

MJG/SH/6

Commissioner's File: CSB/1311/1989

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 dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 27 July 1989 as that decision is not erroneous in law: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a man aged 62 years at the relevant time. The appeal is against the decision dated 27 July 1989 of a social security appeal tribunal which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 30 November 1988 as follows,

"Refusal to review the decision in question that the award of the long-term scale rate of supplementary benefit should be backdated to 1976 having been in payment since 1986."

3. The position shortly is that the long-term scale rate of supplementary benefit, based on there being no need to be available for employment, had been in payment to the claimant since he attained the age of 60 years in 1986. On 12 August 1988 the claimant requested a review of his benefit entitlement to allow for backdating of the long-term scale rate to 1976 i.e. the year in which the claimant had his 50th birthday. [He was born on 13 May 1926]. In a letter of appeal from his solicitors dated 26 June 1989 the request for backdating is stated to be made as from 12 May 1983.

4. The tribunal after what was clearly a detailed and careful hearing decided that the appeal must be dismissed. They gave a number of reasons for their decision. One of them was "there was no error pursuant to Regulation 72 [of the Social Security (Adjudication) Regulations 1986] justifying the requested backdating. The quarterly signing decision was not a decision

justifying a review under regulation 72 .."

5. Since that decision, a Commissioner's decision on file CSB/1331/1989 (to be reported as R(SB) 10/91) has dealt with this type of case. A copy of that decision has been made available to the parties and they have made written submissions on it. In that decision the Commissioner rejected the application of regulation 72(1)(a) of the Adjudication Regulations 1986 (allowing more than 12 months backdating of the long-term scale rate of benefit). At paragraph 11 of his decision the Commissioner said,

"In my judgment, where regulation 72(1)(a) of the above cited Social Security (Adjudication) Regulations 1986 refers to a decision under review being 'erroneous by reason only of a mistake made, or of something done or omitted to be done by an officer of the Department of Health and Social Security ...' etc, that refers only to clear mistakes of fact or law in relation to an actual issue in a given case at a time when the officer of the relevant Department etc was actively required by his duties under the social security legislation to arrive at a decision or take some administrative act. It certainly does not impose a general duty on the officers etc of the Department of their own accord constantly to keep all cases under review in order to see whether or not any particular exempting regulation might apply. The wording of regulation 72(1)(a) does not in my judgment bear that construction and to hold otherwise would be to place an impossible burden upon officers of the Department etc."

6. Moreover at paragraph 9 of that decision, the Commissioner said "the mere administrative action of putting the claimant on to quarterly signing could not of itself give rise to any case for involving regulation 6(e) and (u) [of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981], or for the Department to initiate a review for that purpose".

7. In my judgment, those statements by the Commissioner apply equally to this case. I have taken into account the detailed factual evidence available in this case, including evidence as to the claimant's problems with his eyesight, his employability, and his employment history. Nevertheless in my view none of that evidence makes any difference to the application of the general ruling of the Commissioner in R(SB) 10/91 and I must therefore dismiss the appeal, since the tribunal basically based its reasoning on the type of reasoning that is used by the Commissioner in that Decision.

8. That being so, there is no need for me to deal with the further argument that was presented to the tribunal as to whether or not under regulation 72(2) of the 1986 Adjudication Regulations any review would have been on the ground "that the decision was erroneous in point of law by virtue of determination by a Commissioner." Even if that were not the position (as argued by the claimant's representative at the hearing and by his

solicitors in written representations beforehand), it could make no difference in view of the construction of regulation 72(1)(a) and its application to the facts of this case.

(Signed) M.J. Goodman
Commissioner

(Date) 15 January 1992