Additional requirement
New claim
or review
Oral v written ?

MJG/JCG

Commissioner's File: CSB/861/1984

C A O File: AO 9294/84

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: Ann Kelly

Social Security Appeal Tribunal: Sheffield

Case No: 10/578

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 20 June 1984 and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2(1) and the Social Security (Adjudication) Regulations 1984 [SI 1984 No. 451], regulation 27.

2. This is an appeal to the Commissioner by the claimant a woman living with her two children, aged 4 and 2 years. The appeal was at her request the subject of an oral hearing which took place before me on 26 March 1985, at which the claimant was present and represented by her social worker, Miss J. Driscoll and the adjudication officer was represented by Mr. E.O.F. Stocker. I am indebted to Miss Driscoll and to Mr. Stocker for their assistance to me at the hearing.

3. This case was originally being considered by my colleague, Mrs. R.F.M. Heggs, Commissioner, but owing to her illness on the date scheduled for the oral hearing, I took over the case and with the consent of the parties, held the oral hearing. On 6 December 1984 Mrs. Heggs gave the following Direction:

> "I direct legal argument on whether the request to the higher rate heating addition made on 28 March 1984 was a new claim or an application for review of the claimant's heating addition entitlement. I also wish to hear legal argument as to the effect, if any, of the claimant having left the property in respect of which the additional heating entitlement is claimed."

That Direction was given in the light of the facts in this case, the social security appeal tribunal having on 20 June 1984 held

that a higher rate heating addition was not payable to the claimant in respect of her previous address at 86 S Buildings, described in the facts placed by the local benefit officer before the tribunal as "an old type 3 bedroomed flat which is not centrally heated". The claimant left that address on 30 January 1984 and at the date of application for review (28 March 1984, but see below) was living at 112 F Road. That is why Mrs. Heggs required argument as to whether or not a 'claim' for a higher rate heating addition could be maintained after the claimant had left the premises in question.

4. On that issue Mr. Stocker agreed in his submission to me at the oral hearing, with a written submission dated 11 March 1985 (paragraphs 11-14), made on behalf of the claimant as follows,

> "It is submitted that in the consideration of an application such as the one in question, the fact that a claimant has left a property could create difficulties of practice but not difficulties of principle. The difficulty in practice could be the investigation of the application since in the case of a property which is alleged to be exceptionally difficult to heat it may well not be possible to visit the property. The claimant, in such a case, might well be required to furnish 'information and evidence' for the purpose of determining the application (regulation 4, Claims and Payments Regulations). In the absence of the possibility of proper investigation or in the absence of evidence and information, the adjudication officer could well have no alternative but to determine the application in a manner adverse to the claimant R(SB)29/83. In the present case, however, a considerable amount of evidence was provided to the social security appeal tribunal. In particular, medical evidence was produced, all evidence was given and a detailed report on insulation levels and heat loss in the property occupied by [the claimant] which Report was drawn up by the Shefield Metropolitan District Council, was adduced. In an unreported Commissioner's decision this report has been described by a Commissioner as 'substantial' (CSB 544/84, paragraph 5).

5. I accept that submission and Mr. Stocker's agreement with it as being a correct description of the position though it should be borne in mind that any application for review is subject to a time-limit (see below). Moreover, an application for review must show a ground within the meaning of section 104 of the Social Security Act 1975. If there has been no mistake of fact or law and no ignorance of a material fact and no relevant change of circumstances then no review can take place. However, in the present case the benefit officer's decision awarding the weekly supplementary benefit allowance may well have been given in ignorance of material facts e.g. the detailed evidence contained in the report drawn up by the Metropolitan District Council. It was rightly submitted to me by both Miss Driscoll and Mr. Stocker that the present case concerned an application for review and not a fresh claim, (see R(SB)48/83), thus answering the other query in Mrs. Heggs' Direction.

6. I accept the concurring submissions of Miss Driscoll and Mr. Stocker that the original tribunal that heard this case failed to make adequate findings of fact on all the issues before it or to give detailed reasons for its decision. The only reasons for decision read as follows,

> "Part 1 Schedule 4 paragraph 2(b) applies. No exceptional difficulties were submitted".

That statement, I am sorry to say, is wholly inadequate. The reference to Part 1 Schedule 4, paragraph 2(b) will be to the Supplementary Benefits (Requirements) Regulations 1983 [SI 1983 No. 1399] referring to a situation of,

> "Person who is a householder where, having regard in particular to whether the rooms are draughty or damp or exceptionally large -
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It is the latter situation that was put to the tribunal here but apart from saying that paragraph 2(b) applies (presumably in the sense of "is relevant") the tribunal has made no findings of fact (apart from finding that the flat was next to the internal stairway) nor given any reasons for decision relating to it. I must therefore set the tribunal's decision aside as being erroneous in law. The case will have to be reheard by a differently constituted tribunal, as the Commissioner in this jurisdiction can adjudicate only on questions of law and not on questions of fact. In that connection I ought to say to the new tribunal that it is entirely up to that tribunal whether or not it determines on the facts that the claimant succeeds under paragraph 2(b) of Schedule 4 (Part 1) of the Requirements Regulations. I ought, however, to record that a submission was made to me on behalf of the adjudication officer by Mr. Stocker that the report on the heating position by the Metropolitan District Council appeared to show a strong case for the claimant's particular flat having come within paragraph 2(b), though Mr. Stocker emphasised (which is undoubtedly the position) that the new tribunal will wish to ensure that the details given in that report do in fact apply to the particular flat which the claimant occupied. I myself make no comment on the facts, as in my view it is undesirable and outside my jurisdiction to do so.

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This is important because, if the new tribunal were to find that an extra heating addition should be granted to the claimant, there is of course a time-limit imposed by regulation 87(1)(b) of the above

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> "104(2) A question may be raised with a view to a review under this section by means of an application in writing to an adjudication officer, stating the grounds of the application".

However, both Mr. Stocker and Miss Driscoll submitted to me that that did not mean that a "request" within regulation 87(1)(b) of the Adjudication Regulations had necessarily to be in writing. As both submissions concurred on this point, I am prepared to accept that contention in the present case but I would reserve the point for further argument, should it become controversial or critical in some future case.

(Signed) M.J. Goodman
Commissioner

Date: 26 April 1985

Req. Heating AR

MJG/JCG

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1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 20 June 1984 and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2(1) and the Social Security (Adjudication) Regulations 1984 [SI 1984 No. 451], regulation 27.

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> "It is submitted that in the consideration of an application such as the one in question, the fact that a claimant has left a property could create difficulties of practice but not difficulties of principle. The difficulty in practice could be the investigation of the application since in the case of a property which is alleged to be exceptionally difficult to heat it may well not be possible to visit the property. The claimant, in such a case, might well be required to furnish 'information and evidence' for the purpose of determining the application (regulation 4, Claims and Payments Regulations). In the absence of the possibility of proper investigation or in the absence of evidence and information, the adjudication officer could well have no alternative but to determine the application in a manner adverse to the claimant R(SB/29/83. In the present case, however, a considerable amount of evidence was provided to the social security appeal tribunal. In particular, medical evidence was produced, all evidence was given and a detailed report on insulation levels and heat loss in the property occupied by [the claimant] which Report was drawn up by the Shefield Metropolitan District Council, was adduced. In an unreported Commissioner's decision this report has been described by a Commissioner as 'substantial' (CSB 544/84, paragraph 5).

5. I accept that submission and Mr. Stocker's agreement with it as being a correct description of the position though it should be borne in mind that any application for review is subject to a time-limit (see below). Moreover, an application for review must show a ground within the meaning of section 104 of the Social Security Act 1975. If there has been no mistake of fact or law and no ignorance of a material fact and no relevant change of circumstances then no review can take place. However, in the present case the benefit officer's decision awarding the weekly supplementary benefit allowance may well have been given in ignorance of material facts e.g. the detailed evidence contained in the report drawn up by the Metropolitan District Council. It was rightly submitted to me by both Miss Driscoll and Mr. Stocker that the present case concerned an application for review and not a fresh claim, (see R(SB)48/83), thus answering the other query in Mrs. Heggs' Direction.

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