

Higher rate heating addition — exceptional difficulty
in heating can be due to combination of factors, — need
not be due to single factor. Inadequate findings of fact
& reasons.

JGMI/JOB

Commissioner's File: CSSB/468/87
LO: Rutherglen
LO Ref No: 811/186485

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO THE COMMISSIONER FROM DECISION OF SOCIAL
SECURITY APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Michael McKINLAY

Social Security Appeal Tribunal: Glasgow

Case No: 437/15

1. My decision is that the decision of the social security appeal tribunal dated 5 May 1987 is erroneous in law and is set aside. The claimant's case is referred to a differently constituted tribunal for reconsideration.

2. This is an appeal by the claimant upon a point of law, with leave of the tribunal chairman, against the above-mentioned tribunal decision. The decision arises from a request by the claimant received by his local office on 3 November 1986 for review of his supplementary benefit assessment to include a heating addition at the higher rate. The claimant was at the material time a single man aged 25 living in a local authority house in Castlemilk, Glasgow. His request was made on the grounds that his home was exceptionally difficult to heat adequately within the meaning of the provisions considered below. After investigation an adjudication officer decided that the claimant's home suffered from some damp and draughts and that it was difficult to heat adequately but not exceptionally so. He awarded a heating addition at the lower rate appropriate in those circumstances. The claimant appealed to a social security appeal tribunal.

3. An additional requirement for heating may be applicable in certain circumstances under the provisions of regulation 12 of and Part I of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983. The paragraph of Part I of Schedule 4 material for present purposes is paragraph 2 which is in the following terms:-

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

(a)/

(a) the home is difficult to heat adequately:

(a) £2.20

(b) the home is exceptionally difficult to heat adequately, for example because

it is very old or in a very exposed position. (b) £5.55"

4. The findings of the tribunal were stated in the following terms:-

"1. The tribunal accepted the facts as stated in paragraphs 1-5 of the form AT 2.

2. The Tribunal considered fully the evidence as presented by the Representative. However, they considered that the accommodation was difficult to heat but not exceptionally so. They considered this in view of the fact that he was living on the ground floor of his tenement block. It was not therefore particularly exposed neither was it particularly old."

The tribunal's reasons were stated in the following terms:-

"Regulation 12 of Supplementary Benefit (Requirements) Regulations.

Part 1 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations.

R SB 42/84."

5. In my judgment the decision of the tribunal is erroneous in law by reason of the inadequacy of the findings and reasons stated by the tribunal. The findings adopted from paragraphs 1 - 5 of the adjudication officer's submission were of a formal character only. The tribunal chairman's careful note of evidence summarises the broad contentions put forward by the claimant's representative relevant to such matters as the effects of weather, geographical position, the construction of the claimant's house, draughts and dampness. What was in fact put forward was a mixture of evidence, assertion, and submission. Unfortunately although the tribunal state that they "considered fully the evidence as presented" their decision does not disclose what material facts they regarded as established so as to make clear on what basis they proceeded in reaching their decision that the claimant's home was difficult but not exceptionally difficult to heat adequately for the purposes of paragraph 2 of the Schedule. They do explain their views on age and exposure but these are only examples of factors that may lead to exceptional difficulty in heating a home adequately.

6. I must set aside the decision of the tribunal as erroneous in law and refer the case to a differently constituted tribunal for reconsideration. The new tribunal must clarify the facts which they accept as being material to their decision. I should also mention that in considering whether the claimant's house is or is not "exceptionally difficult to heat adequately" decision R(SB)42/84 which deals with this matter does not require a tribunal to identify a single exceptional

factor./

factor. The question is simply whether on the facts accepted by the tribunal the claimant's house is not merely difficult to heat adequately but exceptionally difficult to heat adequately. The exceptional difficulty, if it is found to exist, may arise from one circumstance or a combination of circumstances differentiating the claimant's case from one in which the home is regarded as difficult to heat adequately.

7. The appeal of the claimant is allowed.

(signed) J G Mitchell
Commissioner
Date: 15 April 1988