

see 210/1981

JSW/DWA

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Reg 4 DQ has requirement to provide info
SSA has to make a decision on claim and if info provided

1. My decision is that the decision of the Walthamstow supplementary benefit appeal tribunal, dated 27 July 1981, is not erroneous in law.
- 1
2. At the oral hearing before me, the claimant appeared in person and the benefit officer was represented by Miss L Shuker of the solicitor's office of the Department of Health and Social Security.
3. The claimant completed a form at an unemployment benefit office which was accepted as a claim for supplementary benefit on 2 March 1981. He was interviewed at the local office on 7 April 1981 when he was unable to produce information necessary to enable the benefit officer to determine his claim. A standard letter was issued on 7 April 1981 requesting the information. The letter stated that the benefit officer could not decide entitlement to supplementary benefit unless the information was given, and if the information asked for was given, the claim would be looked at again. The claimant did not provide the information either in response to that letter or a further letter sent on 22 April 1981.
4. On 14 May 1981, the claimant wrote to the local office purporting to appeal to the appeal tribunal on the ground that too long a period had elapsed from applying for supplementary benefit on 27 February 1981. On 27 July 1981, the claimant attended the hearing before the appeal tribunal who found that no decision had been made by the supplementary benefit officer and that therefore they had no jurisdiction to hear the appeal.
5. I granted leave to appeal in this case and in 2 earlier decisions because all were included on the same file and appeared to be connected since there was no explanation as to why they were together. Other papers were included relating to another claim for supplementary benefit, dated 1 March 1982, by the claimant which both the claimant and Miss Shuker agreed had nothing whatever to do with any of these appeals. I have dealt with the other appeals separately so as not to confuse the issue in this appeal.

6. In the supplementary benefit officer's observations, under a heading - "Reasons for the supplementary benefit officer's Decision", it was stated that the officer decided (sic) that insufficient evidence had been provided to enable a decision to be made on whether the appellant had entitlement to supplementary benefit for the reasons stated. Another reason was that the claimant was in receipt of Family Income Supplement which had been accepted and is dependent on the condition that full-time work in excess of 30 hours weekly was being undertaken. It seemed to be arguable that the benefit officer had given a decision that the claimant was not entitled to a supplementary allowance and I granted leave to appeal on that issue because the decision (if any) was ambiguous and also as to the jurisdiction of the appeal tribunal.

7. The claimant said that he had **not refused to furnish information** but that is an issue of fact. He is or was carrying on business from his home as a civil design consulting engineer. He has made many lengthy written statements and has stated that it was wrong of the tribunal to expect him to disclose details of his clients when he did not know them and wrong to expect him to reveal his sources of work.

8. Miss Shuker explained that the statements under the heading - "Reasons for the supplementary benefit officer's Decision" are on a printed form which is set out to guide a benefit officer as to the matters to be included. She submitted that the benefit officer had not given a decision. Having heard Miss Shuker and the claimant I conclude that the benefit officer did not give a decision but was simply explaining his reasons for not having given a decision.

9. Section 15(1) of the Supplementary Benefits Act 1976, as amended, ("the Act") provides, as far as material -

"15 - (1) A person claiming, or in receipt of, supplementary benefit may appeal to the Appeal Tribunal against any determination of a benefit officer (including a determination to refuse to review a determination) with respect to the claim for benefit except that no appeal shall lie by virtue of this sub-section in a case falling within sections 10(2), 12(4) or 20(3) of this Act".

The other sections referred to have no application to this appeal and I have included them because each section provides for an appeal to the Appeal Tribunal in other and different provisions of the Act.

10. There is no other provision in the Act giving a right of appeal to an appeal tribunal and I agree with the submission that there is no right of appeal against the refusal of a benefit officer to give a decision. I am encouraged in this view by a decision of another Commissioner to the like effect in Decision CSSB 111/82, in which he gave his reasons for not granting leave to appeal. The decision of the appeal tribunal is not therefore erroneous in law.

11. It is unsatisfactory to leave a claim undecided and necessary to enquire further into the matter to ascertain whether such a situation can be avoided. The refusal of the benefit officer to give a decision in this case appears to be based on regulation 4 of the Supplementary Benefit (Claims and Payments) Regulations 1980 [S.I. 1980 No. 1579] and regulation 2 of the Supplementary Benefit (Determination of Questions) Regulations 1980 [SI 1980 No 1643]. Those regulations provide respectively as follows -

Claims and Payments Regulations

"4 Every person who makes a claim for benefit shall furnish such certificates, documents, information and evidence for the purpose of determining the claim as may be required by the Secretary of State and, if reasonably so required, shall for that purpose attend at any office or place as the Secretary of State may direct."

Regulation 4 is reproduced in the same terms in regulation 4 of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No. 1525].

Determination of Questions Regulations

"2 - (1) Any question relating to supplementary benefit which arises under the Act and is not to be determined by the Secretary of State shall be referred forthwith to a benefit officer for determination.

(2) Different aspects of the same question may be dealt with by different benefit officers.

(3) Any question which is referred under paragraph (1) shall be taken into consideration and, so far as practicable, and subject to regulation 5 (reference of questions) and to compliance by the claimant with regulations 4 and 8 of the Supplementary Benefit (Claims and Payments) Regulations 1980 (information to be given in connection with claims and payments), shall be determined within 14 days."

12. There is no provision for an appeal against the requirement of the Secretary of State to furnish such certificates, documents, information and evidence or whether a requirement to attend at any office or place is "reasonably so required". The Secretary of State is the sole judge as to those requirements and whether they are reasonable. Regulation 2(3) of the Determination of Questions Regulations, however, is not authority for a benefit officer to withhold a determination on a claim unless and until a claimant has complied to his satisfaction with a request by the Secretary of State under regulation 4 above. Regulation 2(3) only relieves him of the duty to determine a claim within 14 days when there has not been compliance by the claimant with regulations 4 and 8 of the Claims and Payments Regulations.

13. Miss Shuker submitted that a benefit officer cannot refuse to give a decision on the basis that there is insufficient information for a determination to be made and that, if a benefit officer is unable to obtain sufficient information, he should give a decision on the information he has either allowing or refusing the claim. Section 2(1) of the Act provides, subject to specified qualifications and the making of certain regulations, that the question whether any person is entitled to supplementary benefit and the amount of any such benefit and any other question relating to supplementary benefit which arises under the Act shall be determined by a benefit officer. In my opinion, that section, together with regulation 2 of the Determination of Questions Regulations requires a benefit officer to reach a decision and, in the absence of some, or any, information which he reasonably requires, he is obliged at some stage to give a decision on a claim. The time when he should decide a claim will depend on the nature of the information he requires and allowing a reasonable time for it to be obtained and given by the claimant. I agree with Miss Shuker's submission that a benefit officer should give a decision, indeed, I would say must give a decision on a claim. In view of the way in which the regulations have been drafted, that is the only fair way to bring in issue a question as to whether or not a benefit officer has sufficient information and whether, having regard to the information which he has, the decision he has given is correct.

14. By regulation 5(4) of Amendments Regulations [S.I. 1982 No.907], regulation 5A was inserted into the Claims and Payments Regulations 1981 from 9 August 1982, which provides as follows -

"5A. Where before the determination of any claim, the Secretary of State, pursuant to regulation 4, requires the claimant -

- (a) to furnish the information requested on a form given to him for that purpose; or
- (b) to attend at an office or place in the manner directed,

and the claimant fails to furnish such information within 21 days of being so required, or, as the case may be, fails to attend as directed, the Secretary of State may, unless he is satisfied that such failure was reasonable in all the circumstances, treat the claim as having been withdrawn."

That regulation does not solve the problem created in this case. Indeed, the result is likely to be similar to that in this appeal, namely, that a claimant will endeavour to appeal to an appeal tribunal contending that he has not withdrawn his claim. Again, there is no right of appeal under the provisions of the Act. It is also questionable whether regulation 5A is within the enabling power of the Secretary of State under the sections of the Act set out in the Amendments Regulations but that does not arise in this appeal.

15. The benefit officer sought guidance as to the jurisdiction of the Commissioner in this matter. It was submitted that, if the tribunal's "decision" is not a decision but merely a statement that they had no jurisdiction, then the claimant's remedy would have been to apply to the High Court for mandamus. If, however, the tribunal gave a decision from which an appeal lies to the Commissioner, then it was submitted that the matter should be referred back to the benefit officer to make a decision. Miss Shuker submitted that my decision on the question depends upon whether or not a decision had been made by the tribunal.

16. Section 15A(1) of the Act provides that -

"The Secretary of State may by rules make provision for any party to proceedings before an Appeal Tribunal (whether under this or any other Act) to appeal to a Commissioner against a decision of the tribunal."

Rules have been made by the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 S.I. 1980 No.1605. Rule 8 provides as follows -

"8. (1) Subject to paragraph (3) any person who is a party to proceedings before a tribunal may appeal to a Commissioner, with the leave of a Commissioner, against any decision of the tribunal given in those proceedings on the ground that the decision is erroneous in point of law.

(2) For the purposes of paragraph (1) the parties to the proceedings before the tribunal are the person who brought the appeal to the tribunal and the benefit or supplement officer against whose determination the appeal was brought.

(3) n/a."

17. The record of the proceedings before the tribunal show that the claimant was present as appellant and a benefit officer was present and made a submission that the matter of the appeal was outside the jurisdiction of the tribunal because no decision had been made by the benefit officer. The claimant, having purported to appeal, the matter could not be left undecided and the tribunal decided - "That the matter of the appeal is outside the jurisdiction of the Tribunal". That, in my judgment, is a decision and there is a right of appeal against it, subject to leave being granted, to a Commissioner. Although the jurisdiction of the Commissioner is statutory, any issue as to the jurisdiction of an appeal tribunal on any matter brought before them is for the tribunal to determine and is within the jurisdiction of a Commissioner to determine: indeed, it would be paradoxical if it were not so.

18. As to my referring the matter back to the benefit officer to determine the claim made on 2 March 1981, I doubt whether my authority extends to referring a matter back to a benefit officer. It will,

however, be clear that my decision leaves the matter to the benefit officer to determine since he has not made a determination. His decision will be made on the information which he has either with or without any further information which the claimant is able to furnish.

19. The claimant's appeal is dismissed.

Signed: J S Watson
Commissioner

Date: 15 March 1983

Commissioner's File C.S.B. 510/1981
C SBO File: 593/81