

Procedure  
Before April 1987 SSAT did not deal with issue which had not been subject of an AO's decision - however cannot treat claimant's written representations <sup>in connection with appeal to SSAT</sup> as application for review of his SB.

MJG/SH/39

Commissioner's File: CSB/542/1988

Region: North Western

**SUPPLEMENTARY BENEFITS ACT 1976**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** Terence E.

**Social Security Appeal Tribunal:** Manchester

**Case No:** 111/10

1. I allow the claimant's appeal (but only in so far as indicated below) against the decision of the social security appeal tribunal dated 7 July 1986 as that decision is erroneous in law and is set aside. I give the decision which the tribunal should have given as follows:-

- (a) An overpayment of supplementary benefit of £64.35 for the inclusive period from 15 August 1984 to 19 March 1985 is recoverable from the claimant as the overpayment occurred in consequence of innocent misrepresentation by the claimant of a material fact: Supplementary Benefit Act 1976, section 20;
- (b) The written representations dated 14 January 1986 to the tribunal by the claimant's representative are to be treated as including an application for review of the claimant's requirements for supplementary benefit purposes so as to apply for a review on the ground that the higher heating addition is payable to the claimant under paragraph 2(b) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 (as amended). The application for review should be adjudicated on as soon as possible by a local adjudication officer.

2. This is an appeal to the Commissioner by the claimant, at the relevant time aged 32 years, living with his wife then aged 30 years, and their two daughters aged 10 and 3 years respectively. The appeal is against the unanimous decision of a social security appeal tribunal dated 7 July 1986. The actual decision of the tribunal was to dismiss the claimant's appeal from a decision of the local adjudication officer issued on 12 April 1985, requiring repayment of supplementary benefit of £64.35 overpaid for the period 15 August 1984 to 19 March 1985 on the footing that the claimant had innocently misrepresented a material fact namely (in claiming a heating allowance on the ground of central heating - see paragraph 3 of Schedule 4 to the above cited Requirements Regulations) that his house consisted of five main rooms, whereas in fact it consisted only of four main rooms. That was because what had originally been two living rooms had been knocked together i.e. had had the partition wall removed so as to make one main large room. In fact for the reasons set out below it does not appear that the claimant wishes to appeal to the Commissioner about that particular ruling of the tribunal. However I should say that having examined all the facts and being familiar with this problem I would uphold (as I have done in paragraph 1 of this decision) the tribunal's decision since one large room that originally was two rooms is nevertheless only one "room". Moreover, I hold that the overpayment occurred by the

claimant's misrepresentation of a material fact. However, it is also clear to me that the claimant acted perfectly bona fide in this matter and I would hope that, in relation to the actual time and manner of the repayment of the £64.35 overpayment, the Secretary of State will have regard to the claimant's bona fides and family circumstances.

3. The claimant's appeal is in fact against the ruling of the tribunal (though it does not appear in their actual decision) in relation to a contention which was first made to the tribunal only in written representations by the claimant's representative on 14 January 1986, namely that the claimant was entitled to a higher heating requirement on another ground i.e. that he complied with paragraph 2(b) of Schedule 4 to the above-cited Requirements Regulations which allow such a requirement where,

"[the claimant is a] person who is a householder, having regard in particular, to whether the rooms are draughty or damp or exceptionally large ... the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation."

This matter was extensively canvassed before the tribunal which came to the conclusion that the claimant's home did not meet those requirements of the regulation. In a written submission dated 19 August 1988 the adjudication officer now concerned submits that the tribunal erred in law in not making findings of fact in regard to the claimant's allegations of poor insulation and consequent heat loss from the property.

4. However, in response to a direction by me dated 27 February 1989, there is a further written submission by the adjudication officer now concerned, dated 23 March 1989, that as the tribunal's decision was given before changes in the law took effect on 5 April 1987 (by the Social Security Act 1986) the tribunal in fact had no power to deal with this new issue which had never been the subject of an adjudication officer's decision (compare now the power to do so under section 102 of the Social Security Act 1975). I accept that submission as being correct in law and it follows therefore that the original tribunal should not have undertaken this particular matter and I have had to declare their decision erroneous in law on that account.

5. I have however myself given the decision which the tribunal should have given in paragraph 1 of his decision, namely that what is in effect an application for a review of the claimant's requirements for supplementary benefit purposes must be dealt with by a local adjudication officer, which I would hope could be dealt with as soon as possible. Any question of back-dating of the requirement if granted is of course governed by the 52 weeks limit on back-dating in respect of an application for review (see regulation 89 of the Social Security (Adjudication) Regulations 1984).

(Signed) M.J. Goodman  
Commissioner

Date: 6 July 1989