

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Gurdas Singh

Social Security Appeal Tribunal: Cleveland

Case No: 025/07

1. My decision is that the decision of the social security appeal tribunal was erroneous in point of law. I set it aside and refer the case to a differently constituted social security appeal tribunal who should have regard to what I have said in paragraph 5 of this decision.
2. This is an appeal brought by the claimant with leave of the Commissioner from the decision of the Cleveland social security appeal tribunal, given on 13 October 1986, which confirmed a decision of the adjudication officer refusing the claimant a single payment for a heater for a bathroom.
3. On 6 June 1986 the claimant sought a single payment for a heater for his bathroom. At that time he was receiving a supplementary allowance. The claimant was then aged 58 years and he lived with his wife in his own home which has five rooms and is centrally heated. A visit was made to his home by the officials of the Department of Health and Social Security and it was observed that the bathroom was on the ground floor of the building, but was separated from the main part of the building by a hallway leading to the back door. There was no heating appliance in the bathroom and the room was cold. There were three radiators in the lounge, one in each bedroom and one in the kitchen. The claimant suffers from asthma. The claimant's general practitioner confirmed that he so suffered and stated that it was desirable that his house should be adequately heated. On 30 June 1986 the adjudication officer decided that the claimant was not entitled to a single payment of benefit in respect of the claim made. The claimant appealed to the tribunal. In his written observations on the claimant's appeal the adjudication officer submitted that a single payment could not properly be made to him because he did not satisfy the conditions of regulation 3 of the Supplementary Benefit (Single Payments) Regulations. The tribunal upheld the adjudication officer's decision and gave as reasons that the appellant's doctor stated that heating was desirable, but did not say that it was essential. As the whole property was centrally heated except the bathroom it would in the opinion of the members have been possible for the appellant to obtain a heating light bulb for the bathroom. The members went on to say that they considered the submission by the claimant's representative, but decided that the claimant did have available to him a suitable alternative being the heat reflecting light bulb. Accordingly he did not need a heater and a single payment could not be made under regulation 3(2) of the Supplementary Benefit (Single Payments) Regulations.
4. The claimant now appeals to the Commissioner on a question of law from the decision of the tribunal. In his grounds of appeal he refers to the finding of the tribunal that the claimant did "have available to him a suitable alternative being the heat reflecting light

bulb". He argues that at the time of the claim, when the need for the heating appliance existed, he did not have such a bulb available to him as an alternative. He did not have it at all. The second point taken by the claimant is that the tribunal in the circumstances of the case should have had regard to what was said by the Commissioner in CSB/283/1983. The adjudication officer now concerned submits that the claimant's appeal should be allowed but because of the absence of finding of fact the case should be remitted to be heard by a differently constituted tribunal.

5. Manifestly the decision is erroneous in point of law. In my judgment the members of the tribunal have misconstrued regulation 3 of the Supplementary Benefit (Single Payments) Regulations. They considered regulation 3(2)(a) and decided, because the appellant's doctor said that the heating was desirable and not essential, that there was not a need as specified in the sub-paragraph. It may be that the tribunal thought that such was the test because of regulation 9, which provides a meaning of "essential furniture and household equipment". But regulation 9 while using the term "essential furniture", itself sets out the items defined as such. It does not provide an extra qualification for need in the sense that possession of the item is essential to the claimant's well being. The evidence of the doctor was that the claimant suffered from asthma and that heating was desirable, the desirability can only have been on health grounds. For the purpose of ascertaining need on health grounds I see little difference between "desirable" and "essential". But it is clear that the members of the tribunal did see a difference and it seems to me they set a more rigorous test than that required by regulation 3(2)(a); something akin to the requirement imposed by regulation 30, i.e. "the only means by which serious damage or serious risk to the health or safety of any member of the assessment unit may be prevented". The tribunal also erred in law when they came to apply regulation 3(2)(b). It is clear from the findings of fact that the claimant did not have a heat reflecting light bulb, and in these circumstances it was not open to the tribunal to decide that he did have available to him a suitable alternative being the heat reflecting light bulb. I agree with the claimant's representative that the question is not whether the claimant could purchase the reflecting bulb, but whether at the date of the claim he had no space heating appliance for the bathroom.

(Signed) J J Skinner
Commissioner

Date: 22 September 1987