the tribunal a very heavy burden indeed; and nothing in the foregoing paragraphs of my decision is to be construed as making any intended criticism of the tribunal.

17. My decision is as indicated in para 1(3) above.

Signed I Edwards-Jones
Commissioner

Date: 23 January 1984

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C SBO File: 402/83
Region: London South