

Fuel costs. SP.

JBM/SH/3/MD

Commissioner's File: CSB/242/1985

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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:** Lawrence Bernard Springthorpe

**Social Security Appeal Tribunal:** Barking

**Case No:** 7/10

**[ORAL HEARING]**

1. My decision is that the decision of the Barking social security appeal tribunal dated 26 November 1984 is erroneous in point of law. Accordingly I set it aside and give the decision the appeal tribunal should have given namely that the amount of the single payment should not be calculated on the basis of inclusion of the standing charge as part of the fuel costs.
2. This is an appeal by the adjudication officer to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal varying the decision of the adjudication officer issued on 12 April 1984 set out in Box 1 of Form AT2. The Commissioner directed an oral hearing. Accordingly on 22 January 1986 I held an oral hearing. Mr C.A.M.E. d'Eca of the Solicitor's Office, Department of Health and Social Security represented the adjudication officer. Mr Julian Norris of the Beckton Citizens Advice Bureau represented the claimant. To both of them I am indebted.
3. The findings of fact of the appeal tribunal set out on the face of their record are as follows:-

"Appellant is a single person with one child who moved to his present address on 21 Nov 83. On 21 March 84 he claimed a single payment for fuel costs following receipt of a bill for £122.90 in respect of the period 20 July 83 to 10 March 84. (The amount of the bill is still subject to correction since it includes a period during which the appellant was not resident at the address, and the Department have indicated that if the average weekly cost during the time of his residence can subsequently be shown to be higher than the average weekly cost calculated over the whole period to which the bill at present relates an adjustment in the single payment will be made). The appellant is however appealing against the exclusion of the Standing charge from the calculations made by the Department when arriving at the figure of £24.40 for which a single payment has been made under Regs 26 of the Single Payments Regulations. Submissions were made on behalf of appellant as detailed in the note of evidence."

4. The relevant statutory provisions are contained in the Supplementary Benefit (Single Payments) Regulations 1981, regulations 26(1) and (2).

Regulation 26(1) provides as follows:-

- "26. (1) A single payment shall be made to meet the fuel costs of the assessment unit where they are greater than the amount which has been put aside to pay for them because -
- (a) a period of exceptionally severe weather has result in consumption greater than normal, having regard to any available information on previous levels of consumption; or
  - (b) the members of the assessment unit are unfamiliar with the cost of running the heating system in their homes because they have recently moved to that home or the system has recently been installed."

5. In the light of the view I take I do not need to set out the submission made before me by Mr d'Eca. Mr Norris in his address before me referred me to his detailed written submissions dated 16 July 1985 and to the 3 appendices, A, B, and C to those submissions. Mr Norris stated that the standing charge may vary throughout different areas of Great Britain, that the phrase "fuel costs" in the legislation referred to above was used for the purposes of encompassing the standing charge and he referred me on the costs of running a heating system to the analogy of running a motorcar in respect of which he submitted that one would not look only at the petrol costs. The costs of running, Mr Norris submitted, are more embracing than mere "consumption". Mr Norris also referred to the decision of a Tribunal of Commissioners in R(SB)22/84 at paragraphs 25 and at paragraph 18(1) in respect of the words they used - "outstanding liability" - which he submitted would include a standing charge. Mr Norris submitted in regard to a person setting aside money to meet the wattage or therm charge but not money to meet the standing charge on top that it would be inequitable if such a person would not qualify for a single payment. Mr Norris also referred me to the Housing Benefits Regulations 1982 and the Housing Benefits Amendment (No. 2) Regulations 1984 as assistance in construing "fuel costs" in regulation 26(1) of the Single Payment Regulations 1981.

6. Having heard the arguments of Mr Norris and Mr d'Eca I set out my conclusions below. The issue before me is the construction of the words "fuel costs" in regulation 26 of the Single Payment Regulations. In my judgment the appeal tribunal have erred in law in that they have misconstrued the phrase as used in regulation 26(2)(b) by finding that it encompasses the standing charge in respect of fuel. The appeal tribunal in their reasons for decision raised the question of the reference to fuel costs in the plural and stated "it is difficult to understand why the plural should be used if the intention was to confine a single payment to the cost per therm or per watt of fuel." I think to their reasoning the answer is that a heating system may be fuelled by more than one type of fuel and the running of a heating system can represent the costs of different fuels used. I turn to the main grounds on which I found my judgment. In my judgment the rule of construction is that where a phrase is used more than once in the same legislation that phrase unless the context requires otherwise falls to have the same meaning applied. A fortiori it applies where the same phrase is used in the same provision as here. Therefore whatever meaning is given to fuel costs that must

be consistent throughout regulation 26. I look at regulation 26(1)(a) and (2) providing that the amount payable where regulation 26(i)(a) is satisfied is the cost of the amount of the excess over normal consumption. In other words it is not to be arrived at by reference to the total fuel bill incorporating as the latter does the standing charge as well as the charges in respect of consumption. Further, since the amount payable "to meet fuel costs" is so restricted under regulation 26(i)(a) by regulation 26(2) that restriction clearly confers a limited meaning on the expression "Fuel costs" in regulation 26(i) and such limited meaning must therefore also attach to "Fuel costs" in regulation 26(2)(b). I would add 5 further points. I do not find the analogy of the costs of running a motor car helpful in the context of regulation 26(2)(b) which must be more restrictive than the general meaning of cost of running a heating system. Secondly I do not find the decision of a Tribunal of Commissioners in R(SB)22/84 of relevance in the present context. The Tribunal were considering the case of one heating system being used and not as in many cases the use of more than one type of fuel. I do not see that the use of the words "outstanding liability" in paragraph 18(1) of that decision was intended to embrace a standing charge. A particular bill might include capital items as well as for fuel costs, standing charge etc. Thirdly in regard to assistance from the Housing Benefit Regulations as to interpretation of "fuel costs" in the Single Payments Regulations, these are different regulations and I cannot use a definition using different wording to assist in the instant case. Fourthly I would add that in my view a standing charge for gas or electricity comes within the normal requirements of regulation 4(1) of Supplementary Benefit (Requirements) Regulations 1983 the definition of which is not an exclusive one - it contains the words "in particular". In my view they can be regarded as "items of normal expenditure on day-to-day living." I would also add that annexed to Mr Norris's helpful written submissions dated 16 July 1985 as appendix A and appendix B there is a letter from British Gas dated 28 February 1985 and a document headed "British Gas Press Information". None of this material was of course before the appeal tribunal and although it represents helpful background information, none of it is relevant to my decision in the present case as I am confined to deciding whether or not the tribunal erred in law.

7. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulation 1984 my decision is set out in paragraph 1 of this decision and for the reasons above given I find it expedient to give the decision the appeal tribunal should have given themselves. It is not in dispute that the claimant was entitled to a Single Payment under regulation 26(1)(b).

6. The adjudication officer's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner

Date: 5th March 1986