

MJG/SH/6

Commissioner's File: CSB/1077/1989

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A

QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 1 August 1986 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given, namely that the claim for supplementary benefit made by the claimant on 1 April 1986 shall be treated as if it had been made on 12 February 1986, the claimant having proved that, throughout the period between 12 February 1986 and 1 April 1986, there was continuous good cause for the failure to make the claim before 1 April 1986: Social Security Act 1975, section 101 (as amended) and the Supplementary Benefit (Claims and Payments) Regulations 1981, regulation 5(2)(a).

2. This is an appeal to the Commissioner by the claimant, a married man aged 48 at the relevant time, living with his wife then also aged 48. The appeal is against the unanimous decision of a social security appeal tribunal dated 1 August 1986, which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 15 April 1986, to the effect that the claimant was entitled to receive a supplementary allowance from 3 April 1986 but not from the earlier date (12 February 1986) for which the claimant had asked the award to be back-dated.

3. Basically the facts of this case are as follows. The claimant and his wife arrived in the United Kingdom from Sri Lanka on 2 May 1985 and were living with relatives in this country. On 2 May 1985 they were granted by an immigration officer two months leave to enter the United Kingdom. What happened on expiry of that two months period is not clear but it is clear from the documents that on 12 February 1986 (the date to which the claimant has asked the award of supplementary

benefit to be backdated) the claimant and his wife applied to the Home Office for leave to remain in the United Kingdom during the civil disturbances in Sri Lanka. On 14 March 1986 the claimant and his wife were granted by the Home Office six months leave to remain in the United Kingdom. The detailed terms of that leave are set out in a letter (now made part of the appeal papers) from the Home Office to the claimant and his wife, dated 14 March 1986. That letter indicated to the claimant that if he satisfied the appropriate qualifying conditions he would be entitled to social security benefit including supplementary benefit in the normal way. However the claimant did not in fact claim supplementary benefit until 1 April 1986. He has given as reasons for that delay, (a) he was not able to move about due to a sprain in his leg (b) the telephone in the house in which he and his wife were staying was locked up and was not available until 1 April 1986 (c) his wife is illiterate.

4. The social security appeal tribunal may not have had the benefit of the full analysis of the facts as I have given them above. Some of those facts I have found as a result of evidence that has been tendered only at the stage of appeal to the Commissioner. The tribunal made as a finding of fact that the claimant "did not know until 1.4.86 if he could claim benefit and had no intention of applying earlier." With respect to the tribunal, I am not at all sure that that is in fact the position and the claimant has certainly contended otherwise. Be that as it may the tribunal's reasons for decision simply stated that the claimant had not demonstrated "good cause" for the delay within the meaning of the regulations in force at that time, namely regulation 5(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981.

5. The tribunal did also refer to their finding that they considered 1 April 1986 to be the first relevant date that a claim could have been made and cited Commissioner's Decision R(S) 2/63. Nevertheless, I consider that I should accept the submission of the adjudication officer now concerned, supporting the claimant's appeal, dated 17 December 1990, that the tribunal's reasons for decision, which did not deal in detail with the claimant's factual allegations, are inadequate within the meaning of regulation 19 of the Social Security (Adjudication) Regulations 1984 (the Regulations in force at that time). It is of course difficult for a tribunal in cases of this kind and I have tried not to use "hindsight", but I am satisfied that the adjudication officer's submission should be accepted. I accordingly set the tribunal's decision aside as being erroneous in law.

6. In the submission of 17 December 1990, the adjudication officer asks me to remit the case back to another tribunal on the ground that the first tribunal had made insufficient findings of fact. However, I am satisfied that there are sufficient facts to give a decision myself, within my powers under the amended section 101 of the Social Security Act 1975 and I have done so in paragraph 1 above. There are however three further matters that I should comment on for the guidance of the adjudication

officer in implementing this decision.

7. The first is that, in the submission of 17 December 1990, the adjudication officer now concerned refers to the power of the Secretary of State to back-date by one month a claim under regulation 19(3) of and paragraph 6 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987. However, with respect to the adjudication officer, that submission is erroneous because the 1987 Regulations were not in force at the relevant time. The relevant regulations were the Supplementary Benefit (Claims and Payments) Regulations 1981 which contained no similar provision for a month's back-dating.

8. Secondly, the adjudication officer will need to investigate the legal position as to the claimant's status in respect of entitlement to supplementary benefit for the period set out in paragraph 1 of my decision namely from 12 February 1986 to 1 April 1986. This involves an interpretation of regulation 10(6) of and paragraph 10 of Schedule 3 to the Supplementary Benefit (Requirements) Regulations 1983, which refer to "persons from abroad". It would appear that the period as from 14 March 1986, when the claimant was granted six months leave to remain in the UK by the Home Office, is not in doubt (subject of course to the normal assessment of his financial resources and requirements). However, for the earlier period i.e. from 12 February 1986 when he had applied to the Home Office for leave to remain in the United Kingdom up to 13 March 1986 (the day before he was granted that leave), the adjudication officer will have to consider whether the provisions of the 1983 Requirements Regulations (which I have referred to above) would entitle the claimant either to a limited amount of supplementary benefit or possibly disentitle him altogether. That depends on an ascertainment of the facts and application of the provisions of the 1983 Requirements Regulations. If any difficulty or dispute about this should arise, it can be referred back to me for Supplemental Decision. My present decision is confined to the matter under appeal to the Commissioner namely the question of whether or not there was good cause for delay. I have held on the facts that there undoubtedly was good cause for delay, within the guidelines laid down by a Tribunal of Commissioners in R(S) 2/63.

9. Thirdly, because my decision deals only with the appeal as to normal supplementary benefit, I have not dealt in detail in this decision with paragraph 4 of the written submission dated 17 December 1990 of the adjudication officer now concerned, as to a possible alternative entitlement by the claimant to benefit under the Supplementary Benefit (Urgent Cases) Regulation 1981, regulations 5 and 21. If that should become material, then the

adjudication officer should endeavour to reach a conclusion on the entitlement to urgent cases benefit. Again if there is any dispute or difficulty as to that matter, it can be referred back to me for Supplemental Decision.

(Signed) M.J. Goodman
Commissioner

(Date) 13 January 1992