



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 decision of the social security appeal tribunal is not erroneous in point of law and accordingly this appeal fails.

2. This is a claimant's appeal against the decision of the Liverpool social security appeal tribunal given on 10 April 1990 which upheld a decision of the adjudication officer that he was not entitled to arrears of the long-term scale rate of supplementary benefit prior to 4 June 1984.

3. I have before me written argument prepared on behalf of the claimant by Ms Janet Ward of the Liverpool Citizens Advice Bureau and submissions made by the adjudication officer now concerned.

4. The tribunal found as fact that the claimant was a single man aged 65 years. He had been awarded the long-term scale rate of supplementary benefit from 4 June 1984. They accepted that he suffered from peripheral vascular inefficiency since 1979. They found that he had not disclosed this condition when a visiting officer interviewed him in 1981. He had in fact told the visiting officer that he hoped to obtain work in the near future. It was submitted on behalf of the claimant to the tribunal that it was the visiting officer's job to ask about his health and in fact he had not been asked about it; consequently, it was said, regulation 72 of the Social Security (Adjudication) Regulations was applicable.

5. The tribunal upheld the decision of the adjudication officer that the claimant was not entitled to the long-term scale rate prior to 4 June 1984. They gave the following reasons for so doing:

"The claimant is unable to avail himself of the provisions of Reg.72(1) of the Adjudication Regulations, because he cannot show that his non-award of benefit prior to 4.6.84 was the result of an error or omission on the part of an officer of the D.H.S.S. or Department of Employment. Alternatively, if the visiting officer made insufficient

enquiries regarding the claimant's state of health during a visit prior to 1984, the claimant caused or materially contributed to that mistake, act or omission by telling the visiting officer that he hoped to obtain work in the very near future (thus indicating that he considered himself fit for work)."

6. The claimant's ground of appeal is that on the facts found by the members of the tribunal no person acting judicially or properly instructed as to the relevant law could have come to a determination that the claimant caused or materially contributed to the omission by the visiting officer, to make sufficient enquiries into the state of the claimant's health. It seems to me that there is no merit in the point. In my judgment the decision of the tribunal is not erroneous in point of law and the members dealt with the question admirably. It was for the claimant to make the point concerning his health to the visiting officer. He did not do so. In my judgment regulation 72(1)(a) does not impose a duty on officers of the Department to interrogate claimants as to every conceivable circumstance which might affect their award of supplementary benefit. The mistake envisaged by the regulation is a clear and obvious mistake made by the officer of the Department on the facts disclosed to him or which he had reason to believe were relevant. Clearly the tribunal were correct in holding that the claimant had not shown that there had been a mistake by the officer of the Department. They, also, bore in mind that if the claimant were to show such a mistake it had also to be shown that he had not caused or materially contributed to it; they found on the evidence that his failure to disclose his illness and his reference to hoping to obtain work would have contributed to a mistake.

7. I have had regard to the cases cited both by the claimant's representative and the adjudication officer, but none of these bear directly on the point which I have to decide and are not of great assistance to me.

(Signed) J J Skinner
Commissioner

Date: 15 September 1992