SUPPLEMENTARY BENEFIT

Additional Requirements—fuel supply to central heating system disconnected.

The claimant lived in property which normally had 4 centrally heated rooms but in June 1980 the gas supply for the central heating was disconnected. In April 1981 the supplementary benefit officer refused to reinstate an additional requirement for the claimant's central heating. On appeal, despite the fact that the fuel supply to the central heating system was still disconnected, the Tribunal awarded the additional requirement on the grounds that the central heating was the normal system for heating the claimant's home, even though the fuel supply had been disconnected.

Held that:

1. a decision of a supplementary benefit appeal tribunal may be erroneous in point of law if:

(1) it contains a false proposition ex facie; or

(2) it is supported by no evidence; or

(3) the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question; or

(4) there has been any breach of the requirement to act according to the demands of natural justice; or

(5) there has been any failure adequately to observe the requirement in rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 to include in the record of the tribunal's determination "a statement of the reasons for their determination and of their findings on material questions of fact" (paragraph 13).

The Tribunal on the facts found reached a conclusion that no person acting judicially and properly instructed as to the relevant law could have come to;

2. for an additional requirement for central heating to be payable, it must be possible to say in respect of the week for which benefit is in question that the home *is* centrally heated by a single system and that the heating *is* the normal means of heating (paragraph 16);

3. where the central heating system has broken down and is awaiting repair or, depending on circumstances, the fuel supply is disconnected, there must come a stage after a substantial lapse of time when the central heating system can no longer be considered the normal means of heating. At that stage, which is a question of degree, the additional requirement is no longer payable (paragraph 16).

The appeal was allowed.

1. My decision is that

(1) the decision of the Supplementary Benefit Appeal Tribunal dated 1 September 1981 is erroneous in point of law and I set it aside;

(2) I am satisfied that it is expedient in the circumstances to give the decision that the tribunal should have given;

(3) that decision should have been, and my decision is, that the appeal of the benefit officer is allowed and the decision of the supplementary benefit officer issued on 29 April 1981 is confirmed for the reasons set out below.

The Nature of the Appeal

2. This case raises questions as to the interpretation of the regulations under which householders in receipt of supplementary benefit can claim an additional allowance for central heating, as to the grounds on which a decision of a supplementary benefit appeal tribunal may be said to be erroneous in point of law and, in particular, as to the application of the principle that such a decision is erroneous in point of law if the facts found

are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal.

3. This is an appeal by the supplementary benefit officer on a point of law against the decision of a supplementary benefit appeal tribunal on 1 September 1981 that the claimant is entitled to an additional requirement for heating under paragraph 3 of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299] (which I shall call "the Requirements Regulations").

4. That decision of the supplementary benefit appeal tribunal reversed the decision of a supplementary benefit officer issued on 29 April 1981, which was "supplementary allowance of £49.81 determined and paid weekly from the prescribed pay day Wednesday in week commencing 6.4.81" and the effect of which had been to reject the claimant's contention that he was entitled to a heating addition under paragraph 3 of Schedule 3 of the Requirements Regulations.

5. I granted leave to appeal against the decision of 1 September 1981 and held an oral hearing of the appeal. The supplementary benefit officer was represented by Mr P. N. Milledge of the Solicitor's Office, Department of Health and Social Security. The claimant, who did not appear, was represented by Mr S. Mudie, Welfare Rights Officer.

Submissions to the Tribunal

6. According to the written submission of the supplementary benefit officer to the tribunal, the appellant is aged 36 and lives with his wife. He has been receiving supplementary allowance since 1974. The appellant is a householder living in property which normally has 4 centrally heated rooms but the fuel supply for central heating, gas, was disconnected in June 1980 because of the arrears, amounting to £105, owing to the North West Gas Board.

7. The submission stated that regulation 12 and Part I of Schedule 3 of the Requirements Regulations define what is meant by additional heating requirements, specify the conditions under which additions to weekly supplementary allowance will be made for them and lay down the amounts of such additions. In particular, where the home is heated by a central heating system. The reasons for the officer's decision were said to be as follows:

> "The supplementary benefit officer decided that the appellant was not entitled to an additional requirement in respect of heating because the conditions laid down in the Regulations were not satisfied in that the home was not centrally heated because the fuel supply to the central heating system has been disconnected in June 1980".

8. The claimant's appeal (which is undated but was lodged on 6 August 1981) was on the following grounds:

> "I submit that notwithstanding the fact that my gas supply has been disconnected, I am entitled to a heating addition under Paragraph 3, schedule 3 of the requirement regulations. The gas disconnection should only be regarded as a temporary breakdown in the central heating. I am paying off the gas bill as fast as I can in order to get the supply back. To argue that I am not entitled to the addition implies that it should be given up by claimants if their system breaks down or if they choose not to use the system..."

The Tribunal Decision

9. The Chairman's note of evidence states: "Full details of this case appear on form 235." The facts found, decision and reasons for the decision are set out on form LT235.

The facts found were:

"The appellant has been receiving a Supplementary Allowance since 197 [A hole for filing has removed the final figure on the original case papers!] He lives in a house with four rooms excluding the usual offices and asked for the reinstatement of the additional requirement of £1.40 which ceased when the gas supply to the central heating system was disconnected in June 1980. His representative Mr Mudie of the Social Services Department contends that it was wrong for the Department to discontinue the additional requirement of £1.40 weekly because he says it should only be regarded as a temporary breakdown in the heating system. Disconnection was made because of non-payment of the gas accounts and arrears now amount to £120. He says that for the Department to take the view that he is not entitled to an additional requirement for heating implies that it should also be given up if the central heating system breaks down or if the appellant chooses not to use the central heating system.

The presenting officer on behalf of the benefit officer contends that when the system was disconnected the central heating system as such ceased to be available to the appellant and therefore the central heating system became, for the purposes of the Regulations, non-existent, and therefore the appellant was not entitled to the benefit of an additional requirement."

The tribunal decision was:

"The appeal is successful".

The tribunal's reasons were:

"The majority decision of the Tribunal is the appellant's house is heated by gas and this is the normal means of heating the premises, and therefore the appellant is entitled to an additional requirement under paragraph 3, Schedule 3 Requirements Regulations, even though there had been a temporary disconnection.

The minority view is because there had been a disconnection of the gas supply to the appellant's premises in June 1980, the heating system for the purposes of Schedule 3, paragraph 3 could no longer be said to exist and therefore the additional requirement under the Schedule, quote Schedule 3 paragraph 3 was not available to the appellant. It was the unanimous view of the Tribunal that the Regulation as at presently worded is unsatisfactory and clarification is required for guidance in the case of disconnection of supply."

The Relevant Law

10. The Requirements Regulations came into operation on 24 November 1980 and were in force when the supplementary benefit officer's decision was issued (29 April 1981) and also at the date of the tribunal decision (1 September 1981), except where otherwise indicated in square brackets. Subsequent amendments are also so indicated.

Regulation 12 provides:

"12.—(1) Subject to paragraphs (2) to (5), the weekly amount specified in column (2) of any paragraph in Part I of Schedule 3 shall be applicable to the claimant in respect of a member of the assessment unit to whom column (1) of the corresponding paragraph applies.

(2) The provisions of Part I of Schedule 3 shall be subject to the following conditions—

(a) ....

(b) ....

(c) no amount shall be applicable during absence from the home—

(i) under paragraphs 2, 3 and 5, if all members of the assessment unit have been absent for a continuous period of more than four weeks,

(ii) ....

(iii) ....

(d) ....

(e) ....

(f) ....

(g) ....

(h) where an amount is applicable under regulation 15 for rent which is inclusive of heating no amount shall be applicable under paragraphs 1 to 5.

[(i) ......inserted from 27 July 1981 S.I. 1981 No 1016]

(3) ....

(4) ....

(5) ....

Schedule 3 provides:

" SCHEDULE 3 — Regulations 11 to 13

ADDITIONAL REQUIREMENTS

PART I

HEATING

Items and cases applicable (1)	Weekly amount (2)
Heating	
....	....
3. Person who is a householder where the home, excluding any bathroom, lavatory or hall, consists of—	
(a) not more than four rooms, (b) five or more rooms;	3. (a) £1.40; (b) £2.80.
and is centrally heated by a single system, including night storage heaters, which (notwithstanding that individual parts of the system may be operated independently of each other) is operated from a central point and is the normal means of heating the living and dining [as from 27.7.81 "living or dining": see S.I. 1981 No 1016] areas.	[(a) £1.65 (b) £3.30 as from 23.11.81: see S.I. 1981 No 1196].
....	..........................."

Note

Paragraphs 2 and 5, which are mentioned in regulation 12(2)(c), relate respectively to the case where there is a householder and having regard in particular to whether the rooms are draughty or damp or exceptionally large the home is (a) difficult to heat adequately or (b) is exceptionally difficult to heat adequately and to the case where a householder's home is part of an estate built with a heating system which the Secretary of State has recognised to have disproportionately high running costs.

Submissions on the Appeal

11. On behalf of the benefit officer, Mr Milledge while accepting that the claimant was a householder whose home, excluding any bathroom, lavatory or hall, consisted of not more than four rooms in terms of paragraph 3 of Schedule 3 of the Requirements Regulations, submitted that the decision of the tribunal was erroneous in point of law in that the tribunal failed to consider the period that the central heating had been disconnected by the Gas Board (10 months to the date of the supplementary benefit officer's decision and 15 months to the date of their own decision) or, if they did consider the period, they arrived at a conclusion that no reasonable tribunal could have reached. His submission was that the tribunal were relying on the normal form of heating and that they took for granted that they should ignore what was abnormal the system having been disconnected perhaps temporarily. In his submission it was a question of fact and degree whether something is or is not normal. It would be absurd in some cases to regard disconnection of perhaps a year or more as still being normal. The benefit in question was a weekly benefit. Fifteen months had elapsed by the date of the tribunal hearing. They could look at the facts till then. They applied the wrong test of what is normal. When considering a weekly benefit, one looks at a shorter period than fifteen months. Six months would be more reasonable. In construing the expression "is centrally heated by a single system" one must look at this expression in the context of normality and the first condition "is centrally heated by a single system" hangs on the condition "and is the normal means of heating the living and dining areas". One could not expect the central heating to be on in say June but must look at the case in the context of the claimant's living habits and looking at it over a period look to see if it is the normal circumstances. The tribunal appeared to have looked at eternity and said that as the central heating equipment is there that is normal. But one must look to see if the equipment is functioning and has been in a reasonable test period. The tribunal should have looked at such a period. If they did, and concluded it was normal (15 months on weekly benefit) then it was a decision that no reasonable tribunal properly instructed could have reached.

12. On behalf of the claimant, Mr Mudie submitted that "is centrally heated" is a common phrase in common parlance and means "it has a central heating system". A housing officer would say "it is centrally heated" or "it has a central heating system". One has also to consider if it was normal. The tribunal took the regulation as meaning on the type of dwelling it was designed to incorporate gas central heating and often such properties do not have other forms of heating for example there is no chimney. There was evidence before the tribunal that the claimant and his wife had used the central heating system and were hoping to have it switched back on. The tribunal accepted that the claimant's house could be said to be "is centrally heated" and it was reasonable for them to hold that. Some period, it had been suggested, must be imposed on the tribunal. Mr Mudie did not think that they considered that but they considered the structure of the building and whether it was a normal means of heating the home in a construction sense. The tribunal were aware that it was a

temporary disconnection—it was in the findings—and they considered whether it was the normal situation and clearly they decided that it was temporary. Mr Mudie submitted that the majority were influenced by the claimant wanting to return to normal central heating and that they considered the period.

Was the Tribunal Decision Erroneous in Point of Law?

13. A decision of a supplementary benefit appeal tribunal may be erroneous in point of law if:

(1) it contains a false proposition ex facie;

or

(2) it is supported by no evidence;

or

(3) the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question;

(see, on these three points, *Edwards v Bairstow* [1956] A.C. 14, 36; and *Global Plant Ltd v Secretary of State for Social Services* [1972] 1 Q.B. 139)

or

(4) there has been any breach of the requirement to act according to the demands of natural justice (see *R v Deputy Industrial Injuries Commissioner, Ex parte Moore* [1965] 1 Q.B. 456 at pages 486 et seq and *Wiseman v Borneman* [1971] A.C. 297 at pages 308, 309, 311, 314);

or

(5) there has been any failure adequately to observe the requirement in rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] to include in the record of the tribunal determination "a statement of the reasons for their determination and of the findings on material questions of fact" (see Decision R(SB)11/82).

14. It has not been suggested that there was any breach of the rules of natural justice in this case or that the record of their decision was defective in terms of rule 7(2)(b) of the Appeals Rules (though it might well be argued that the record should have found, as a material fact, how the home had in fact been heated during the previous 15 months, when the gas supplying the central heating system had been disconnected). There is not, on the face of it, any obvious false proposition of law, and there was some evidence before the tribunal.

15. The real issue is whether the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question.

In *Edwards v Bairstow* [1956] A.C. 14, Lord Radcliffe, in an opinion which has been many times applied in subsequent cases, of which the *Global Plant* case (see above) is an example, propounded and explained the accepted test as follows (pages 33 – 36):

"......it is a question of law what meaning is to be given to the words of the Income Tax Act "trade, manufacture, adventure or concern in the nature of trade" and for that matter what constitutes "profits or gains" arising from it. Here we have a statutory phrase involving a charge of tax, and it is for the courts to interpret its meaning, having regard to the context in which it occurs and to the principles which they

bring to bear upon the meaning of income. But, that being said, the law does not supply a precise definition of the word "trade": much less does it prescribe a detailed or exhaustive set of rules for application to any particular set of circumstances. In effect it lays down the limits within which it would be permissible to say that a "trade" as interpreted by section 237 of the Act does or does not exist.

But the field so marked out is a wide one and there are many combinations of circumstances in which it could not be said to be wrong to arrive at a conclusion one way or the other. If the facts of any particular case are fairly capable of being so described, it seems to me that it necessarily follows that the determination of the Commissioners, Special or General, to the effect that a trade does or does not exist is not "erroneous in point of law"; and, if a determination cannot be shown to be erroneous in point of law, the statute does not admit of its being upset by the court on appeal. I except the occasions when the commissioners, although dealing with a set of facts which would warrant a decision either way, show by some reason they give or statement they make in the body of the case that they have misunderstood the law in some relevant particular.

All these cases in which the facts warrant a determination either way can be described as questions of degree and therefore as questions of fact........ But, of course, in proper circumstances a case can be described as one of fact, or as purely one of fact (if the testimonial adds anything), without going through the procedure of explaining that is so because it is one of degree and, the facts fairly admitting of the determination come to, there is no error which justifies the court's intervention.... The true clue to the understanding of the position lies, I think, in recalling that the court can allow an appeal from the commissioners' determination only if it is shown to be erroneous in point of law.

Nor do I think that there can be any real divergence of opinion as to what constitutes error of law for this purpose...... where there is an actual statement in the case which shows a misconception of the law, no one feels any difficulty. But, equally, no one supposes that the court's right, or as I would say, duty, to intervene stops at this......
the true position of the court in all these cases can be shortly stated. If a party to a hearing before commissioners expresses dissatisfaction with their determination as being erroneous in point of law...... [then]...... When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstance, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there, too, there has been error in point of law. I do not think that it much matters whether this state of affairs is described as one in which there is no evidence to support the determination or as one in which the evidence is inconsistent with and contradictory of the determination, or as one in which the true and only reasonable conclusion contradicts the determination. Rightly understood, each phrase propounds the same test. For my part, I prefer the last of the three, since I think that it is rather misleading to speak of there being no

evidence to support a conclusion when in cases such as these many of the facts are likely to be neutral in themselves, and only to take their colour from the combination of circumstances in which they are found to occur''.

16. In the present case, the relevant law is set out in the Requirements Regulations: see paragraph 10 above.

The relevant requirement is that the home

''is centrally heated by a single system......which...... is the normal means of heating the living and [since 27.7.81 ''or''] dining areas'' (my underlining).

The addition, payable where this requirement is met, is a *weekly* addition in respect of an existing state of things as above described. It is not payable for homes which *were* centrally heated by a single system which *was* the normal means of heating living and [or] dining areas; nor for homes which *will be* centrally heated by a single system which *will be* the normal means of heating living and [or] dining areas. The weekly addition is payable regardless of the time of year, whether summer or winter, so that the heating system clearly does not have to be switched on and operating for the addition to be payable. But it must be possible to say, in respect of the week for which benefit is in question, that the home *is* centrally heated by a single system and that the heating *is* the normal means of heating the living and [or] dining rooms. This question could reasonably be answered ''Yes'' in respect of short periods when (a) the system has broken down and is awaiting repair, or, (b) depending on circumstances, even if the Gas Board has cut off the supply. But after a substantial lapse of time there must (depending in each case on the particular circumstances as to when that point is reached) come a stage when it is no longer possible to say this, when the existing state of things, namely a home which is centrally heated with living and [or] dining areas where this is the normal means of heating, no longer exists and it becomes a past state of things. At that stage, which is a question of degree, the addition is no longer payable.

17. The tribunal had before it all the weeks falling within the period 6 April 1981 to 1 September 1981. Each week should be considered separately applying the law in force (there is no material difference in this case) week by week. In my judgment, no tribunal judicially and properly instructed as to the relevant law could, on the facts found, have come to the conclusion that during any of the weeks falling within that period the home could be described, in the present tense, as one which ''is centrally heated by a single system, which is the normal means of heating the living and [''or'' from 27.7.81] dining areas'' so as to entitle the claimant to a weekly addition for central heating. The system had, during this period been in disuse for *ten to fifteen months,* according to the week under consideration. The tribunal must have been under some misconception as to the law. Accordingly, in my judgment, the decision of the tribunal was erroneous in point of law and I set it aside.

Is it expedient to give the Decision that the Tribunal should have given?

18. Having reached the conclusion that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question, which was to award an additional requirement for central heating under paragraph 3 of Schedule 3 of the Requirements Regulations, no useful purpose would be served by directing the appeal to be heard by a different tribunal, for no such tribunal could, without error of law, come to the same conclusion. In these circumstances, it is expedient that I should give the decision that the

tribunal should have given, namely to confirm the decision of the benefit officer issued on 29 April 1981. This decision is given in paragraph 1.

(Signed) V. G. H. Hallett
Commissioner