

CSB 261
744/1987

MJG/BDS

SUPPLEMENTARY BENEFITS ACT 1976

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

heater for bedroom
- baby
inadequate finding of
fact

Case No. 23/499

1. I allow the claimant's appeal and set aside the decision dated 31 March 1981 of the Supplementary Benefit Appeal Tribunal as being erroneous in law. I refer the case to another Tribunal, to determine in accordance with this decision: Supplementary Benefits Act 1976, section 3 (as amended); the Supplementary Benefit (Single Payments) Regulations 1980 [S.I. 1980 No. 985 (as amended by S.I. 1980 No. 1649)] regulations 3 and 9; and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605 (as amended by S.I. 1982 No. 40)] rules 7 and 10.

2. On 20 February 1981 the claimant claimed a single payment for a gas-fire for the bedroom in which a recently born baby was to sleep. The Supplementary Benefit Appeal Tribunal on 31 March 1981 upheld the benefit officer's decision to refuse such a single payment. The Tribunal entered in the box on form LT235 headed, "Findings of Tribunal on question of fact material to decision", the following,

"The appellant's representative said the only matter for consideration by the Tribunal at this time was a heating appliance for one bedroom. This was said to be needed on the grounds that the new born baby requires constant warmth."

That passage does not constitute a finding of fact but is only a recital of the claimant's contention. It should have added what was the Tribunal's own finding of fact i.e. on whether there was a "need" for the gas fire within the detailed provisions of regulation 3 of the Single Payments Regulations, which should have been considered and applied, with reasons. The error is not cured by the fact that the Tribunal stated in the box headed "Reasons for Decision",

"The Tribunal had no evidence that a heating appliance for the bedroom is an essential requirement"

because (a) that is not a positive finding of fact and (b) it does not apply, nor refer to, the detailed requirements of regulations 3 and 9.

3. The benefit officer now concerned submits (paragraphs 9-11 of his written submission dated 5 April 1982),

"It is submitted that the Tribunal erred in law in failing to give adequate weight to evidence offered by the claimant that an extra heating appliance was required because there was a newly born baby in the claimant's home. It is further submitted that the Tribunal erred in law in failing to make adequate findings of fact to arrive at its decision. In my submission any Tribunal purporting to consider an award for a single payment for a heating appliance is bound to consider whether there is a need for one by virtue of regulation 3. Where the claim is for an additional heating appliance the Tribunal must consider and make findings of fact as to the adequacy of the heating arrangements in existence that give rise to the claim in order to consider whether there is a need for a further heating appliance. In this case the Tribunal has failed to make the relevant findings of fact and therefore the claimant's appeal is supported."

4. I accept that submission in its entirety as being correct. Consequently, I must set aside the Tribunal's decision as being erroneous in law. I do not propose to decide the case myself (as I am empowered to do by the amended rule 10(8) of the above-cited Appeals Rules), since this is a case where, in my view, a differently constituted Tribunal should examine the matter anew, in the light of what is said in this decision. The new Tribunal will of course have freedom to allow or dismiss the claimant's appeal. The fact that I have allowed his appeal to the Commissioner on a point of law does not imply any indication of how the new Tribunal should decide the substance of the appeal. They should of course have regard to the provisions of regulations 3 and 9 of the Single Payments Regulations.

(Signed) M J Goodman
Commissioner

Date: 7 June 1982

Commissioner's File: C.S.B./261/1981
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