

CH addition - reg 12(2)(j) - "applicable" means claimant must have been awarded addition - but see 616/86 and 1177/86

Commissioner's File: CSB/0297/1936

C A O File: AO 2132/SB/86

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that the decision of the Shrewsbury social security appeal tribunal dated 10 December 1985 is erroneous in point of law. Accordingly I set it aside and substitute the decision that that tribunal should themselves have made which is that the claimant is not entitled to a heating addition under paragraph 3 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 by virtue of regulation 12(2)(c) of the Supplementary Benefit (Requirements) Regulations 1983 being applicable.
2. This is an appeal by the claimant with the leave of the Commissioner to the Commissioner against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 25 October 1985 set out in Box 1 of Form AT2.
3. The facts and history of the case are dealt with in paragraphs 1 to 4 inclusive of the submission dated 7 March 1986 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 save to state that by a letter dated 15 March 1986 the claimant applied to withdraw his appeal. However the adjudication officer refused consent to the withdrawal and accordingly on 6 May 1986 I ordered that the appeal proceed.
4. The relevant statutory provisions are referred to in paragraph 5 of the submission dated 7 March 1986 of the adjudication officer now concerned. Nothing is to be gained by my setting out these references afresh here.
Paragraphs 1 to 8 of Part I, Schedule 4 to the Requirements Regulations provide the circumstances in which additional requirements for heating are appropriate and the rates thereof. Paragraph 3 of Schedule 4 is set out at paragraph 7 of the submission dated 7 March 1986 of the adjudication officer now concerned and I do not propose to set that paragraph out afresh here. Further the provisions of regulation 12(2)(c), (f) and (j) are set out also in paragraph 7 of the submission dated 7 March 1986 of the adjudication officer now concerned and I do not propose to set them out afresh here either.
5. The only issue before me is whether or not the claimant is precluded from receiving an amount under paragraph 3 of Schedule 4 to the Requirements Regulations because of the

provisions of regulation 12(2)(j) of those Regulations. The matter is only in dispute from the date that the claimant returned to centrally heated accommodation that is 25 September 1985. The claimant's grounds of appeal deal solely with his contention that the provisions of paragraph 3 of Schedule 4 were applicable to him and had been continuously applicable to him since before 5 August 1985. There is no dispute that the provisions of paragraph 3 of that Schedule have been applicable to him since 25 September 1985. The claimant lived at his present address, which was centrally heated, until 25 March 1985. He then moved, on a temporary basis, to accommodation without central heating, returning to his present address on 25 September 1985. During the period that he was living at his present address, up until 25 March 1985, the claimant was in receipt of an additional requirement for central heating in accordance with the provisions of paragraph 3 of Schedule 4. This additional requirement continued to be paid until 12 July 1985 when it was withdrawn. These are matters included in the tribunal's findings of fact on the face of the record. The issue therefore before me is that whether or not paragraph 3 has been applicable or continuously applicable depends upon the meaning of "applicable" within the context of the Requirements Regulations.

6. The Requirements Regulations provide that various specified requirements are or are not applicable to a person in certain specified circumstances. By reason of paragraph 3 of Schedule 1 to the Act and the Aggregation Regulations the requirements applicable to one person are treated as applicable to another person "the claimant". Entitlement and payability are terms relevant only to an award of supplementary benefit. "Applicable" may mean that a person satisfies the conditions specified in the relevant provision of the Requirements Regulations; or not only do they satisfy the conditions, but that that requirement has been properly included in their assessment and they have been awarded a pension or allowance based on that assessment. This second meaning within the context of regulation 12(2)(j) of the Requirements Regulations is the appropriate meaning. Regulation 12(2)(j) of the Requirements Regulations precludes the award of an amount under paragraph 3 of those Regulations unless the claimant has been awarded a supplementary allowance based upon an assessment that properly includes an amount under paragraph 3 and the claimant has been continuously in receipt of that amount. The only exception to this arises under regulation 12(2)(f) which is not relevant in this case (and in this the claimant is in agreement).

7. It was the duty of the tribunal in considering the effect of regulation 12(2)(j) to satisfy themselves that an additional requirement even though not awarded was not applicable to the claimant before 5 August 1985 and was not continuously applicable from that time. This was an issue basic to their decision. However it is clear on the face of the record that the tribunal have simply found that the heating addition was not applicable. They should have in particular had regard to regulation 12(2)(c) of the Requirements Regulations and made findings on whether the claimant's council flat could at the relevant time still be the claimant's home within the meaning of regulation 2(1) of the Requirements Regulations and whether the period of his absence from that accommodation prevented a heating addition from being applicable. Accordingly the decision of the tribunal is erroneous in law in that they have failed so to do.

8. 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. The relevant findings have been made by the tribunal concerning the period of the claimant's absence from his council flat which the claimant accepts as home and accordingly I am able to substitute my own decision for that of the tribunal which I do.