

**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 this appeal must be allowed. The case is remitted for reconsideration by a differently constituted social security appeal tribunal.

2. On 13 December 1988, the claimant was required to be available for employment as a condition of entitlement to supplementary benefit. He appealed against this decision, on the basis that he was within the terms of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981.

3. After an adjourned hearing, the claimant's case was considered by the Liverpool social security appeal tribunal on 17 May 1990. The decision of the tribunal was that the appeal was disallowed - the appellant was not entitled to supplementary benefit at the long-term rate. The reasons given by the tribunal for that decision were:-

"The appellant did not satisfy any of the requirements of Reg.6 of the Conditions of Entitlement Regs.

In particular Reg.6(e) is not satisfied since the appellant was capable at least, of light work. Also Reg.6(u) is not satisfied because the appellant was only 53 and was capable of work. Although there has been considerable unemployment the appellant has not shown that he has made reasonable efforts to find work.

If long term rate had been payable it could only have been due from 4.12.86 since there is no evidence that Reg.72(1)(a) of the Adjudication Regs. applied."

4. The claimant appeals with leave of the chairman of the tribunal. The adjudication officer supports the appeal. He submits that the claimant's submission was that he should be excused from the requirement to be available for employment because his case, together with factors such as a nervous problem, his poor literary skills and the need to care for his

wife, acted as a disablement within the terms of regulation 6(e) and (u) of the Conditions of Entitlement Regulations, with the result that he had no further prospects of employment. It is submitted that the tribunal misapplied the provisions of regulation 6(e) and (u) by considering the claimant's capacity for work. In R(SB) 6/87, the Commissioner stated that the tribunal are concerned with a claimant's prospects of employment and not his capacity for work. It did not necessarily follow that a claimant who is capable of light work had further prospects of employment. This submission, which was also made on behalf of the appellant, I accept, and accordingly I find that in that respect the decision of the appeal tribunal was erroneous in law.

5. There was also jointly submitted on behalf of the claimant and by the adjudication officer that there was a further error of law in that the tribunal failed to explain why they concluded that the claimant had not made reasonable efforts to find work and why his evidence on this point was rejected (R(SB) 11/82). I accept this further submission, and accordingly find that in this respect also the decision of the tribunal was erroneous in law.

6. The appeal is allowed. The case is remitted for reconsideration by a differently constituted social security appeal tribunal.

(Signed) M Heald  
Commissioner

Date: 7 April 1992