

## SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW  
DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Patrick Austin

Supplementary Benefit Appeal Tribunal: Finchley

Case No: 09/421

1. This appeal succeeds. My decision is that the decision of the supplementary benefit appeal tribunal dated 27 March 1984 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.
2. On 11 July 1983 the claimant claimed a single payment in order to assist him to meet half the costs of an electricity bill and a gas bill saying he needed help because he had not realised how much the full cost was as at his previous place of residence there was a communal heating system and the cost of heating was included in his rent. On 15 July 1983 a supplementary benefit (now adjudication) officer refused a single payment. The claimant appealed against this decision and in his written submission on the appeal the supplementary benefit officer wrote that the claimant was not entitled to a single payment under regulation 26 of the Single Payments Regulations, under either of the two conditions in that regulation, because the weather during the relevant period could not be described as exceptionally severe and, the heating system having broken down, the claimant used an electric fire which was not a system.
3. The tribunal who heard the appeal on 27 March 1984 confirmed the benefit officer's decision giving as their reasons why regulation 26 was not satisfied that the claimant was using an electric fire and not central heating and so could control the amount of electricity used and the weather was not exceptionally severe. They found as fact (among other matters) (1) that the claimant needed the money for the fuel bills because he did not realise how much the fuel cost was, (2) that at one place of residence there was a communal heating system and at the second he did not have to pay bills and (3) that at the flat in question the central heating had broken down and during the period until it was repaired he used an electric fire and did not know how to budget for it.
4. The adjudication officer now concerned, in paragraph 11 of his written submission dated 26 November 1984, submits that it is to be inferred that the tribunal were saying an electric fire was not a "heating system" for the purposes of sub-paragraph (1)(b) of regulation 26 of the Single Payments Regulations and that they must have been under some misconception of law as to the meaning of those words in that regulation and have merely

restated the erroneous submissions of the benefit officer. In the submission of the adjudication officer now concerned, a "heating system" is not necessarily a fixed installation such as a central heating system, but rather any system which produces heat and may consist of a single electric fire. I agree that the expression is not confined to a central heating system. Where, in the regulations relating to supplementary benefit it is desired to refer to a central heating system, this is done in clear terms: see paragraph 3 of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980 (since replaced by paragraph 3 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983), which provides for the payment of an additional requirement in certain cases where the home "is centrally heated by a single system". I also agree that a heating system may include a single electric fire. But to say that every system that produces heat is a heating system is to go too far; because there are systems which produce heat but are neither intended nor adapted for supplying warmth to a home. The expression "heating system" is an ordinary one in the English language with no technical meaning and applying the principles set out in Cozens v Brutus [1973] A.C. 854 HL it is undesirable for me to attempt to define it. Whether any particular subject matter amounts to a "heating system" in terms of regulation 26 is for the tribunal to determine. It is, however, an error of law to limit the expression to a central heating system. I agree with the adjudication officer that no reasonable tribunal properly instructed as to the law could reach this conclusion.

5. For these reasons, the decision of the tribunal given on 27 March 1984 is erroneous in point of law and, for the reasons given by the adjudication officer now concerned, it is not expedient for me to give the decision that the tribunal should have given. The case must accordingly be referred to a social security appeal tribunal which should, in accordance with the usual practice, be entirely differently constituted. The tribunal should follow and apply my observations as to a "heating system" in terms of regulation 26 and they should take account of and make findings on all the points raised by the adjudication officer now concerned in his written submission of 26 November 1984, which should be before them. Except to the extent indicated in paragraph 4 above, I am in general agreement with this submission. The tribunal should also take account of and make findings on all other relevant points raised by or on behalf of the claimant or the adjudication officer. The record of their decision should comply with regulation 19 of the Social Security (Adjudication) Regulations 1984 as amended.

(Signed) V G H Hallett  
Commissioner

Date: 22 February 1985

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