

*Previous SP for fireguard does not preclude a further SP for other fireguards if need more than one.
Inadequate funding of fact.*

VGHH/SH/12/MD

Commissioner's File: CSSB/189/1987

Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Raymond Cowie

Social Security Appeal Tribunal: Glasgow East

Case No: 294/11,12 & 13

1. My decision is that the decision of the social security appeal tribunal dated 13 August 1986 is erroneous in law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. On 29 July 1986 the claimant claimed a fireguard. According to form AT2 the adjudication officer issued a decision on this claim on 28 August 1986 in the following terms:

"The claimant is not entitled to a single payment in respect of a fireguard. (Regulation 3 of the Supplementary Benefit (Single Payments) Regulations and Regulation 24 of the Supplementary Benefit (Urgent Cases) Regulations)."

The reasons for this decision are stated on form A6(SP) to be that the claimant was awarded a single payment of £17.50 for a fireguard on 26 March 1986 and this should be still available to him.

3. The claimant appealed against this decision stating that the baby aged 3 "is putting her hands onto fire".

4. The claimant in his written submission to the appeal tribunal stated that the facts before him were that the claimant was a married man aged 41 who resides with his wife aged 30 and his children aged 3 and 1 month in a local authority flat in Glasgow. At present he is registered at the unemployment benefit office and his income consists of supplementary allowance and child benefit. He has no declared savings. On 29 July 1986 the claimant applied for a single payment for a fireguard and for clothing for himself and wife. On 28 August 1986 an adjudication officer refused a single payment in respect of clothing for the wife and refused the claim for a fireguard. On 3 September 1986 the claimant appealed against the refusal of a single payment for clothing for his wife and a fireguard. The present appeal relates only to the refusal of the single payment for a fireguard. The adjudication officer decided that as at the date of claim the claimant did not satisfy the provisions of regulation 3(2) of the Single Payments Regulations because the claimant had been awarded a payment of £17.50 for a fireguard on 26 March 1986. The

adjudication officer did not consider that another fireguard should be required in such a short space of time.

5. The tribunal heard the appeal on 13 August 1986. The chairman's note of evidence stated:

"Tribunal noted claimant's reply to Question 2 of AT6.

Representative said he had not seen claimant since he persuaded him to fill in claim. Representative took the view that as claimant had 3 electric fires, he needed more than one guard. That award was a Nursery Guard. So now claimant needed a living room guard. Houses in Castlemilk were so hard to heat more than one electric fire was on at a time. 3 year old child pushed her fingers through protective bars on one-bar bedroom fires. As claimant cleared the Regulation 3 hurdle of need, Regulation 9 did not limit the number of fire guards.

Presenting Officer could not explain the reference to "reasonable quantity" on Benefit Officer's report."

NB: In reply to question 2 of form AT6, which stated that if you have ticked "no" to question 1 (Will you be coming to the hearing?), please give your reasons, the claimant stated:

"I accept that I have already received payment for a fireguard although I wasn't aware of it at the time I made my claim."

6. The tribunal's decision was:

"To uphold the Adjudication Officer's decision."

Their recorded findings of fact were:

- "1. Claimant is in receipt of Supplementary Benefit.
2. Assessment Unit at date of claim included 3 year old + 1 month old dependant children.
3. Claimant is householder.
4. He has 3 electric fires.
5. The home conditions require constant heat in all rooms."

Their recorded reasons for decision were:

- "1. Majority Decision. Claimant's own view of award in reply to R. had no instructions from claimant specific to Appeal. The fireguard provided for by SP award of 17.00 was for a large guard for children (ie nursery guard) as opposed to guard for a children's room - ie nursery or bedroom. 3 year old requires supervision in any event and good fire guard is portable from room to room and need has been met.
2. Miniority Decision. Need is for a guard in every room: claimant should not need to confine child to one room."

7. The chairman gave leave to appeal against the tribunal's decision and the adjudication officer in his written submission on the appeal, which submission is dated 16 July 1987,

states that the reasons for the decision are inadequate because it is accepted that fires may be on in more than one room and the child would appear to be mobile and be able to reach any unguarded fire and indeed has done so. The claimant was left in the dark as to why his evidence had failed to satisfy the tribunal. The decision was erroneous as being in breach of regulation 19(2)(b) of the Adjudication Regulations 1984.

8. In my judgment, the tribunal decision is erroneous in law because the findings of fact are inadequate. It is not stated what sort of electric fires were possessed by the claimant. (The claimant did not choose to give evidence). It may be that the bedroom fire was a radiant fire (see the chairman's note of evidence) though even this is not clear. But it is totally uncertain as to what sort of electric fires there were in the other rooms. Were they radiant fires or convectors? If radiant, could they be positioned on the wall out of reach of children? If they were convectors, what was the anticipated danger? If there was danger, what type of fireguard is there that would obviate such danger? Is such fireguard fixed or portable? If it is portable, how is it safe against a 3 year old child? Has the existing fireguard been inspected? Did the claimant use the original grant for a fireguard to purchase one?

9. I set aside the decision of the tribunal as erroneous in law. In the absence of findings of fact on the above points, it is not possible for me to give the decision that the tribunal should have given. The case is accordingly referred to another tribunal which should be entirely differently constituted. That tribunal should make findings on the points mentioned in paragraph 8 above. They should also make findings on whether electric fires were needed in the flat? Is it centrally heated? If so, is the heating in fact inadequate? If the central heating is adequate, why are electric fires needed? If it is not adequate, the fact that the claim was made in July when heating would not normally be on would not by itself be a ground for rejection of the claim, since the claim for a fireguard in the case of an assessment unit not about to move should be considered in the knowledge that in cold weather, which might occur at any time, heating will be needed.

10. (1) This is a case where the claimant should be invited to give evidence as to the need for the additional fireguards and to answer questions on the points referred to in paragraph 8 above. It is not at all clear that the claimant himself feels that there was a need for further fireguards, since he decided not to attend the oral hearing on the basis that he already had one fireguard.

(2) The onus is on the claimant to satisfy the need for the additional fireguards. It is not desirable that this appeal should be decided in the absence of the claimant and without seeing and hearing him, unless there is some thoroughly convincing reason for his non-attendance.

11. My decision is set out in paragraph 1.

(Signed) V.G.H. Hallett

Commissioner

Date: 26 April 1988