

JBM/SH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: David Hale

Supplementary Benefit Appeal Tribunal: Shoreditch

Case No: 03/416

1. My decision is that the decision of the Shoreditch Supplementary Benefit Appeal Tribunal dated 29 June 1983 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing by a differently constituted appeal tribunal; regulation 27 of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451].

2. This is an appeal to the Commissioner by the claimant with the leave of the Commissioner against the unanimous decision of the appeal tribunal dated 29 June 1983 confirming the decision of the benefit officer issued on 21 February 1983 "Refusal to award a single payment in respect of the claimant's electricity bill of £120.90".

The facts and history of the matter are dealt with in the grounds for my decision in the submission dated 17 March 1984 by the benefit officer now preferred on which the claimant has had the opportunity to comment. I do not propose to set these matters out here.

The relevant statutory provisions and decisions of the Commissioner are referred to in paragraph 9 of the submission dated 7 March 1984. Nothing is to be gained by my setting out those references afresh here in so far as I do so below.

In regard to a claim for a single payment of the amount of an outstanding electricity bill the appeal tribunal were first required to consider whether, at the date of his claim, the claimant came within regulation 26 of the Supplementary Benefit (Single Payments) Regulations 1981 which provides as follows:-

"26- (1) A single payment shall be made in respect of a claimant's fuel costs where they are greater than the amount which he has put aside to pay for them because -

- (a) a period of exceptionally severe weather has resulted in consumption greater than normal, having regard to any available information on previous levels of consumption; or
- (b) he is unfamiliar with the cost of running the heating system in his home because he has recently moved to that home or the system has recently been installed."

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6. In this case no question arises as to regulation 26(1)(a). In relation to regulation 26(1)(b) the tribunal found the following facts. "The appellant recently moved to a 2 bedroomed flat which was heated by an open fire in the living-room. The appellant is disabled and could not use the fire so he had electric fires installed. The bill was as a result of the use of these fires. The appellant had electric fires at his previous address." and gave as their reasons for decision "Unfamiliarity with a strange heating system. In [the claimant's] case the strange heating system to which he refers is an open coal burning grate, this appears not to have been used and his expenditure is solely on electric appliances not unsimilar to that at his previous address.". As the claimant had not used and could not use the open coal fire his unfamiliarity with that system was not relevant. In so far as the tribunal considered the electric system it is clear from their reasons for decision that they based their decision on the fact that the claimant's expenditure was on appliances not unsimilar to those at his previous address but did not address their minds to whether he was unfamiliar with the cost of running the system consisting of electric appliances in his new home. Accordingly the tribunal erred in law.

7. The tribunal to whom I remit this matter should determine first whether the claimant had set aside any amount to meet his fuel costs and if so whether the amount was less than the amount of those fuel costs. A claimant who has set aside nothing towards his anticipated fuel costs may be within the preliminary conditions of the Regulations, see paragraphs 14, 15 and 15 of the decision of a Tribunal of Commissioners to be reported as R(SB)22/84. Secondly, the appeal tribunal should determine whether any shortfall between the claimant's fuel costs and the amount set aside towards them had occurred because the claimant was unfamiliar with the costs of running the heating system in his home.

8. I turn finally to regulation 30 of the Single Payments Regulations in regard to which the appeal tribunal dated 29 June 1983 on the face of the record have made insufficient findings of fact and have given inadequate reasons for their decision. Accordingly they failed to comply with the requirements of rule 7(2)(b) of the Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980 (now replaced by regulation 19 of the Adjudication Regulations).

9. In accordance with my jurisdiction as set out in regulation 27 of the Adjudication Regulations my decision is as set out in paragraph 1 of this decision and I direct that the tribunal to whom I remit this case in re-hearing the matter shall pay particular attention to all the matters to which I have referred to above and should consider the decision to be reported as R(SB)22/84. They should consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision. I would add that I have given careful consideration to the claimant's further observations noted as received in the Office of the Commissioner on 6 April 1984 and to his further letter also noted as received in the Office of the Commissioner on 6 April 1984. The matters there raised

are basically questions of fact which are for consideration by the appeal tribunal to whom I remit this case. I do not consider an oral hearing by me is necessary.

10. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom  
Commissioner

Date: 13 July 1984

Commissioner's File: CSB/21/1984  
C SBC File: 1599/83  
Region: London North