

JM/SH/2

Commissioner's File: CSB/077/1990

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 9 November 1989 which confirmed a decision issued by the adjudication officer on 20 March 1989. My decision is as follows:

- (1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.
- (2) Pursuant to section 101(5) of the Social Security Act 1975 (as amended) the case is referred to the appeal tribunal for determination in accordance with the principles of law set out and referred to in this decision.

2. The case is of a type with which the Commissioners became very familiar. In essence, it concerns the application of paragraph (u) of regulation 6 of the erstwhile Supplementary Benefit (Conditions of Entitlement) Regulations 1981. There is no equivalent to paragraph (u) in the comparable provisions of the income support legislation. But, nearly four years after supplementary benefit disappeared from the statute book, paragraph (u) cases are still filtering through before the Commissioner. Not unnaturally, the Commissioner normally himself tries finally to dispose of such cases. I have considered following that course here. The relevant form AT3 suggests that before the appeal tribunal only one point was argued on behalf of the claimant by his representative; and a decision signed by a Commissioner 14 months after the appeal tribunal gave its decision demonstrates that that point was completely unsustainable. But I have taken the following matters into account:

- (a) The papers before me are remarkably sparse. There is no medical evidence whatsoever. There are no documents relevant to the local adjudication officer's part in this matter prior to the submission which he prepared for the benefit of the appeal tribunal when that tribunal was called upon to consider the claimant's appeal against the decision which was issued on 20 March 1989.
- (b) I am well aware that many claimants and claimant's representatives considered to be well founded the one point upon which (so far as the record on the Form AT3 goes) the claimant's representative relied. I myself never thought that it was well founded. However, until the decision on Commissioner's file CSB/1331/1989 (to be reported as R(SB) 10/91) was given, many representatives may have retained faith in the point. It is possible that, in such faith, this claimant's representative made no attempt to seek out and to present other points which might have assisted the claimant.

In those circumstances - and, perhaps, over-generously - I have decided that the claimant and/or his representative should have a further opportunity of calling evidence and arguing the case. The parties live in Liverpool. The most convenient course, accordingly, is to have the matter reheard by an appeal tribunal in Liverpool. The case basically turns upon the erstwhile regulation 72 of the Social Security (Adjudication) Regulations 1986. That regulation applied, of course, to income support after supplementary benefit had been abolished. Nevertheless, it may help in this case if the chairman of the fresh tribunal has had experience of trying supplementary benefit appeals.

3. Since the case is to be retried, I can deal very briefly with the facts. The claimant was born in 1932. He and his wife appear to have lived on supplementary benefit for many years until that benefit was replaced by income support. The appeal tribunal was told the following:

- (a) No officer of the Department of Health and Social Security visited the claimant between 1981 and the abolition of supplementary benefit.
- (b) In 1986 the claimant suffered a stroke which resulted in temporary blindness.
- (c) The claimant made no claim or claims for sickness benefit.
- (d) The claimant never applied for any of the additional payments for which provision was made in the supplementary benefit legislation.
- (e) The claimant was put on quarterly signing in 1982.

There is also a statement in the papers to the effect that the claimant has had three heart attacks.

4. The decision of the local adjudication officer which lies at the root of these present proceedings was set out thus:

"[The claimant's] arrears of benefit, payable on review, are limited to the 12 months before the date on which the review was requested."

It appears that it was on 11 July 1988 that the claimant requested a review of his erstwhile supplementary benefit upon the basis that for some time there should have been waived the requirement that he should be available for employment as a condition of entitlement to supplementary benefit. He relied upon paragraph (u) of regulation 6 of the Conditions of Entitlement Regulations, contending that the combination of his age and poor health rendered his circumstances analogous to those set out in paragraph (e) of regulation 6. That contention appears to have been accepted by the local adjudication officer. I am well aware that there was much misunderstanding as to the true limitations, as well as the true scope, of decisions of a Tribunal of Commissioners R(SB) 5/87 and R(SB) 6/87. In this particular case, however, I am not disposed to have reopened the question of whether the claimant was entitled to have his circumstances regarded as analogous to the circumstances contemplated by paragraph (e) of regulation 6 of the Conditions of Entitlement Regulations. Consequently, I direct that the appeal tribunal which rehears the case should confine its attention to the "backdating" issue; which, in turn, involves consideration of the applicability of the erstwhile regulation 72 of the Adjudication Regulations. It was, in fact, to that issue alone that the appeal tribunal which sat on 9 November 1989 gave its attention.

5. In CSB/1331/1989 the Commissioner stressed that, in the context of regulation 6 of the Conditions of Entitlement regulations, the fact that a claimant has been put on quarterly signing has no bearing upon the applicability of regulation 72 of the Adjudication Regulations. To the fresh tribunal I commend paragraphs 8 to 11 of that decision.

6. In a submission dated 26 April 1990 the adjudication officer now concerned supports the claimant's appeal. I regard paragraph 3 of that submission as well founded; and a copy of the submission should be before the appeal tribunal which rehears this matter. That submission was, of course, written before the promulgation of the decision in CSB/1331/1989. In the light of that decision, paragraph 4 of the submission of the adjudication officer now concerned is, of course, superfluous. Even if the Secretary of State's decision on quarterly signing had been communicated to the relevant adjudication officer, no difference would have been made to the applicability of regulation 72.

7. The claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

(Date) 3 February 1992