AR-Laundry — can be awarded on seasonal basis — but see 177/85.

AR - laundry. incs "outdoor drying facts not suitable?" But CSB 177/85 thinks this is wrong.

IEJ/SH/MD

Commissioner's File: CSB/441/1985

C A O File: AO 2566/85

1. (1) This is an adjudication officer's appeal from the unanimous decision dated 25 January 1985 of a social security appeal tribunal ("the tribunal") brought by my leave and upon the contention that the tribunal's decision was given in error of law. By their decision the tribunal in effect reversed the decision of an adjudication officer issued on 14 August 1984 that the claimant was not entitled to any additional requirement for laundry, in that they awarded to the claimant a laundry addition of £5.10 per week less 50p for the period 1 October to 30 April.

(2) The appeal achieves a technical success, but does not succeed upon the point of principle which has been the primary ground upon which the adjudication officer has brought the appeal.

(3) I set aside the tribunal's decision as given in error of law in respects later below identified and direct that the claimant's appeal from the adjudication officer's decision be reheard by a differently constituted tribunal. I do not consider it expedient to seek to give myself the decision which the tribunal should have given, as in my judgment a proper determination requires the ascertainment and finding of additional facts.

2. The basic facts of the case have not been in dispute. The claimant is a single parent and has at all material times been in receipt of supplementary allowance for an assessment unit comprising herself and her infant daughter, who was in the second half of 1984 one year old. They lived in a flat rented from a local authority which was not centrally heated. She had no savings. She was herself in good health, but her daughter was under the care of a hospital paediatrician because prone to ear and chest infections, on account of which the paediatrician considered that she required to have living conditions which were as warm and dry as possible. The claimant had no washing machine. The daughter was incontinent. The claimant took the laundry to a launderette at least once a week, with an additional visit once a fortnight, and the cost per visit was £3.40. The claimant had access to an outdoor drying facility.

3. Under the combined effect of regulations 11 and 13 of and Schedule 4 Part II to the Requirements Regulations (and in particular, paragraph 18 of Part II to Schedule 4) an additional requirement in respect of laundry, where awarded, is to be of the amount by which the estimated average weekly laundry costs exceed a prescribed amount which as from 26 November 1984 is £0.50 (but prior to that date was £0.45 - a complication I am ignoring for simplicity of exposition but should be borne in mind if any award is made on the re-hearing). The figure of £5.10 the subject of the tribunal's decision, less £0.50 as they have indicated, is thus identifiable as representing in the circumstances an estimate of average weekly laundry costs of £3.40 per visit to the launderette at an average frequency of 1½ visits. Under the combined effect of the same provisions an additional requirement as to laundry costs is (subject to a qualification as regards a claimant who has received a single payment for a washing machine, which does not bear in the circumstances of the present case) to be made (but made only):

"18. Where -

(a) the laundry of the assessment unit cannot be done at home because all adult members of the household are ill, disabled or infirm or because there are no suitable washing or drying facilities; or

(b) the quantity is substantially greater, for example because of incontinence, than the amount which would normally be generated by an assessment unit of the same composition;"

4. The claimant was the only adult member of the household and was not herself ill, disabled or infirm. It has not been suggested that the quantity of laundry needing to be done was substantially greater than the amount which would normally be generated by an assessment unit of the same composition. True it is that the daughter was incontinent - but the substantial amount of laundry need attributable to a one year old infant in circumstances in which on cost or other grounds disposable nappies are not in use, whilst a matter of common general knowledge, could not bring the case within head (b) above - because that amount could be expected to be within the amount generated by any assessment unit including a child of that age.

5. In the circumstances the claimant's sole possibility of success upon her claim for an additional laundry requirement lay in the formula:-

"The laundry of the assessment unit cannot be done at home ... because there are no suitable washing or drying facilities."

6. It was common ground that the claimant's accommodation included a sink, and it was the adjudication officer's contention that the sink constituted suitable washing facilities; and whilst one may fairly say that whether in relation to a particular household's laundry need a sink constitutes "suitable" washing facilities is a matter of opinion, the tribunal have not founded their decision upon any lack of suitable washing facilities, and I need not pursue that limb of the formula in the present case. Thus the area of controversy is further reduced to whether the claimant did or did not satisfy the condition:-

"The laundry of the assessment unit cannot be done at home... because there are no suitable ...drying facilities."

7. It was, as I have indicated, not in controversy that the claimant had, as ancilliary to her occupation of the flat, access to an outdoor drying facility in the nature of a clothes line or lines, and it was not suggested that under appropriate weather conditions this would not constitute "suitable drying conditions". However, the paediatrician supported the claimant's claim for an additional laundry requirement; and the tribunal clearly gave cogent attention to the child's health problem and concluded that, having regard to the nature of that and to the paediatrician's evidence, the alternative of drying the laundry in the flat itself at such times as it could not be dried out of doors due to weather conditions did not constitute suitable drying facilities. Their stated reasons for decision include the intimation:-

> "The Tribunal have noted that the Appellant has drying facilities in her garden but in view of the daughter's physical condition it would be undesirable for any drying to be carried out inside the flat when the general weather conditions do not allow for drying outdoors. The Tribunal have selected the period when it is normal practice for public authorities to put on the heating."
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> - and so it was that their award was for the period 1 October to 30 April.

8. It is the contention on the present appeal of the adjudication officer now concerned that the tribunal erred in law in so deciding. His contention is expressed as follows:-

> "In my submission the condition to be satisfied under paragraph 18(a) of Schedule 4 to the Requirements Regulations is that the laundry cannot be done at home because there are no" (his underlining) "suitable washing or drying facilities. The tribunal found as a fact that the claimant had drying facilities in her garden and I submit that it is to be inferred from that finding that the facilities were found to be suitable during the period May to September because the award was limited to the remaining months of the year. The tribunal went on to decide that in view of the daughter's physical condition it would be undesirable for any drying to be carried out inside the flat during inclement weather. Whilst I would not dispute that the drying of clothes indoors may aggravate the claimant's daughter's chest condition, I would submit that short periods of inclement weather represent only a temporary interruption of the availability of the facility. I would submit that the condition to be satisfied is that there are no (his underlining again) suitable washing or drying facilities, not whether a facility is temporarily unavailable, inadequate or insufficient. In my submission, therefore, by extending paragraph 18(a) of Schedule 4 of the Requirements Regulations to include the temporary interruption of the availability of the drying facility, the tribunal erred in law."

9. If the law was as that submission rests upon it being, it might rightly be said that the law was an ass. But that is not in my judgment the law. Supplementary allowance is a weekly benefit and there are express provisions elsewhere in the Requirements Regulations which in regard to other additional requirements expressly recognise that the requirement may not be continuous - see, for example, the provisions of regulation 12(2)(c)(i) as to disentitlement to certain additional heating requirements after specified periods of continuous absence from home. True it is that there is no express provision applicable as regards paragraph 18 of any comparable nature, and true it is also, in my view, that a quite isolated and temporary interruption in the availability of an otherwise suitable drying facility should not be taken as qualifying a claimant for the additional requirement. But the formula does not say "there are no drying facilities whatsoever" it says "there are no suitable drying facilities" (my underlining). And if it is proper to conclude as the fact in given circumstances that there is an identifiable part of the year during which there are

suitable drying facilities and another identifiable part of the year during which such drying facilties as there are are not "suitable", then in my judgment an adjudicating authority is fully entitled to conclude, as this tribunal concluded, that the qualifying conditions are satisfied in that particular as regards the part of the year in which the available drying facilities are not "suitable". And it is in my judgment well open to a tribunal to conclude, as this tribunal concluded, that outdoor drying facilities are not "suitable" drying facilities all year round and that having regard to the state of health of a member of the assessment unit who could be expected to be ordinarily within the home at the times at which indoor drying of washing would, if at all, take place there; that such operation would, if it did take place there, give rise to conditions deleterious to his or her health; and that on that account an indoor drying facilitiy which was otherwise available did not constitute a "suitable" facility. 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; the size of local authority accommodation provided to a household consisting of mother and infant child; and the internal conditions which will obtain if during the winter season all their laundry must first be washed in the sink, then wrung out by hand or wringer, and then set out around the flat to be dried by the domestic heating available.

10. I accept that there is nothing in the regulations which in terms authorises the recognition of need for an additional laundry requirement on a seasonal basis. But neither is there to be found, in my view, anything to preclude such a recognition. And, in my judgment the tribunal were well - entitled, and were indeed required, to determine what was or was not "suitable" with a due regard to all the circumstances of the particular assessment unit and not in any abstract or generalised contemplations.

11. (1) As a quite separate point, the adjudication officer now concerned contends that the tribunal have failed to state findings of fact and reasons for decison adequate to discharge their obligations in that behalf under regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984. In the main I am against him under this head also, for in relation to his primary contention I find the tribunal's stated findings adequate if on the sparse side, and the stated reasons for decision entirely adequate.

(2) But I must nevertheless set aside the tribunal's decision under the same head of error of law as that on which the adjudication officer has so relied, because the tribunal have in my judgment fallen at the final hurdle of giving sufficiently precise practical effect to their decision. As will be seen above, they have not specified from what October their award was to take effect. It might at large be proper to infer 1st October 1984, as next preceding their decision in January 1985. But the imprecision is in fact reflective of a material omission from their contemplations, namely that the claimant was in appealing against the adjudication officer's decision of 14 August 1984, specifically seeking a back-award as well as a current award of laundry addition; and that aspect of the case as it stood before them they have not in my judgment sufficiently dealt with either as to findings or stated reasons, the terms of their actual decision apart. They needed first to consider and make findings as to when review was first requested and as to when the relevant qualifying conditions were first satisfied, and in the light of their conclusions and of regulation 87 of the Adjudication Regulations (limiting award of arrears for more than 52 weeks prior to the request for review) then to determine and express a reasoned decision as to whether any and what arrears of award for any and what time or times prior to their own decision were the subject of their award, and if not, why not.

12. I direct that the tribunal re-hearing the claimant's appeal be furnished with a copy of my present decision and that:

(1) they take particular note of what I have indicated: (a) in the parenthesis following the reference to "E.O.50" in para 3 above; and

(b) in para. 11(2) above

(2) unless by the time for their decision my conclusions expressed in paras.9 and 10 above have been displaced by higher authority they proceed on the basis that they correctly state the law.

13. My decision is as indicated in paragraph 1(3) above, but I would by way of precaution add that any amount which may be awarded on the re-hearing will, if in so far as the claimant has been or is at any material time entitled to supplementary allowance at the long term higher rate, be subject to downward adjustment under regulation 11(2A) (regulation 13(5) until 26 November 1984) of the Supplementary Benefit (Requirements) Regulations 1983 and will not be relieved by paragraph (2B) of that regulation.

14. My decision is accordingly as indicated in paragraph 1(2)above.

(Signed) I.Edwards-Jones
Commissioner

Date: 22nd October 1985