

L.P.A.-S.

SUPPLEMENTARY BENEFITS ACT 1976**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW****DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. My decision is that the majority decision of the Liverpool social security appeal tribunal is not erroneous in point of law.

2. The claimant, Mr P, appeals with leave of the chairman against the decision of the tribunal disallowing his appeal against the decision of the adjudication officer that he was only -

" ... entitled to arrears of long term scale rate for a period not exceeding 52 weeks."

3. Mr P has been unemployed since 1975, when he first received supplementary benefit subject to that he register as available for employment. On 7 April 1988 Mr P asked for that condition to be waived and, consequently, for the long-term rate of benefit. By that time his health had deteriorated; he was partially deaf, had piles, was incontinent and had suffered from a collapsed lung. The adjudication officer decided that Mr P satisfied the conditions of regulation 6(c) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 (that he was a person who, "by reason of some disease or bodily or mental disablement, is incapable of work") and awarded the long-term scale rate backdated for 52 weeks. Mr P appealed against that decision and sought backdating of the award to 1985.

4. Regulation 69(1) of the Social Security (Adjudication) Regulations 1986 provides that where a decision is revised on review - which is what occurred here - then, subject to regulation 72 of the Adjudication Regulations, no increase of benefit is payable for more than 52 weeks before the date on which the review was requested. Regulation 72 provides, in brief, that an award may be backdated beyond the 52 weeks limit imposed by regulation 69 if the decision reviewed was erroneous "by reason only of a mistake made, or of something done or omitted to be done" by or on behalf of the Department.

5. The tribunal found as a fact that Mr P had been "found to be completely deaf in his right ear and substantially deaf in his

left ear" in mid-1983 and that his left side hearing had been improved by a hearing aid. The majority of the tribunal considered that, although Mr P "had probably satisfied Reg 6(c) for several years" there was no departmental error or omission which would justify the operation of regulation 72. The dissenting chairman held that, a visiting officer having visited Mr P in February, May and October 1983, when he "must have been wearing his hearing aid on at least one of those occasions", the visiting officer was, or should have been, on notice of a relevant change in Mr P's circumstances which he should have reported to the Department, and that Mr P was accordingly entitled to have payments backdated to 1983 pursuant to regulation 73.

6. In my judgment whether or not Mr P was wearing his hearing aid when the officer visited him and, if so, whether that should have put the officer on enquiry, are essentially questions of fact. The majority of the tribunal plainly considered that until 17 May 1988, when Mr P was interviewed at the local office, there was nothing which should have alerted the Department. Findings of fact are the province of the tribunal and, while there was plainly room in this case for the different point of view expressed by the dissenting chairman, I would not be justified in interfering with the majority opinion.

7. In my judgment the majority of the tribunal were entitled to conclude that there was no error or omission which would entitle Mr P to the assistance of regulation 72. In those circumstances the limitation imposed by 69 must operate and no arrears of benefit can be backdated for more than 52 weeks. It follows that the tribunal correctly confirmed the adjudication officer's decision and that the tribunal's decision is not erroneous in point of law.

8. The claimant's appeal is dismissed.

(Signed) M H Johnson
Commissioner

Date: 14 April 1992