

JJS/5/LS

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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: Michael Wosien

Social Security Appeal Tribunal: Orkney

Case No: 01/06

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law. I set it aside and refer the case to a differently constituted social security appeal tribunal for determination. I direct the attention of the tribunal to what I have said in paragraph 7 hereof.

2. This is a claimant's appeal from a decision, of the Kirkwall social security appeal tribunal, given on 27 February 1986, confirming an adjudication officer's decision not to pay higher rate heating addition to the claimant. The decision of the tribunal was a majority one and leave to appeal was granted by the chairman on 9 May 1986. The papers were laid before me on 20 July 1987.

3. The question before the tribunal was whether the claimant qualified for a higher rate heating addition under paragraph 2(b) of schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. The paragraph is contained in part I of the schedule and sets out for the purpose of regulation 12(1) of the Supplementary Benefit (Requirements) Regulations 1983 the conditions in which additional requirements for heating will be taken into account. Paragraph 2 deals with accommodation criteria and reads as follows:

"Person who is a householder where having regard in particular to whether the rooms are draughty or damp or exceptionally large -

- (a) the home is difficult to heat adequately;
- (b) the home is exceptionally difficult to heat adequately, for example because it is very old or in a very exposed situation."

Two levels of heating addition are payable, if (a) only is satisfied the lesser amount is payable, but if the criteria in (b) is satisfied then the higher addition is paid. The claimant's case was that he was entitled to the higher addition.

4. At the material time the claimant was a married man living in rented accommodation with his wife and a son aged 5 months. He was in receipt of supplementary allowance. In September 1985 the family had moved to Eday, Orkney in Scotland from Morecambe. The claimant sought a higher rate heating addition. The cottage which was occupied by the claimant is an old one which had been modernised. It has two outside doors, one of which is leading from the kitchen. The claimant stated in his grounds of appeal that to heat the whole cottage would mean maintaining two fires, one in the living room and the other in the

kitchen. He maintained that the fireplace which had been installed was inefficient. In his grounds of appeal to the Commissioner he has stated that the cottage faces the open Atlantic (no reference to this appears in the case papers which were before the tribunal, but it may be that such fact was known to the members of the tribunal). The adjudication officer in his submission to the tribunal referred to a visit made to the claimant's home on 20 December 1985 by a visiting officer. He stated that the visiting officer reported that the cottage had been modernised, both inside and outside, within the previous 2 years and that a porch had been built over the front door. The accommodation consisted of a living room, kitchen and two bedrooms and in the opinion of the visiting officer these rooms were of an average size and she did not consider them difficult to heat. Reference was made to a further opinion of the visiting officer namely that while the cottage was exposed it was not considered to be any more difficult to heat than any other home on the island.

5. The claimant's appeal was heard by the tribunal on 27 February 1986. The appellant was present. The chairman made no note of the evidence or in any event no note of the evidence has been supplied to me. It would appear from the claimant's grounds of appeal to the Commissioner that there was material available to the tribunal in addition to what was stated in the submission of the adjudication officer to them and the claimant's written grounds of appeal. The only finding on questions of fact material to the tribunal's decision was that all members accepted from the evidence supplied that the house was in an exposed situation. The adjudication officer's decision was upheld by a majority decision of the members. It was recorded that the decision rested upon the situation of the dwelling house as to whether it was exposed or very exposed. The dissenting member was of opinion that it was in a very exposed position but the other members decided that it was not in a very exposed situation.

6. The question for the tribunal was whether the claimant's home was exceptionally difficult to heat adequately. The tribunal were wrong to limit their consideration to the circumstance of whether or not the house was in a very exposed position. R(SB) 42/84 is authority for the proposition that although particular factors are identified which must be considered, it is necessary for a tribunal to consider all relevant circumstances and to take them into account. The adjudication officer now concerns submits that the tribunal should have considered whether the rooms in the house were draughty or damp or whether or not the property was old as well as whether it was in a very exposed situation. I agree. Indeed it is to be noted that the claimant himself had in his grounds of appeal to the tribunal contended that the home was exceptionally difficult to heat adequately because it was draughty. He referred to the age of the building, the draughts due to the doors, as well as the house, being in a very exposed situation. The tribunal erred in law in limiting their findings to one of the relevant circumstances only and this is the reason why I have set aside their decision.

7. It is necessary for me to remit the case to a differently constituted tribunal for determination. There has been considerable delay and I would have wished to have given the decision myself. However the tribunal have made insufficient findings of fact to enable me to substitute my own decision for the one given by them. Again due to the failure to record evidence it is not expedient for me to make findings of fact. In these circumstances I have decided that the case should be remitted to a differently constituted tribunal for determination. It will be necessary for that body to consider all the relevant circumstances relating to the accommodation, to make findings of fact and to keep an adequate record of the proceedings.

(Signed) J J Skinner
Commissioner

Date: 27 August 1987