

Central hty addition - "applicable" in reg 12(2)(j)
doesn't mean to AR had actually to have been
in payment before 5 Aug 85

HE
C.A.B.

higher heating rate

reg 30/12/86
moderate persons
regional central v
Commissioner's File: CSB/0678/1986

MHD/3/LS

C.A.O File: AO 2568/SB/86

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George Frederick Wallerus

Social Security Appeal Tribunal: Barking

Case No: 24/50

1. My decision is that the decision of the social security appeal tribunal dated 11 March 1986 is erroneous in point of law. Accordingly I set it aside and remit the matter for rehearing by a differently constituted tribunal.
2. The claimant appeals to the Commissioner with leave of the chairman of the tribunal against the unanimous decision of the Barking social security appeal tribunal, dated 11 March 1986, dismissing his appeal from the decision of the adjudication officer, issued on 3 January 1986, not to award him a heating addition at the higher rate, but at the lower rate only.
3. The claimant is a married man who has been in receipt of supplementary benefit since 23 November 1985, and who lives with his wife in what, in his letter dated 4 January 1986, he describes as "a house with 5 rooms" with a "heating system that is extremely expensive to run". It was in those circumstances that he requested an additional requirement for heating on the basis initially, it would seem, that he was suffering from osteo-arthritis.
4. The adjudication officer held that the claimant was entitled to a heating addition at the lower rate, but did not satisfy any of the conditions for a higher rate addition set out in Part I of Schedule 4 (not Schedule 3 as erroneously stated in paragraph 4 of the adjudication officer's submission on form AT2) of the Supplementary Benefit (Requirements) Regulations 1983, and that neither was he eligible for consideration for a central heating addition as he was precluded by regulation 12(2)(j) of the Requirements Regulations, which he set out in full in paragraph 6 of his submission. Unfortunately he preceded this by stating that the "new legislation" had the effect of disqualifying the claimant because he had "not been continuously in receipt of ... [benefit] ... since before 5 August 1985". That is inaccurate and I have little doubt that it was instrumental in misleading the appeal tribunal to make a finding in those terms. In general I am bound to say that the adjudication officer's submission does not seem to have been prepared with the care one expects.
5. On 4 January 1986 the claimant wrote asking the Department to "rectify" the adjudication officer's decision. That letter was apparently taken as his notice of appeal which, judging from his letter dated 5 March 1986, had not been his intention. In any event the adjudication officer made his submission, to which I have referred, and the matter came before the appeal tribunal on 11 March 1986. The chairman noted that the claimant "referred to the various leaflets he had received" from the Department (which he deals with in some detail in his letter of 5 March), and which he said had misled him, and that he then went on to give particulars of his heating costs and of his state of health.

6. The appeal tribunal found on questions of fact "as set out by the Adjudication Officer" and noted that they "accepted that [the claimant's] premises were difficult to heat and that his heating bill was very high", and, in those circumstances, somewhat surprisingly unanimously dismissed his appeal. Their reasons, in brief, were that although the claimant "was obviously seriously ill it could not be said that he suffered from chronic ill-health ...", and that he was not entitled to central heating addition as that had been "withdrawn and he had not been in continuous receipt of this benefit since 5/3/85".

7. The adjudication officer now concerned with the case, in his very full and helpful submission dated 26 June 1986, sets out in detail the relevant regulations and I need not repeat them here. In summary paragraphs 1, 2, 3 and 6 of Part I of Schedule 4 deal with the circumstances in which a claimant may be entitled to an additional requirement, at various rates, in respect of heating, and regulations 11 and 12 of the Requirements Regulations define and limit the manner in which such claims are to be dealt with.

8. The adjudication officer now concerned submits that, as the tribunal's only relevant finding of fact was that the claimant's premises were difficult to heat, they have made inadequate findings upon which to dismiss the claimant's appeal. In my judgment that is clearly correct and consequently is in breach of the tribunal's duty under regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 and, consequently, constitutes an error in law which requires me to remit the matter for rehearing by a differently constituted tribunal, who will make the necessary findings of fact - and record the same.

9. I commend to the new tribunal the careful analysis by the adjudication officer now concerned of the law, and of the matters about which they will have to be satisfied before deciding whether paragraphs 1, 2, 3 and/or 6 of Schedule 4 apply to the claimant and, if so, in the case of paragraph 3, whether he is excluded by reason of regulation 12(2)(j).

10. With regard to regulation 12(2)(j), this provides that, with effect from 5 August 1985, an additional central heating requirement will only be paid to a claimant to whom paragraph 3 of Schedule 4 was "applicable" prior to that date. The claimant in the instant case has been in receipt of benefit since 23 November 1985 but that does not necessarily preclude him from the additional requirement since, as I understand it, a proper construction of sub-paragraph (j) does not mean that the additional requirement was actually being paid immediately before 5 August 1985, merely that had the claimant's needs been correctly assessed at that time he would have been so entitled.

11. In the circumstances the claimant's appeal is allowed and my decision is as set out in paragraph 1.

(Signed) M. H. Johnson
Commissioner

Date: 13 December 1986