

Procedure - claimant not give opportunity
to deal with tribunal's objections to
evidence - error of law.

DR/JOB

Commissioner's File: CSSB/450/87

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Steven KNOX

Social Security Appeal Tribunal: Glasgow East

Case No: 283/01

ORAL HEARING

1. My decision is that the decision of the social security appeal tribunal dated 28 January 1987 is erroneous in point of law and is therefore set aside.

2. At the time under consideration the claimant was a single parent aged 28 years with three dependent children who were aged 3, 7 and 9. He was in receipt of a supplementary allowance. He also received a lower rate heating addition since he had a dependant who was less than 5 years of age. On 13 February 1986 a letter was received from the claimant which was to the effect that he should be awarded a heating addition at the higher rate on the basis that his house was exceptionally difficult to heat. The claimant's house was a council house which was of the Wilson type of construction and situated in the Easthall area of Glasgow.

3. The relevant statutory provisions which set forth the conditions relating to heating additions and the amounts payable therefore are contained in paragraph 2 of Part I Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. Said paragraph 2 is in the following terms:-

"2. Person who is a householder where, having regard in particular to whether the rooms are draughty or damp or exceptionally large:

(a) the home is difficult to heat adequately 2. (a) £2.20

(b) the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation." (b) £5.55

4. The residents in the Easthall district of Glasgow formed an association called the Easthall Residents Association whose duty it was to investigate the question whether the houses in the Easthall area were exceptionally difficult to heat. In this connection they instructed the Technical Services Agency (TSA) to carry out a thermal/dampness fabric survey. This was carried out during December 1984 and January 1985 and the types of houses in the Easthall area were examined. The present claimant's house was not one of the houses examined, but an examination was made of a house or houses of the Wilson type of construction. A lengthy report was produced by the said TSA, and it is maintained by the said association that the said report supports the contention that the Wilson type of house was exceptionally difficult to heat. The said Association also obtained other items of evidence in support of their contention that the Wilson type of house was exceptionally difficult to heat.

5. The local adjudication officer decided that the claimant was entitled to the lower rate heating addition on the basis that his house was difficult to heat adequately but that the claimant was not entitled to the higher rate heating addition since it was not accepted that it was exceptionally difficult to heat. I would explain that the lower rate heating addition involves an award of £2.20 per week, but, as above explained, the claimant was already in receipt of an award of £2.20 since he had a child aged less than 5 years - paragraph 8(a) of said Schedule 4 to the Requirements Regulations. The claimant appealed to a social security appeal tribunal against the said decision of the local adjudication officer. The claimant appeared before a social security appeal tribunal, and he was represented by a Welfare Rights Officer. The tribunal disallowed the appeal and decided to uphold the local adjudication officer's decision that the claimant was only entitled to the lower rate heating addition. The claimant's representative produced and founded on the said report by the TSA. The said representative also referred to tables which indicated that to heat the type of house occupied by the claimant to a comfort level by means of electricity would have a probable cost of £1,500 per annum. It was pointed out that the claimant in fact only paid £10.04 per week in respect of electricity which he stated was as much as he could afford for heating purposes. The reasons for the tribunal's decision were as follows:-

"At least one member of the tribunal has some knowledge of the Wilsonite type of construction referred to and would not be prepared to accept all the statements made in the papers submitted. For instance, the statement that the house cannot be warmed until the thick inner wall is itself warmed up is highly questionable - the position would appear to be the reverse ie since the house is being warmed from the inside by the heaters, the object of the thick inner wall is to stop heat escaping to the exterior of the building. The estimated ideal heating costs are somewhat incredible for what appears to be an average size council house. The actual electricity costs give perhaps a more accurate picture, although the tribunal accept the point that Mr Knox will not be in a position to heat the house to the extent to which he would like - but on the other hand the electricity bill must reflect sizeable amounts for washing machine and water heating for which additional requirements are in payment. The tribunal would award the lower

rate/

rate heating addition (Requirements Regulations Schedule 4 Paragraph 2(a)) because they think the house would be hard to heat because of the nature of the heating system, and also because there is some evidence of dampness. They did not think that the evidence has shown that it would be an exceptionally difficult type of house to heat, nor is there any special problem such as exposed position relating to this particular house."

6. The issue before the tribunal was not whether all Wilson type houses were exceptionally difficult to heat but whether the claimant's own house was exceptionally difficult to heat adequately. It was, however, clearly competent and in order for the claimant and his representative to found on the technical reports which had been obtained by the Easthall Residents Association and in particular the said TSA report. It is not in dispute that the tribunal were entitled to take into account any expertise which any member had relating to the question at issue, but it would appear that neither the claimant nor his representative had any information regarding the knowledge or qualifications of the member or members regarding the technical matters at issue. It seems clear that one of the important aspects of the claimant's case was based on the findings contained in the information obtained by the Easthall Residents Association and in particular the findings contained in the said TSA report. The tribunal due to the alleged knowledge of the Wilson type of construction on the part of one or more of the members of the tribunal evidently did not agree with certain parts of the said TSA report. The tribunal were of course entitled to reach that conclusion, but in the circumstances of this case I consider that an opportunity should have been given to the claimant and his representative to hear what portions of the TSA report were not acceptable to the tribunal so as to enable them to make any comments or submissions in that connection. The claimant's representative maintains that he did not know what objections the tribunal had to the findings in the TSA report and was given no opportunity to make any submissions regarding these objections. I have reached the view that since the claimant's representative was not given an opportunity to answer and deal with said views on the Wilson type of construction held by one or more members of the tribunal the said decision of the tribunal should be regarded as erroneous in point of law and therefore set aside. It was also contended by the claimant's representative that the tribunal had given inadequate reasons for their decision. I incline to the view that the tribunal gave adequate reasons for reaching their said decision, but I need not deal with this issue any further since I have decided that the tribunal decision ought to be set aside for the reason set forth above. The case must now be reheard by another tribunal.

7. The appeal brought on the claimant's behalf is allowed.



(signed) Douglas Reith
Commissioner
Date: 28 September 1988
