C 5B 618/1983

DGR/SG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Exceptionally diff to hear : favour.

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 18 February 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.

2. This is an appeal by the claimant bought with my leave against the decision of the supplementary benefit appeal tribunal of 18 February 1983.

3. In May 1982 the claimant, who was then in receipt of supplementary benefit by reason of his unemployment and was living in non-centrally heated accommodation, requested help with his heating bills, and in addition asked for a higher rate heating addition. He was currently in receipt of a heating addition, but at the lower rate. However on 13 August 1982, following a visit by an officer of the Department to the claimant's home, the benefit officer decided that the claimant was not entitled to a higher rate heating addition because the conditions of regulation 12 and paragraph 2(b) of Part I of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 were not satisfied. He did, however, award a single payment of £12.23 towards the heating costs, and this particular decision is not the subject matter of appeal.

4. The claimant appealed to the local tribunal who in the event upheld the benefit officer. The tribunal gave as the reasons for their decision,

> "The Tribunal considered that the higher heating addition was not appropriate as the property was not, in the tribunal's opinion, exceptionally difficult to heat in respect of those rooms which need to be heated. The property is not very old, it is not in an exposed position and the rooms are not exceptionally large. Therefore a heating addition under Paragraph 2(b) of Part I of Schedule 3 to the Requirements Regulations is not appropriate".

5. The claimant will be entitled to a heating addition at the higher rate if he satisfies paragraph 2(b) of Schedule 3, i.e. if he shows that "the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation". Now, it must be realised that although the fact of a property's being very old or in a very exposed situation is very much a material consideration in deciding whether it is excessively difficult to heat, these considerations are not exclusive. It is open to the determining authority to take into account any consideration which has a material bearing on the issue whether or not the property in question is exceptionally difficult to heat. Antiquity and exposure are only examples of the kind of factors which render a home exceptionally difficult to heat.

6. In the present case the tribunal appear to have based their decision solely on the fact that the property was not very old, that it was not in a exposed position, and that the rooms were not exceptionally large. However, undoubtedly evidence was produced suggesting that the home was inter alia damp, draughty and in need of repair, all of which point to the possibility that the property was exceptionally difficult to heat. In deciding whether or not the claimant satisfied paragraph 2(b) the tribunal had to take into account the evidence referred to above, and could not simply dispose of the matter on the basis that the property was not very old, that it was not in an exposed position, and that the rooms were not exceptionally large. To have restricted themselves in the way they did the tribunal clearly erred in point of law, and their decision must be set aside.

7. Furthermore, the tribunal erred in that they should have specifically either accepted or rejected the evidence put forward on behalf of the claimant. The claimant must not be left in the dark as to whether or not evidence on which he relied was accepted or rejected. On this ground too the decision of the tribunal was erroneous in point of law.

8. I have no alternative but to set aside the tribunal's decision and to direct that the matter be reheard by a differently constituted tribunal. That tribunal will have regard to the matters referred to above, and it may be helpful if I add that the number of rooms which need to be heated in a person's home is not a relevant consideration in determining whether the provisions of paragraph 2(b) of Schedule 3 are satisfied. The tribunal appear to have treated this factor as relevant, and incidentally were erroneous on that score as well.

9. My decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 1 November 1983

Commissioner's File: C.S.B. 618/1983
C SBO File: 674/83
Region: Midlands

CSB 618/1983

DGR/SG

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