

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 allow the claimant's appeal against the decision of the social security appeal tribunal dated 7 December 1984 and I set that decision aside as being erroneous in law. I remit the case for rehearing and redetermination to a differently constituted social security appeal tribunal: Supplementary Benefits Act 1976, section 2 and the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451, as amended], regulations 19 and 27.
2. This is an appeal to the Commissioner by the claimant, a married man, aged 42 at the relevant time, against the unanimous decision dated 7 December 1984 of the local tribunal confirming the adjudication officer's decision that the claimant's claim for supplementary benefit made on 18 January 1984 could not be back-dated to 17 October 1983.
3. The principal issue before the local tribunal was whether under regulation 5(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 [SI 1981 No 1525, as amended], the claimant could show, for the period from 17 October 1983 to 17 January 1984, that "throughout [that period] there was continuous good cause for failure to make the claim before the day on which it was made". There was also in issue before the tribunal the question whether the claimant could take advantage of sub-paragraph (b) of regulation 5(2) of the Claims and Payments Regulations relating to the making of a claim to supplementary benefit as soon as reasonably practicable after the claim for unemployment benefit had been determined. The local adjudication officer in a lengthy submission to the local tribunal set out all the legal considerations, including detailed material as to the meaning of "good cause" for delay.

4. However, as the adjudication officer now concerned (supporting the claimant's appeal on this point) rightly submits in his written submission dated 4 April 1985, the local tribunal did not make adequate findings of fact or give adequate reasons for decision as required by regulation 19(2) of the above-cited Adjudication Regulations. As to the tribunal's findings of fact, the adjudication officer now concerned submits that they contain "no more than a record of the evidence before them". He further submits, as to the tribunal's reasons,

"Nor, I submit, have [the tribunal] given any reasons for their decision in box 4 of Form AT3, they have merely stated that the regulations are not satisfied. The claimant led evidence that he did not return the form B1 [postal claim for supplementary benefit available from the unemployment benefit office] because of the advice he received at the unemployment benefit office on 17.10.83 that he was not entitled to unemployment benefit or supplementary benefit, that he made a further enquiry at the UBO in November, that it was not until 9.12.83 that he was advised to pursue his claim for supplementary benefit and that when he first became unemployed his health was not good. In decision R(SB) 11/82 a Commissioner held that a claimant is entitled to know why his evidence failed to satisfy the determining authority, that a tribunal may not simply state its conclusions and that a failure to give reasons for its decision will vitiate that decision. In that case the Commissioner was dealing with the similarly worded provisions of rule 7(2)(b) of the Appeals Rules and I submit that that decision is authority for the proposition and the tribunal in the instant case erred in point of law. I submit that the tribunal erred further in point of law by failing to apply the correct tests as to good cause by reference to the principles of law set out in decision R(SB) 6/83. In that decision a Commissioner held that there can be good cause for delay in claiming if the delay was due to a mistaken belief reasonably held. I submit that there is the instant case nothing on the face of the record to show that the tribunal considered the terms of that decision in the light of the claimant's evidence ..."

5. I accept those submissions as being correct. The new tribunal that rehears this case will wish to take all these factors into account and make adequate findings of fact and give adequate reasons for decision in relation to them. One matter they will want to take into account is that the claimant was issued by the unemployment benefit office with a form B1 postal claim, the instructions at the beginning of which state,

"The address of your local social security office is on the envelope. When you have filled in the form send it to us quickly".

The adjudication officer now concerned indicates that claimants receive a reply-paid envelope addressed to the local social security office so that there can be no confusion as to the destination of the Form B1 and he submits that the new tribunal will need to consider this point in the light of the claimant's submission that he was unaware that the form when completed should be submitted to the Department of Health and Social Security. I accept that submission also as being correct in law and that the instructions on the Form B1 of the reply-paid envelope show a direction by the Secretary of State that regulation 3(2)(a) of the above cited Claims and Payments Regulations shall not apply and that this is a case where regulation 3(2)(b) applies, the requirement being that Form B1 shall be delivered or sent to an office of the Department of Health and Social Security.

6. I also accept as correct the submission in paragraph 9 of the adjudication officer's written submission dated 4 April 1985 that it is not possible either for the local tribunal or the Commissioner to consider the claim in the alternative for reimbursement of mortgage payments by the claimant under regulation 28(1)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 [SI 1981 No 1528]. That issue was not before the local tribunal nor is it before me, not having been adjudicated on by a local adjudication officer. The new tribunal that rehears this case will be similarly not able to take that particular matter into consideration. The claimant should, if he requires it to be pursued, request a decision from the local adjudication officer (if it has not already been given) on the claim for a single payment.

(Signed) M J Goodman
Commissioner

Date: 15th August 1985.