JM/MD

Commissioner's File: CSB/773/1985
C A O File: AO 2516/85
Region: Midlands

higher heating addition - caravan

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 Bartholomew Fury
Social Security Appeal Tribunal: Nottingham
Case No: 85/54/10

[ORAL HEARING]

1. This is a claimant's appeal, brought by leave of a regional chairman of the social security appeal tribunal, against a decision of that tribunal dated 1 April 1985 which confirmed a decision issued by the adjudication officer on 28 November 1984.

2. I held an oral hearing of the appeal. The claimant was ably represented by Mr S Ennals, of the Bulwell Advice and Resource Centre. The adjudicaton officer was represented by Mrs L Conlon, of the Solicitor's Office of the Department of Health and Social Security, to whom I am also indebted for helpful assistance.

3. The claimant's appeal is supported both by the adjudication officer now concerned and Mrs Conlon to the extent that they submit that the matter should go back to the appeal tribunal for rehearing.

4. The claimant is a married man who lives with his wife, a baby daughter and a non-dependent son. Their home consists of two caravans. The claimant, his wife and the baby sleep in one of those caravans. Their son sleeps in the other. At all material times the claimant has been in receipt of invalidity benefit and a supplementary allowance. The case turns upon whether or not he is entitled to a heating addition at the higher rate. Since the assessment unit contains a child under the age of 5, there is, of course, no doubt that he is entitled to a heating addition at the lower rate - and his supplementary allowance has been calculated and paid upon that basis.

5. The first column of paragraph 2 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 reads as follows:

> "2. Person who is a householder where, having regard in particular to whether the rooms are draughty or damp or exceptionally large -
>
> (a) the home is difficult to heat adequately;
>
> (b) the home is exceptionally difficult to heat adequately, for example because

it is very old or in a very exposed position."

The claimant founds on sub-paragraph (b). Satisfaction of that sub-paragraph carries entitlement to the higher rate. It will avail this claimant nothing to establish satisfaction of sub-paragraph (a). Such satisfaction carries entitlement to an addition at the lower rate - but the effect of the relevant regulations is that such entitlement overlaps with the undisputed entitlement in respect of the child under 5 - and, in practice, nothing extra would be paid to the claimant.

6. On the evidence before him at the relevant time, the local adjudication officer rejected the claim to a higher rate of heating addition. He had ascertained that the larger caravan (ie the one in which the claimant, the claimant's wife and the baby slept) was fitted with a coal fire. The smaller caravan was fitted with an electric fire. The warden of the relevant caravan site had, apparently, expressed the opinion that all the caravans on the site were "extremely cosy". He had never heard from any of the residents, past or present, any complaints of difficulty in heating the respective caravans. The adjudication officer also considered information which he had obtained from two major caravan dealers in the area. I need not here go into the precise details of that information. It appeared, however, that the larger caravan was well built and of a model frequently sold to travelling-men and gypsies. It was, accordingly, designed to be lived in all the year round.

7. The claimant appealed to the appeal tribunal. Mr Ennals represented the claimant thereat. He adduced a substantial volume of evidence - both written and oral. The hearing was adjourned so that the adjudication officer might have an opportunity of considering the evidence adduced on behalf of the claimant and of preparing further evidence in rebuttal thereof.

8. The adjourned hearing took place before a tribunal which was, as to two of its members, differently constituted from the tribunal which had sat on the first occasion. Mr Ennals assured me, however, that the case was dealt with de novo; and he took no point in respect thereof. In the forefront of his evidence was a detailed and technical temperature survey report which had been prepared by the Nottingham Heating Project. It dealt with practical tests which had been conducted in the larger caravan over a period of 6 days towards the end of January 1985. Records had been kept of the amount of coal consumed and of the temperatures obtained thereby. The insulation properties of the larger caravan were canvassed in the report. The conclusion was that it would cost about £600 a year to maintain the interior of the caravan at adequate temperatures. Before the appeal tribunal were also (perhaps by way of annexures to the aforesaid report) extracts from the Building Research Establishment digest and Housing Benefit Circular (83)5. Mr Ennals also produced a letter dated 1 February 1985 and written to the Bulwell Advice and Resource Centre by the technical secretary to the National Caravan Council Ltd. On behalf of the adjudication officer were produced a letter written by the said technical secretary and dated 27 February 1985 and a letter dated 4 March 1985 written by the managing director of a Bedforshire company which specialises in the coachwork of caravans. As was agreed by both representatives who appeared before me, there is a patent contradiction in the letters written by the aforesaid technical secretary. In the letter to the Bulwell Advice and Resource Centre, it is stated that the larger caravan is a touring caravan - and that such caravans are "certainly not" designed for all year round use. But in the letter addressed to the adjudication officer it is explicitly stated that the larger caravan was of a model built mainly for the "traveller" market: "As such they would be expected to be lived in all the year round".

9. It is obvious from the relevant Form AT3 that the appeal tribunal approached its task carefully and conscientiously. There is an ample note of the evidence which was presented. There is a full record of the reasons. In fairness to the tribunal, I must set out the reasons in full:

"The sole question in issue was whether the claimant was entitled to an increase in his benefit on the ground that the home was 'exceptionally difficult to heat' as distinct from just 'difficult to heat'.

The Tribunal have considered several factors which could be said to have some bearing on the issue (see R(SB)42/84). These include the likely insulation of the walls, the 'exposed' construction of roof and floor, the character of the home as 2 separate units, the size of the home, the windows of the home. They have also considered the results of the experiment done on the home by the Nottingham Heating Project. Essentially the difficulty that faces the Tribunal is in applying a definition or concept that will usually be applicable to a house, to a totally different structure in the form of a (two) caravans. The only common denominator to use as a comparison would be the cost of heating yet we do not think that we can base our decision solely upon cost for 2 reasons. First we did not have any actual heating costs for an 'equivalent' house, (only what could be inferred from the rates of benefit) and secondly because we do not think that the concept of 'exceptionally difficult to heat' should be simply a matter of cost. Cost is in our view only one indication of difficulty in heating and will sometimes be ambiguous (as for example where a particular expensive form of fuel is consumed). This is what we take to be the meaning of the last para. in R(SB)42/84.

The Tribunal have also in this case had to have recourse to the experience of members as to the heating of caravans, when they have used them for long or short periods themselves.

Taking all of this into account the majority of the Tribunal do not find that it has been shown that the claimant's home was exceptionally difficult to heat. The majority of the Tribunal note that the measurement of fuel consumed depended upon the honesty and accuracy of the claimant and his wife and they are not satisfied that the figure produced can be relied upon as the basis upon which to displace the other factors and their own experience.

The dissenting member of the Tribunal would agree with the reasoning above but not with the conclusion. Having regard to the insulation of the walls, which at best was only 2.1 U and to the exposure of the surace area (roof and floor) and to the fact that the home consists of two separate living units the member would conclude that the home was exceptionally difficult to heat."

10. All that is carefully done - and I must confess that, at the outset of the hearing before me, I was much less convinced than were the two representatives before me that the appeal tribunal had failed adequately to grapple with and record conclusions in respect of crucial issues. However, after hearing and reflecting upon the respective submissions, I am satisfied that the majority of the tribunal erred in law in the respects set out in paragraphs 11, 12 and 13.

11. The appeal tribunal was quite right in directing itself that its decision could not properly be based solely upon the cost of fuel. But there was error in the two reasons which were set out by way of amplification. It recorded that it did not have any actual heating costs for an "equivalent" house - and, by implication, dismissed "what could be inferred from the rates of benefit". In my view, the search for actual heating costs for an "equivalent" house would be vain. It is rather like looking for an orange which is equivalent to an apple. In the second place, the reference to a particularly expensive form of fuel was, in the context of this case, misplaced. There has been no suggestion that the claimant burns anything other than ordinary domestic coal.

12. There is no question but that the members of appeal tribunals are entitled to draw upon their own experience of the world - provided always that they give to the parties before them an opportunity of commenting upon such experience. In this case, however, the

experience referred to did not go to the essence of the case. The tribunal was concerned with the exceptional difficulty (or otherwise) of heating a particular caravan. It had before it detailed and technical evidence directed thereto. It was no part of the claimant's case that all caravans are exceptionally difficult to heat. It is, accordingly, difficult to see how the experience of any member of the tribunal would be relevant unless such member had lived, in the winter months, in a caravan which was substantially identical to one or other of the caravans involved in this case.

13. The majority's rejection of the measurements of fuel actually consumed was too cavalier. Such measurements did not depend upon the honesty and accuracy of the claimant and his wife. Before the tribunal were statistics which had been prepared as the result of tests and observations by the Nottingham Heating Project. I am in no way saying that such statistics were binding upon the tribunal. But if those statistics - and the implications to be drawn therefrom - were to be rejected by the tribunal, the claimant was entitled to be told why they had been rejected.

14. The matter must go back for rehearing. It will be at large before the fresh appeal tribunal. I am very much of the view that "exceptionally difficult to heat adequately" is a phrase which the legislature intentionally left in general terms so that appeal tribunals could approach the issue in the light of commonsense. Where the legislature has left the matter so widely open, I have no wish to prescribe limits. The following general comments may, however, be of assistance.

15. Paragraph 2 of Schedule 4 to the Requirements Regulations obviously envisages three different situations:

(i) a home which can be heated adequately without difficulty;

(ii) a home which is difficult to heat adequately; and

(iii) a home which is exceptionally difficult to heat adequately.

If this claimant is to succeed, he must bring himself under (iii). It will not do to say that all caravans are difficult to heat adequately and that, in consequence, there is nothing exceptional about this caravan. (I do not, in any event, think that that is how Mr Ennals puts the claimant's case.) The regulation does not say "the caravan is exceptionally difficult to heat adequately" but "the home is exceptionally difficult to heat adequately". I am sure that it is the case that all caravans are not difficult to heat adequately - but, even if they were, that would not be a reason for excluding all caravan dwellers from entitlement under sub-paragraph (a) of paragraph 2; and still less for excluding from the higher rate claimants whose caravans were exceptionally difficult to heat.

16. Although, as I have indicated, the search for a house "equivalent" to this caravan is vain, it is not necessary to dismiss from contemplation all consideration of houses. For example, it is obvious that the insulation properties of a caravan will be likely to fall substantially short of the insultation qualities of a house. But there is a compensating factor. The overall volume of air to be heated is likely to be substantially smaller in a caravan than in a house with its halls, staircases and landings.

17. Finally, the instances specifically mentioned in paragraph 2 of Schedule 4 (draughty, damp, very exposed position, etc) are merely illustrations. They are not definitive. I repeat that the matter is very much at large.

18. My decision is as follows:

(i) The claimant's appeal is allowed.

(ii) The decision of the appeal tribunal dated 1 April 1985 is erroneous in point of law and is set aside.

(iii) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J.Mitchell
Commissioner

Date: 27th November 1985