

Central heating addition. Words "including a partner" in reg 12(5) Reg. Regs do not mean that if it is householder his partner is too automatically. Agrees with 159/86 & 616/86 on meaning of "applicable"

MJG/SH/23/MD

Commissioner's File: CSB/0711/1986

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Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Guildford

Case No: 09/005/07

[ORAL HEARING]

1. I allow the adjudication officer's appeal against the decision of the social security appeal tribunal dated 21 May 1986 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This is an appeal by the adjudication officer against the unanimous decision of the social security appeal tribunal dated 21 May 1986, which upheld the claimant's appeal against a decision of the local adjudication officer issued on 4 October 1985, to the effect that the claimant was not entitled to an additional supplementary benefit 'requirement' for central heating. On my direction the appeal was the subject of an oral hearing before me on 9 October 1987 at which the claimant was not present but was represented by Ms J Winter of the Welfare Rights Unit of the Greater London Citizens Advice Bureau Service. The adjudication officer was represented by Mr P. Darby of Counsel. I am indebted to Ms Winter and to Mr Darby for their assistance to me at the hearing.

3. The facts are briefly these. The claimant, a married woman, at the material time aged 39, was until 20 August 1985 living with her husband in a house owned by him. The tribunal found as a fact that he was responsible for the mortgage payments and for general and water rates on the property (but the new tribunal will need to check this). The husband had been in receipt of a higher rate central heating allowance under paragraph 3 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 [SI 1983 No. 1399], which provides for an additional 'requirement' of a weekly sum where a person who is "a member of the assessment unit" (Requirements Regulation 12(1)) is a,

"Person who is a householder where the home, excluding any bathroom, lavatory or hall, consists of -

(a)

- (b) five or more rooms;

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 or dining areas."

4. On 20 August 1985, the claimant's husband left the matrimonial home, the claimant remaining there with her three children then aged 14, 11 and 6 respectively. The next day 21 August 1985 the claimant herself made a claim for supplementary benefit and it was against the refusal of the local adjudication officer to include a central heating addition in the assessment of her requirements for supplementary benefit purposes that the claimant successfully appealed to the local tribunal.

5. She was of course still living in the same house for which the husband had received a central heating addition but the difficulty arises from regulation 2(5)(d) of the Supplementary Benefit (Requirements) Amendment and Up-Rating Regulations 1985 [SI 1985 No. 1247], which added sub-paragraph (j) to regulation 12(2) of the 1983 Requirements Regulations, as follows,

"Heating

12. (2) The provisions of Part I of Schedule 4 shall be subject to the following conditions -

(a)-(i)

(j) no amount shall be applicable to a householder under paragraph 3 [central heating addition] unless that paragraph was applicable to him before 5 August 1985 and has been continuously applicable to him since that date or would have been so applicable to him but for the effect in his case of regulation 12(2)(f) [overlapping with another head of heating allowance under Schedule 4]."

6. Had therefore the claimant's husband not left the matrimonial home and continued to claim supplementary benefit he would still have been entitled to the central heating allowance but the problem in this case is whether the husband's leaving and the claim being made thereafter by his wife altered the position. The local tribunal held that it did not alter the position, giving the following reasons for their decision,

"[The claimant] should be awarded a central heating addition, having regard to the terms of the Supplementary Benefit (Requirements) Regulations 1983, Regulation 12(2)(j) and 12(2)(f). She was a member of the [N -] household continuously from period 5.8.85 to the date she commenced to receive a supplementary allowance in her own right and, as a member of the [N -] household, a central heating addition was continuously applicable to her."

7. The adjudication officer appeals against that decision on the ground (paragraph 3 of application for leave to appeal dated 7 July 1986) that the word "applicable" in regulation 12(2)(j) of the Requirements Regulations (see paragraph 5 above) means "that a person not only satisfies the condition specified in the relevant provisions of the Requirements Regulations, but that that requirement has been included in the assessment and a pension or allowance, based on that assessment, has been awarded". In my judgment that is too narrow a view of the word "applicable" and in this respect I follow unreported Commissioner's decisions CSB/159/1986 and CSB/616/1986, which on my direction were made part of the appeal papers in this case. Shortly, those decisions held (and copies of

them should be supplied to the new tribunal that hears this case) that if it could be shown that a wife in these circumstances was "a householder" before 5 August 1985, even when her husband was also living in the house, then it could be said that paragraph 3 of Schedule 4 (central heating addition) "was applicable to" the claimant, as well as to her husband, before 5 August 1985. That is a question of fact (compare reported decision R(SB)4/83) and as I have insufficient facts to decide this matter and I could not take evidence from the claimant I have to remit the case for rehearing and redetermination by a new tribunal. That new tribunal will need to ascertain whether before 5 August 1985 ie at a time when her husband was still living in the house the claimant was also "a householder".

8. The new tribunal will need to have regard to the special definition of "householder" to be found in regulation 12(5) of the Requirements Regulations which provides as follows,

"12. (5) For the purposes of Part I of Schedule 4 'householder' means a person (including a partner) who satisfies the conditions of sub-paragraphs (a) and (b) of paragraph 6 of regulation 5 (meaning of householder) but where a person satisfies the condition 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 if the amount specified in column (2) of those paragraphs were divided by the number of the persons in the household who share responsibility or control:

(b) [not relevant]."

9. That clearly envisages that a husband and wife could be joint householders for the purpose of the central heating addition. Whether they were or not in this case is for determination as a question of fact by the new tribunal. The original tribunal found that the house was owned solely by the husband and that he was solely responsible for mortgage payments and for general and water rate payments. The new tribunal will need to check this but in any event that may not necessarily be an end of the matter, in view of the provision of regulation 14(3)(a)(iv) of the 1983 Requirements Regulations which provides that a person shall be treated as responsible for expenditure,

"which he in practice shares with one or more other members of the household, not being close relatives of his, at least one of whom either is responsible under one of the preceding heads of this sub-paragraph or has an equivalent responsibility for housing benefit expenditure and for which the adjudication officer is satisfied that is reasonable in the circumstances to treat him as sharing responsibility."

A spouse is not a "close relative" (see regulation 2(1)) and consequently if the claimant in practice shared with her husband the responsibility for the outgoings of the house eg mortgage payments, rates repairs etc or any other miscellaneous outgoings she may be held by the new tribunal to have been a householder before 5 August 1985 even when her husband was also a householder.

10. If, however, the new tribunal should conclude that the claimant was not a "householder" before 5 August 1985, then I direct them to find that she would not be entitled to an additional requirement for central heating. That is because I reject the submission made to me at the oral hearing by Ms Winter that in law the use of the words "(including a partner)" in regulation 12(5) (see paragraph 8 above) automatically means that if a husband is a householder his partner, eg his wife, must be a householder too. I do not consider that the words "(including a partner)" have that meaning. In my judgment they are inserted in order to make it clear that the confining by the normal definition of "householder" (in regulation 5(6) of the Requirements Regulations) to "a single claimant" does not apply to

regulation 12(5). In my judgment the words "applicable to him" in regulation 12(2)(j) and the words "applicable to the claimant in respect of a member of the assessment unit" in regulation 12(1) preclude the construction for which Ms Winter contended.

11. There were cited to me at the hearing decisions on Commissioner's files CSB/0678/1986 (cited on behalf of the claimant but in my view not particularly germane to the present case) and CSB/297/1986 (cited by the adjudication officer now concerned but in my view possibly having too narrow an ambit).

(Signed) M.J. Goodman
Commissioner

Date: 12 November 1987