

AR for heating - accommodation grant - failure of SSAT to make <sup>adequate</sup> findings of fact or give reasons for its decision.

VGHH/5/LS

Commissioner's File: CSB/1075/1986

C A O File: AO 3196/SB/86

Region: London North

**SUPPLEMENTARY BENEFITS ACT 1976**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: [REDACTED]

Social Security Appeal Tribunal: Finchley

Case No: 09/35/9

1. This claimant's appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 29 May 1986 is erroneous in point of law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. The claimant, a single parent who has been in receipt of a supplementary allowance for a number of years, lives with 3 dependent children in a centrally heated maisonette which she is purchasing with a mortgage. Two of her children suffer from asthma for which they require extra warmth. On 30 January 1986 an adjudication officer decided that the claimant was entitled to an additional requirement in respect of heating allowance of £2.20 a week. The claimant appealed against that decision and in his written submission on the appeal the adjudication officer explained that his award was made under paragraph 1(a) of Schedule 4 to the Requirements Regulations; and that only one amount was, in his view, payable.

3. The case put by the claimant's representative to the appeal tribunal was that the property suffered from considerable damp and for this reason was difficult to heat adequately. In other words, reliance was placed on paragraph 2(a) of Schedule 4 which relates to

"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."

If the claimant were to succeed under this provision, she would be entitled to an additional allowance at the higher rate of £5.45 a week by virtue of regulation 12(2)(d)(ii) of the Requirements Regulations.

4. The tribunal's decision was:

"The Tribunal confirm the Adjudication Officer's decision."

Their recorded findings of fact were:

"The Appellant is a single parent. She receives Supplementary Allowance. She lives with three dependent children aged 11, 10 and 7 in mortgage, centrally heated,

three-roomed accommodation. Two sons suffer from asthma and need extra warmth. She has been awarded additional heating requirement under Regulation 1(1)(a)."

Their recorded reasons for decision were:

"The Tribunal note paragraph 9 of the Adjudication Officer's submission. They are satisfied that the Appellant is entitled to £2.20 under paragraph 1(1)(a) of Schedule 4 of the Requirement Regulations because her sons suffer from chronic asthma and require extra warmth, and she is entitled to £2.20 under paragraph 3(a) because her accommodation is centrally heated and comprises less than four rooms. However, under Regulation 12 of the Regulations, only one of these can apply, and the Tribunal therefore agreed with the Adjudication Officer that a heating addition of £2.20 should be awarded under paragraph 1(1)(a) of Schedule 4 of the Regulations, so that the £1.00 deduction relating to long-term benefit should not apply. The Tribunal are satisfied that the accommodation is not difficult to heat adequately, and paragraph 2(a) of Schedule 4 of the Regulations is not applicable."

5. The tribunal failed to make any finding of fact on a crucial (and disputed) point namely whether any of the rooms were damp. They also failed to give any reason for their conclusion that "the accommodation is not difficult to heat adequately". There has thus been a clear breach of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984, as amended. The claimant is left in the dark as to why her case failed. For these reasons, the decision of the tribunal is erroneous in law and I set it aside.

6. It is not expedient for me to give the decision that the tribunal should have given. Further facts, as already explained, require to be found and there is a conflict of evidence which requires to be resolved. I accordingly refer the case to another social security appeal tribunal which should in accordance with the usual practice, be entirely differently constituted. That tribunal should make findings as to whether the home was and is damp and whether it was and is difficult to heat adequately. In order to reach a conclusion on each of these points, the tribunal should resolve any conflict of evidence, stating which evidence they accept and which they reject, and why. They should ensure that they make findings as to the primary facts on which they base their conclusions on those points. They should make findings on all other relevant points raised by or on behalf of the claimant or the adjudication officer.

7. My decision is set out in paragraph 1.

(Signed) V G H Hallett  
Commissioner

Date: 15 April 1987