CSB 1049/1982

Heating addn. "In particular"

MJG/BOS

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 14 July 1982 and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination, in accordance with the directions given in this decision, to a differently constituted tribunal: Supplementary Benefits Act 1976, section 15A and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, [S.I. 1980 No 1605, as amended by S.I. 1982 No 40], rules 7 and 10(8).

2. This is an appeal to the Commissioner by the claimant, a man aged about 26. The claimant has been receiving supplementary benefit since 16 December 1981. He and his family live in a "mobile home", i.e. a stationary caravan. In his grounds of appeal the claimant stated, "The property in which I live is a mobile home on a permanent site ... The body of the mobile home is manufactured from metal sheeting, there are large single glazed windows on all sides set in ill-fitting metal frames. Both outside doors are half-glazed, as a result there is considerable heat loss and severe draughts". The claimant has now supplemented that information by detailed documentary evidence as to the aluminium construction of the home and the lack of heat insulation of such material, but such evidence was not before the tribunal and the Commissioner in this jurisdiction is not a judge of fact, only a judge of law. This new evidence cannot therefore be taken into account by the Commissioner, but should be tendered to the new tribunal that rehears this case.

3. The claimant was in receipt of a heating addition of £1.65 per week, under regulation 12 of and Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1980, [S.I. 1980 No 1299]. That addition was awarded to him under 3 separate heads of Schedule 3 of the regulations, one of which was paragraph 2 (a) of the Schedule, namely that the claimant was "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 ....". However, the claimant also claimed a higher heating allowance (then £4.05 per week - £4.65 per week since 22 11 82 - S.I. 1982 No 1127) provided for by paragraph 2(b) of the Schedule, which provides as follows,

> "A person who is a householder where, having regard in particular to whether the rooms are draughty or damp or

exceptionally large -

(a) [see paragraph above - this provides only for the lower heating addition]

(b) the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation".

4. The tribunal which heard the case on 14 July 1982 and grappled conscientiously with its problems, made the following findings of fact,

"The appellant purchased the mobile home in July 1981. Some repairs were needed to the windows and door, but not carried out because they could not afford to do so. Prior to the birth of the appellant's child fuel expenditure had been minimal. For the first few weeks following the child's birth, expenditure was increased and then reverted to normal. No figures were available to the tribunal."

The tribunal dismissed the claimant's appeal against a refusal of the higher rate heating addition, giving the following reasons for decision.

"The tribunal consider the conditions of paragraph 2(b) of Schedule 3 of the Requirements Regulations are not satisfied in that the home is not exceptionally difficult to heat adequately and is not very old or in a very exposed situation. The correct additional requirement for heating of £1.65 per week has been allowed under paragraphs 2(a), 3(a) and 7 of schedule 3."

5. Many of the grounds of appeal etc given by or on behalf of the claimant entirely concern questions of fact. As I have indicated above, the Commissioner cannot adjudicate on those questions which should be considered by the new tribunal that rehears this case. However, one ground, namely that there were no reasons given as to how the tribunal arrived at their decision and that it is not shown why the evidence presented at the hearing was rejected, is in effect supported also by the benefit officer now concerned. Paragraph 9 of that officer's written submission states,

"In this case the tribunal found that repairs were needed to the windows and door of the home and they decided that an additional requirement for heating was payable under paragraph 2(a) of Schedule 3 (home difficult to heat adequately) presumably on the grounds that the property was draughty because of the aforementioned faults ... They decided that the property was not exceptionally difficult to heat adequately because it was not old or in a very exposed situation. However, in my submission this does not answer the question posed by the tribunal's findings over the door and windows, i.e. were they so ill-fitting or in such a state of bad repair that the property was excessively difficult to heat adequately or were they fairly minor faults causing the property to be difficult to heat adequately?"

6. I accept the submissions of the claimant and of the benefit officer now concerned, to the effect that the tribunal's decision is erroneous in that it does not fully comply with rule 7(2) of the above cited Appeals Rules, in that the reasons for the decision given do not make it entirely clear why the claimant's appeal failed. It is not normally sufficient for a tribunal merely to reiterate the wording of the particular regulation or section of an Act, as was done in this case. There must be reasons given which relate to the evidence and contentions presented to the tribunal and explain in a factual context why the regulation etc does not apply. Moreover, it may be that, having regard to such reasons as were given, the tribunal misunderstood the affect of paragraph 2 of Schedule 3 to the Requirements Regulations. I propose therefore now to give, as I am requested to do by the benefit officer and by the claimant's representative, detailed directions to the new tribunal as to how that particular paragraph should be interpreted in this case.

7. In order to qualify for the higher-rate heating addition, it must be shown not merely that "the home is difficult to heat adequately" (which qualifies for the lower-rate heating addition under paragraph 2 (a) of the Schedule) but that "the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation" (paragraph 2(b) - my underlining). In addition it must also be shown that this is so, "having regard in particular to whether the rooms are draughty or damp or exceptionally large" (introductory words to paragraph 2 which govern both sub-paragraphs (a) and (b)). I accept the submission of the benefit officer now concerned that the words in paragraph 2(b) "for example because it is very old or in a very exposed situation" do not restrict the adjudicating authorities to considering only age or exposure in deciding whether the home is exceptionally difficult to heat adequately. Nevertheless, I do consider that the introductory words to paragraph 2 "having regard in particular to whether the rooms are draughty or damp or exceptionally large" (my underlining) do restrict the generality of paragraph 2(b). The phrase does not say "having regard" only to "whether the rooms are draughty or damp or exceptionally large". I nevertheless consider that as the words used are "in particular" and not e.g. the words "for example" that the regulation intends to confine relevant factors to those which are of the same kind as "draughty or damp or exceptionally large". In particular in the present case, I consider that the fact that aluminium is a poor insulator compared with a brick wall is irrelevant in that paragraph 2 does not envisage a comparison between the actual materials of which different types of homes are built. For that reason I do not altogether accept the submission of the benefit officer now concerned (paragraph 12) that, in deciding whether the claimant's mobile home is exceptionally difficult to heat adequately, it should be compared not only with other mobile homes but also with other homes generally e.g. those built with brick walls. Insofar as that submission implies that mobile homes are more likely to qualify for the higher-rate heating addition because of the poor insulating qualities of the material of which they are built, I do not regard it as correct. I accept that comparison has to be made with homes generally and not just with other mobile homes, but I also consider that paragraph 2 of the Schedule causes the only relevant factors to be whether "the rooms are draughty or damp or exceptionally large" or matters closely analogous thereto. The actual material of which the property is constructed is not closely analogous.

8. In my judgment, therefore, the new tribunal that rehears this case should consider all the facts anew e.g. whether the home is "in a very exposed situation" but should then go on to ask itself also whether there are other factors which make the home "exceptionally difficult to heat adequately", but only "having regard in particular to whether the rooms are draughty or damp or exceptionally large" or some closely analogous matter. This means for example that the tribunal should ask itself whether the draughty state of the rooms in this particular home did at least for the time being make the home exceptionally difficult to heat adequately. I do not consider that the tribunal should however take into account the poor insulating qualities of aluminium or other metal construction in mobile homes for the reasons I have set out above. Clearly paragraph 2 of Schedule 3, like the other paragraphs in that schedule, directs attention to the particular circumstances of a particular claimant's case and any construction of paragraph 2 that were, so to speak, to confer a 'blanket' right to an increased heating addition for all mobile homes would be an incorrect construction.

9. In submissions dated 20 July 1983, the claimant states, "I would also ask the Commissioner to give a direction on the weight that should be given to fuel bills. The benefit officer implies that because a low amount was spent on fuel that payment of the 'higher addition' was not required. I submit that the amount spent does not in any way reflect need, but does show budget constraints. To heat the poorly insulated premises to a reasonable level it would have been necessary to burn more fuel, but if this had been done bills would have been difficult to meet. Instead the family restrained themselves and the premises remained inadequately heated."

10. I accept that submission, insofar as it points out that low expenditure on heating may not necessarily mean that a higher degree of heating was not required. In my view this again is a question of fact for the new tribunal to decide. It is possible that though low expenditure does imply that no higher expenditure is needed, it may equally mean that the property was not being heated to an adequate level. It is a piece of evidence that should be taken into account by the tribunal, but it is not conclusive one way or the other.

(Signed) M J Goodman
Commissioner

Date: 12 October 1983

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