

- single payment
- suitability of alternative
- suitability "at large" not conclusive, but subject to particular circumstances
- excessive running cost

IFJ/FBJ

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

*elec. fire not suitable alt.
! or high running cost.*

[IDENTIFYING DETAILS DELETED]

1. (1) This is a claimant's appeal from the unanimous decision dated 1 April 1982 of a supplementary benefit appeal tribunal ("the tribunal") brought by my leave. The claimant contends that the tribunal's decision was erroneous in law, and I can express my decision more briefly than might otherwise be necessary because - very properly if I may say so - the benefit officer now concerned concedes that that is the case.
- (2) The claimant had on 16.10.81 claimed a single payment for the cost of storage heaters which was refused on 30.10.81. In a letter received on 8 December 1981, which the claimant asked to be accepted as her appeal if her request for review of the earlier decision was rejected, she claimed that the heating facilities in her home were inadequate as she had only one small electric fire which was used in her daughter's room and that she could not afford to buy any coal for the open fireplace in the front room, and also requested in that letter a grant of a single payment to meet the cost of a gas fire and two paraffin heaters. That request was refused, the letter of 8 December 1981 was treated as effectively an appeal to the tribunal against the refusal to award payments in respect of one gas fire and two paraffin heaters (the claimant no longer seeking storage heaters as originally claimed); and the matter proceeded accordingly.
- (3) The appeal succeeds. I set aside the tribunal's decision as given in error of law in the respect undermentioned and direct that the claimant's appeal from the benefit officer's relevant decision, namely the refusal of payments in respect of one gas fire and two paraffin heaters, be re-heard by a differently constituted tribunal. I do not consider it expedient in the circumstances of the case to give myself the decision which the tribunal should have given, as a proper determination will in my view require the investigation of facts in respect of which there are at present no findings.
- (4) Whilst all questions of fact will be for determination afresh by the tribunal re-hearing the appeal, I direct that (whilst they must not "begin where the previous tribunal left off" on matters of fact) they shall by way of precaution be furnished with a copy of my present decision as an

indication to them of pitfalls to be avoided. I find it unnecessary to give any further specific directions for the re-hearing.

2. (1) The claimant was at the date of her material claim in receipt of supplementary allowance as the head of a one-parent family. As such she was, subject to satisfying the specific qualifying requirements, eligible to claim single payments under the Supplementary Benefit (Single Payments) Regulations 1980 as amended. I pause here to interpose that the tribunal appear to have proceeded in technical error of law in so far as they dealt with the case by reference to the Single Payment Regulations 1981, but that nothing of substance turns on this since in all material respects the latter as in force at the time of that hearing represented no more than a consolidation of the earlier provisions strictly applicable.

(2) It was at all material times common ground that the home of the assessment unit was a house, the accommodation in which included a living room and a dining room each having an open fireplace, and 3 bedrooms, one of which was occupied by the claimant's daughter aged 14. In so applying for a gas fire and two paraffin heaters the claimant indicated "I wish to point out that I only have one small electric fire which is currently being used in" [her daughter's] "bedroom. My living room has a gas pipe which is suitable for the installation of a gas fire. The front room has an open fireplace but I cannot afford to buy coal. I would be grateful if you would review your decision and grant a payment for the supply and installation of a gas fire in my living room and 2 paraffin heaters in order to heat the rest of the house in an economical way."

3. (1) Following the refusal of that claim and the claimant's appeal to the tribunal, the tribunal heard the appeal substantively on 1 April 1982. Amongst the materials they had before them was a letter produced by the claimant from her doctor which is not now to be found on the case file - and will need to be traced, or a reconstruction of it obtained, if the claimant again wishes to rely upon it. The claimant attended the hearing, at which she was represented by a representative of her local Advice Bureau.

(2) The tribunal have made findings of fact in respect of the "open fires" - which I interpret as meaning the fireplaces in which such might be made - and also as to the claimant's possession of one portable electric fire. They held also that the claimant suffered from rheumatism of the spine and that "the doctor's letter merely confirms that extra heating would be desirable". They confirmed the benefit officer's material decision, and indicated as their reasons:-

"The tribunal have considered the submissions made on the appellant's behalf by her representative about her medical condition and her wish to have alternative heating. The tribunal feel from their own experience that paraffin heaters and a gas fire would not help the rheumatism of the spine from which the appellant suffers and note that the doctor's letter for 19.1.82 does not recommend any particular form of heating. The Tribunal are satisfied that the 2 open fires, together with the portable electric fire, are suitable and adequate forms of heating and are satisfied that a single payment should not be made in accordance with Reg 3(2) Supplementary Benefit (Single Payments) Regulations 1981."

4. The chairman's note of evidence includes, besides reference to the one portable fire in the daughter's room, "suitable open fireplaces in 2 rooms", and also records "open fires very costly". It can be deduced from the case file that in so deciding the tribunal were accepting the submission in writing of the benefit officer then concerned that in the circumstances of the case a single payment could not properly be made because the condition of regulation 3(2)(a) of the Single Payments Regulations was not satisfied - ie that there was no need for the items in question. It is, however, only in the simplest circumstances that a claim for a single payment can properly be refused by reference to regulation 3(2)(a) alone. For where the claim is for a payment in respect of the purchase of a particular item it is normally material to take into contemplation additionally the further requirement under regulation 3(2)(b). Regulation 3(2) as in force at the material time provided as follows:-

"(2) A single payment shall be made only where -

(a) there is a need for the item in question; and

(b) in a case in which the payment would be in respect of the purchase of a particular item, the assessment unit does not already possess that item or have available to it a suitable alternative item, and has not unreasonably disposed of, or failed to avail itself of, such an item."

5. It is not in dispute that in appropriate qualifying circumstances a single payment can be made in respect of a gas fire and in respect of one or more paraffin heaters. Nor has it been suggested at any stage of the present case that the assessment unit had any of such items already available to it.

6. Whilst the provisions of regulation 3(2)(a) and regulation 3(2)(b) are expressed cumulatively, so that if a claim fails at the first hurdle it is technically unnecessary to go on to consider the second, I do not consider that where the claim is one for the payment in respect of an item which the assessment does not already possess it is appropriate for a tribunal to reach its decision without due contemplation of the tenor of regulation 3(2)(b) as well as regulation 3(2)(a) even if, at the end of the day, their substantive decision is founded upon the former alone. And I find support for that view in the fact, already the subject of comment in other decisions of Commissioners, that a tribunal which informs itself fully of the material statutory provisions is better equipped to appreciate the issues which properly fall for its determination. There is no indication in the present record of decision that the tribunal ever gave any thought to the provisions of regulation 3(2)(b); and in my view both the tenor of their decision and the stated reasons for it demonstrated that they did not - and that on that account they did not take into consideration all the factors they should have in arriving at their findings of fact, their conclusions, or their stated reasons for decision.

7. For, in my judgment, it by no means follows "as the night the day" that because the home has two usable fireplaces and one portable electric heater and, as here, there were 2 reception rooms and 3 bedrooms, the claimant can have no need of additional heating appliances. As regulation 3(2)(b) demonstrates, there are other material factors which require consideration before such a conclusion can properly be reached. The circumstances of the assessment unit may be such that - eg on medical grounds - what might at large be considered to

be available to meet the need is not in practice available or is not suitable to the requirements and circumstances of the particular assessment unit. Indeed the benefit officer now concerned has very properly pointed out that the claimant's evidence was to the effect that the open fire in her living room was "unsuitable", because it was too costly to run. She had also indicated that the portable electric heater was used to heat her daughter's bedroom - and had produced medical evidence that additional heating would be beneficial to her own health. The tribunal's stated reasons for their conclusion leave the claimant guessing as to why they rejected her evidence as to the unsuitability of the open fireplace as means of heating the living room, or why her contention that - having regard to the purpose to which the portable electric fire was already being put - the medical evidence which she had adduced was not accepted as a sufficient support for her claim.

3. I accept also the benefit officer's submissions:

(1) that the presence or absence of need falls to be determined by reference to the particular circumstances of the assessment unit in respect of whose asserted need the claim has been brought, and not upon any generalised criteria; and

(2) that the statement (relied on by the claimant in her grounds of appeal) in Commissioner's decision CSB/29/81 (paragraph 16) that "there is a need if the alternative is an 'unsatisfactory expedient'" which was expressed in relation to an item temporarily borrowed, is not in the present context directly applicable; but that this does not mean that an available item which is at large capable of serving the same purpose is necessarily a "suitable alternative" to an item claimed, since that too falls to be determined in all the circumstances of the particular case, and grounds of excessive cost of operation would be one such circumstance.

9. (1) Bearing in mind that the provision of heating by means of coal fires involves the need to provide storage for supplies of coal, and to carry coal if not to the storage point also, then at least from the storage point to the fireplace, it might well occur to a tribunal of its own motion, even if not specifically raised by a claimant, that another relevant circumstance might be the capacity or otherwise of a particular claimant on medical grounds to perform such tasks.

(2) There is no indication that, although made aware that this claimant had a "rheumatic spine", the tribunal gave any thought to whether or not that circumstance obtained.

10. In the circumstances I am left in some doubt as to the extent to which the tribunal "asked themselves the right questions" in arriving at their decision; but I need not express any finding that they failed to do so, since there is ample foundation for my present decision to be found in a demonstrated insufficiency of compliance with the requirements imposed upon them as to stating their findings of material fact and the reasons for their decision by Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, which provisions fall to

be read in the light of the standards of compliance which they import, as indicated in paragraph 14 of the decision R(SB)6/81.

11. My decision is accordingly as indicated in paragraph 1(3) above.

Signed I Edwards-Jones
Commissioner

Date: 20 September 1983

Commissioner's File: CSE/283/1983
C SBO File: 278/83
Region: London North

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