

Central heating addition ^{under para 3} - claimant separated from H ^{who} received such an addition - claimant was "householder" ^{at that time} ^{then} para 3 was also applicable to her.

JGM/AM

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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: Muriel McCormick (Mrs)

Social Security Appeal Tribunal: Sheffield

Case No: 10/20/10

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 17 March 1986 was erroneous in point of law and it is set aside. The matter must be referred to another tribunal.
2. The claimant is a woman, who until her husband left her in early September 1986 was living as a member of his assessment unit in a centrally heated local authority flat. Her husband was in receipt of a supplementary allowance, and his requirements included a heating addition under paragraph of Part I of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 (the Requirements Regulations). When he and his wife separated on 10 September 1985, it seems that the requirements of the assessment that included the husband were met up to 19 September 1985 and that it was thus, I suppose, only from then that an allowance would be awarded to the claimant. But the claimant was not credited with any heating addition under paragraph 3 above mentioned. The ground for the exclusion was that regulation 12(1)(j) of the Requirements Regulations provides as follows:

"no amount shall be applicable to a householder under paragraph 3 unless that paragraph was applicable to him [or her] before 5 August 1985 and has been continuously applicable to him [or her] since that date or would have been so applicable but for the effect in his case of regulation 12(2)(f)" (which restricts the duplication of heating additions).
3. The adjudication officer considered that paragraph 3 had been applicable to the claimant's husband and not to the claimant herself during the period from before 8 August 1985 down to the time that her husband left the home; and that accordingly the claimant could not be entitled to a heating addition under paragraph 3. This conclusion, if it be right, would at first sight appear to have a permanently prejudicial effect on the claimant's supplementary allowance. But I understand that in fact she has become entitled to a heating addition under some other paragraph of the schedule and that it is not a case of permanent prejudice to her.

4. The claimant appealed to the appeal tribunal against the adjudication officer's appeal. Her appeal was successful, being allowed on the ground that the claimant had been a "householder" within the meaning of regulation 12(5) of the Requirements Regulations since before 5 August 1985. By inference they concluded that this meant that paragraph 3 was applicable to her from before that date. The adjudication officer now appeals to the Commissioner. He was represented at the oral hearing before me by Mr J Coggins counsel instructed by the Solicitor to the Department of Health and Social Security. The claimant was represented by Mr J Donkersley of the Chapeltown Law Centre Sheffield.

5. I am allowing the appeal primarily because the tribunal did not find facts sufficient to support the conclusion that the claimant was throughout a householder. In the course of giving directions to the new tribunal I shall indicate my reasons for considering that if the claimant was such a householder then it is right to consider that paragraph 3 was applicable to her at the relevant time.

6. The basic question is whether paragraph 3 was applicable to her. The regulation does not use a phrase such as that the claimant was "entitled" to a heating addition at the time, because a heating addition is not something that is paid to a claimant, but it is a factor in the calculation of the supplementary allowance or pension of an assessment unit. Heating additions in general are provided for in regulation 12 of, and Part 1 of Schedule 4 to, the Requirements Regulations. Regulation 12(1) refers to an amount being "applicable to a claimant in respect of a member of the assessment unit". There seems here to be a distinction between an amount being applicable "to" and an amount being applicable "in respect of" a person. Column (1) in the various paragraphs identifies the persons in respect of whom the addition may be awarded. In some paragraphs that person is a member of the assessment unit with special characteristics such as old age or ill health. In others it is just a householder. Undoubtedly the person so described in column (1) can be the claimant. It is quite possible for a paragraph to be applicable to a person as well as well as in respect of him.

7. For the purpose of regulation 12 and Part 4 of Schedule 4 a householder is specially defined, in regulation 12(5), as follows:

"For the purpose of Part 1 of Schedule 4 "householder" means a person (including a partner) who satisfies the conditions of sub-paragraph (a) but contrary to sub-paragraph (b), shares responsibility for, or control of, the expenditure there referred to with another member of the same household -

(a) paragraphs 2 to 6 of Schedule 4 shall apply to him as of the amount specified in column (2) of those paragraphs were divided by the number of persons in the household who share responsibility or control;

(b) paragraph 8 of Schedule 4 shall apply as if he was a householder.

I note the word "apply" in sub-paragraph (a), and I consider that, if under that sub-paragraph one applies paragraph 3 of Part I of Schedule 4 to a person that paragraph is applicable to that person.

8. I now go to the definition of "householder" in regulation 5(6) of the requirements Regulations, which 12(5) modifies for present purposes. The basic definition of "householder" in regulation 5(6) is undoubtedly eccentric. It reads so far as material as follows:

"..... a householder is a single claimant who -

(a) in respect of a home or as the case may be a household in Great Britain is responsible for housing expenditure, or if the household incurs no such expenditure, is the member of the household with major control over household expenditure;

(b) does not share such responsibility or control with another member of the same household; and

(c)

Regulation 5(7) of the same regulation in effect extends the reference to housing expenditure so as to cover "housing benefit expenditure" a phrase which includes rent and rates.

9. The peculiarity of the above definition is twofold. First it applies only to single persons, so that neither partner in a married or unmarried couple is included and secondly it excludes those who share responsibility. In fact one member of the married or unmarried couple is by the Act called a relevant person and as such is in respect of himself or his partner placed in much the same position as a householder for the purposes of the regulation; while those who share responsibility in effect (under regulation 6) share between them some of the requirements of the householder. In the claimant's household before her husband left, the husband was the relevant person and as such the only claimant. And it is accepted that at the present time the claimant was not qualified to be the relevant person or claimant under regulation 1A of the Supplementary Benefit (Aggregation) Regulations 1981 as amended. Thus she was not, before her husband left, either a claimant or capable of being a claimant and, if paragraph 3 of the Schedule can only be said to be applicable to a householder who is a claimant, then the paragraph 3 was not applicable to the claimant before her husband left.

10. In my judgment however the provisions of regulation 12(5)(a) about the sharing of responsibility for housing expenditure (extended to housing benefit expenditure, which includes rent and rates) show that a person who by reason of sharing a responsibility for such expenditure is a householder in terms of regulation 12(5) is a person to whom paragraph 3 is applied, if on a proper interpretation of the situation part of the heating addition is under that paragraph attributed to her, even though, as her requirements are aggregated with those of her husband and treated as his, it makes no practical difference to attribute them to her rather than to him.

11. Regulation 5(6) refers to the person who is responsible for housing expenditure (which includes housing benefit expenditure) and, only if there is no such person, to the person having control of household expenditure. In the present case we are concerned only with the former, as there was undoubtedly housing benefit expenditure in the form of rent, and there was, or were, undoubtedly a person or persons responsible for it. The question is whether the claimant was, while her husband was there, responsible for such expenditure or rather shared responsibility for such expenditure within regulation 12(5). The appeal tribunal, who found that the claimant and her husband shared the rest of the household expenses, did not make any finding that the expenses so shared included anything amounting to housing expenditure or housing benefit expenditure. The most significant item of such expenditure was rent, though there may have been other

such expenditure. They shared responsibility for the rent if they were responsible to the landlord jointly in any way indicated in regulation 14(3) of the requirements regulations. The only likely way is by their having been joint tenants. The tribunal did not make any finding of this. They found only that the husband's name alone appeared on the rent-book. And this, though not conclusively so, suggests that the husband may have been sole tenant, but that they in fact shared the expenditure, which is insufficient under regulation 14(3)(iv) where the sharing is between members of the same household. The new tribunal will have to look at the evidence as to whether they were both tenants or not. There may be a tenancy agreement which would conclude the matter. But a tenancy can exist without any document at all and the identity of the tenant or tenants may be an inference from the facts. I must leave this to the new tribunal.

12. For the foregoing reasons I find that the decision of the former tribunal was erroneous because they concluded, as I understand it, that the bare fact that the claimant and her husband shared the expenditure was sufficient to constitute her a householder in terms of regulation 12(5), whereas in fact they needed to find that the claimant was responsible alone or jointly with her husband in terms of regulation 14(3)(i). The adjudication officer's appeal is therefore allowed.

(Signed): J G Monroe
Commissioner

Date: 1 June 1987