

J/SH/2/MD

Commissioner's File: CSB/672/1985

C A O File: AO 2466/85

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: William Forrester Dixon

Social Security Appeal Tribunal: Liverpool

Case No: 6/11D10

[ORAL HEARING]

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 21 March 1985 which confirmed a decision issued by the adjudication officer on 26 November 1984.
2. I held an oral hearing of the appeal. The claimant attended and was represented by Mrs G Lyons, a senior social worker from the Mental Health Section of the Liverpool Social Service. The adjudication officer was represented by Mr E O F Stocker. I am indebted to both representatives for their helpful submissions. As will appear from what follows, however, the resolution of the point of law arising in this appeal was virtually a foregone conclusion. Both representatives addressed me at some length upon the fairness or unfairness of the relevant regulations. I am entitled, of course, to express my views upon that aspect of the case. They are not, however, germane to the determination of the appeal.
3. The details of the relevant law are fully set out in the papers and are, obviously, fully understood by Mrs Lyons. I need not rehearse them at length here.
4. The claimant, now aged about 47, is mentally handicapped. Since February 1984 he has lived as a joint tenant with three other people who are likewise handicapped. Their home is a privately rented house which has 4 bedrooms and is centrally heated. They are all in receipt of supplementary benefit. They were all in receipt of non-contributory invalidity pension and are now all in receipt of severe disablement allowance. They live as a group independently but with support from visiting social workers. Pursuant to regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983 they are all in receipt of the long-term rate for normal requirements. Since they share responsibility for housing expenditure and/or control over household expenditure, they are entitled not merely to the long-term rate for a non-householder aged not less than 18, but also to an additional sum equal to one-fourth of the difference between that rate and the corresponding rate for a householder (see regulation 6(2) of the Requirements Regulations). Since their home is centrally heated and contains 5 or more rooms, they qualify for an additional heating

allowance at the higher rate (£4.20 with effect from 26 November 1984). The effect of regulation 6(2) is, of course, that the individual requirements of each of the four are thereby increased by one-quarter of £4.20 = £1.05.

5. So far so good. But with effect from 26 November 1984 regulation 11 of the Requirements Regulations has contained a new paragraph. I quote it:

"(2A) Subject to paragraph (2B), where the long-term rate for normal requirements is applicable to the claimant, whether as a person to whom paragraph 1(a) or 3(a) of the table applies or under regulation 7, the weekly amount of his additional requirements shall be the amount by which the amount or, if more than one amount, the aggregate of the amounts applicable to him, or to any partner or dependant of his, under any one or more paragraphs of Schedule 4, exceeds £1."

Paragraph (2B), which was inserted into regulation 11 at the same time, specifies certain additional requirements which are excepted from the purview of paragraph (2A) - but none of those exceptions is relevant to this case.

6. Prior to 26 November 1984 paragraph (5) of regulation 13 of the Requirements Regulations contained provisions somewhat similar to those of what is now paragraph (2A) of regulation 11 - but the relevant sum was 50p and not £1 and, even more important from the point of view of this claimant, heating additions did not attract that, or any, deduction.

7. The upshot of all this is that, since 26 November 1984, the claimant - in common with the 3 other members of the household - received only £0.5 a week by way of additional heating allowance (ie £1.05 less £1). Upon his behalf it is vigorously contended that, if the additional heating allowance is split four ways, the £1 set-off should also be split four ways. In other words, each member of the household should be liable only to a deduction of £0.25 from his "share" of the additional heating allowance. As Mrs Lyons pointed out, where the relevant household consists of five or more joint tenants, the effect of regulation 11(2A) - if literally applied - is to eliminate the additional heating allowance altogether. That, she submits, is contrary to "natural justice" and should not be permitted by the adjudicating authorities. It is blatant and unwarranted discrimination against joint tenants who are on the long-term rate for normal requirements. Mr Stocker, on the other hand, sought to persuade me that there was no real injustice. The long-term rate constituted a bonus. Those in receipt thereof had something "extra" with which to meet items the subject of additional allowances. In any event, the cost of heating a home for four joint tenants would not amount to four times the cost of heating a similar home in sole occupation. In other words, it was probable that each of the four joint tenants was, in practice, spending less on heating than would be a sole tenant of similar accommodation.

8. It is not really for me to pass judgment upon the issue of fair/unfair. One thing, however, does seem certain, namely that the legislature did not foresee the somewhat anomalous situation which has here arisen. Mrs Lyons produced at the hearing an undated letter addressed to the Director of the Child Poverty Action Group and written by the Parliamentary Under Secretary of State for Social Security. That letter makes, in some detail, the points made to me by Mr Stocker. It also says this, however:

"As you say joint householders are made worse off than other householders by the deduction of £1 in each case from their share of such an addition. I regret that unfortunately this was overlooked when regulation 11(2A) was drafted. Thank you for bringing it to my attention. Clearly, with hindsight, what was needed was some provision to take into account only a proportionate share of the available scale margin. If this had been done, and your four joint householders were entitled to a household addition for heating of £5.20 [sic] they would each receive 75p a week more than under

the present provisions."

9. The letter concludes, however, with a paragraph which adverts to what was then (in about May 1985) the forthcoming publication of the review of the supplementary benefit scheme. It indicates that further amendments to the current regulations will not be made "unless they are absolutely necessary"; and stresses that only a small number of claimant's are affected by the present anomaly and that the amount of benefit involved is not large.

10. I cannot regard that as satisfactory. The effect of the draftsman's oversight is that each of the four joint tenants in the household of which the claimant is a member is worse off by almost £40 a year - and to a person living on supplementary benefit that is in no way a negligible sum. But, apart from making that comment, there is nothing which I - or any other of the adjudicating authorities - can do about it. As I sought to explain to Mrs Lyons in the course of the hearing, the express and clear provisions of a statute, or of regulations made under a statute, have in this country to be enforced by the courts and other adjudicating authorities without reference to concepts of overall fairness (which is what I take Mrs Lyons to mean when she refers to "natural justice"). Much current legislation seems unfair to certain sections of the community. Much current legislation seems discriminatory to certain sections of the community. But the remedying of these wrongs - real or imagined - is the province of Parliament. It cannot constitutionally be effected by the courts or other adjudicating authorities.

11. In a characteristically objective attempt to assist the claimant, Mr Stocker suggested that arrangements might be made so that each of the four occupants of the house became separate "householders" in their own right. Whether in the circumstances of this particular group that would be practicable, I somewhat doubt. However, it is not for me to pursue that possibility here.

12. My decision must be that there is no error of law in the appeal tribunal's decision and that, accordingly, the claimant's appeal must be disallowed.

(Signed) J. Mitchell
Commissioner

Date: 27th November 1985