

AR - Laundry - Can't award it on seasonal basis as JBM is assessed on weekly basis

AR - Laundry - FAILURE TO FIND FACTS RE
NITROGEN DRYING FACILITY

7A

- BY NITROGEN DRYING FACILITY
Commissioner's File: CSB/177/1985 NOT PERSONAL
RNV

JBM/LS

C A O File: AO 2368/85

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Raymond Allan

Social Security Appeal Tribunal: Brixton

Case No: 05/29/03

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. My decision is that the decision of the Brixton social security appeal tribunal dated 30 August 1984 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.
2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 9 July 1984 and set out in Box 1 of Form AT2. The claimant requested an oral hearing to which request I acceded. However the claimant did not attend the oral hearing and was not represented. Mrs L Conlon of the Solicitors Office Department of Health and Social Security represented the adjudication officer. I am indebted to her for her helpful submission. In the claimant's letter received at the Office of the Commissioner on 18 December 1985 he states "My claim remains the same". In the light of this and as the claimant succeeds in his appeal I saw no reason to postpone the hearing.
3. The facts and history of the case are dealt with in paragraphs 1 to 3 inclusive of the submission dated 16 May 1985 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. Nothing is to be gained by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to and set out in paragraphs 4, 5, 6 and 7 of the submission dated 16 May 1985 of the adjudication officer now concerned. Nothing is to be gained by my setting out these references and regulations again here.
5. Mrs Conlon submitted that the appeal tribunal had erred in law and that the case should be remitted to a differently constituted appeal tribunal. She also referred to the decision of the Commissioner CSB/441/1985 and submitted that the Commissioner had erred there in adopting a seasonal approach. Mrs Conlon submitted that requirements and assessment and payment of supplementary benefit is on a weekly basis.
6. In my judgment the decision of the appeal tribunal is erroneous in law in that they failed to deal with the claimant's contention that an outside line is a suitable drying facility when it is raining or snowing. Had they done so

they would have had to have decided whether an outside line was suitable in the circumstances and would have had to establish whether there were any other facilities available to the claimant. Decision CSB/441/1985 is similar to the case I have before me. I distinguish the case before me from the Commissioner's unreported case as CSB/441/1985 cannot in my judgment be supported by the regulations. Further in CSB/441/1985 there was medical evidence that drying clothes in the house would be detrimental to the claimant's daughter's health and there were no other drying facilities save from the communal clothes-line in the backgarden. In the instant case there was no evidence before the tribunal that the claimant could not dry the clothes at home. With respect to the learned Commissioner who decided CSB/441/1985 I do not accept his "seasonal requirements" approach referred to in paragraph 10 of that decision. There is nothing in my view to allow a seasonal basis in the regulations which provide for a weekly basis. In support of the proposition that requirements and assessment and payment of supplementary benefit is on a weekly basis I need only refer to regulation 11(2) of the Supplementary Benefit (Requirements) Regulations 1984, and paragraph 18 of Schedule 4 of those regulations at column 2 thereof and regulation 7 (in particular regulation 7(2)) of the Supplementary Benefit (Determination of Questions) Regulations 1980. It is consequently not a case of assessing on a seasonal basis but on a weekly basis. At paragraph 9 the learned Commissioner in decision CSB/441/1985 was correct in referring to supplementary benefit as a weekly benefit but misdirected himself as to the assessment being on a seasonal basis. A weekly basis applies to heating requirements and any other additional requirements. I derive further support for the weekly basis of supplementary benefit in regulation 6 of the Supplementary Benefit (Determination of Questions) Regulations 1980. What the appeal tribunal was dealing with was a part of the award not the whole award itself. The award is of course subject to the Adjudication Regulations and to review and termination. Where a claimant is not getting a laundry addition and the only suitable drying facility available is one located outside and the weather has been too inclement a claimant has to come into the local office and state the change of circumstances saying that in the previous week or weeks he had no suitable drying facilities. This will then be the subject matter of investigation as a question of fact in any week as to whether the claimant had suitable drying facilities available and if appropriate an award will be made. Once again when the claimant obtains the use of outside drying facilities and (the weather being more clement) he will again have to come to the local office and report a change of circumstances. His assessment will again have to be reviewed. The question of review was in my respectful judgment not in the learned Commissioner's mind in his decision CSB/441/1985 in particular where he states in paragraph 9:-

"And, in my view, a tribunal are well entitled also to act in the light of matters of common knowledge such as the weather conditions to be expected;.."

Supplementary benefit is of course paid in arrears. The "seasonal basis" approach is incorrect. The tribunal should have considered the whole period of the appeal and whether there were suitable drying facilities. Suitability should relate both to indoor and outdoor facilities in any given week. The question is of course one of fact.

7. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the matter should pay particular attention to all the aspects to which I referred to above. Further they shall 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 and in particular they are to decide what the weather was like during the relevant period and in

70

relation to that whether the outside line was a suitable drying facility, if the outside line was not a suitable drying facility they should investigate whether there were any other suitable drying facilities available to the claimant such for example as a clothes-horse or radiators in the house.

8. Accordingly the claimant's appeal is allowed.

(Signed): J B Morcom
Commissioner

Date: 4 March 1986