

Availability Reg - Reg 6(e) CofG Regs

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SUPPLEMENTARY BENEFITS ACT 1976

APPEAL TO COMMISSIONER FROM SOCIAL SECURITY APPEAL TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow East

Case No: 69/08

1. My decision is that the decision of the social security appeal tribunal dated 12 December 1984 is erroneous in law and is set aside. The claimant's case is referred to a differently constituted tribunal for consideration afresh.

2. This is an appeal by the claimant, with leave, against the above-mentioned decision of a social security appeal tribunal.

3. On 20 September 1984 the claimant who was and had for more than two years been in receipt of supplementary benefit applied for a review of the decision requiring that he be available for employment as a condition of entitlement to benefit. He sought back-dating of this review since under the statutory provisions which have been set out in the written submission of the adjudication officer dated 2 April 1985 a claimant who has been entitled to benefit without being required to be available for employment for over a year qualifies for benefit at the long term (higher) rate. The adjudication officer refused the claimant's application under particular reference to the provisions of paragraphs (e), (f) and (u) of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981. The claimant appealed to a social security appeal tribunal who unanimously upheld the adjudication officer's decision. It is contended that that decision is erroneous in law.

4. Regulation 6 of the Conditions of Entitlement Regulations contains prescribed cases in which a claimant is not to be required to be available for employment. These include:-

"(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has -

(i) on average worked for less than 4 hours a week,

(ii) been available for employment under section 5 for not less than 39 weeks,

(iii)/

(iii) made reasonable efforts to find employment and not refused any suitable employment;

(f) he has no prospect of future employment and lacks the training or experience to be able to enter or re-enter employment and -

(i) he is within 10 years of attaining pensionable age,

(ii) he has not been in employment in the previous 10 years,

(iii) during that period the requirement to be available for employment pursuant to section 5 has not applied and would not have applied to him had a claim been made for an allowance by or in respect of him;

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(u) the preceding paragraphs do not apply to him, but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

5. The tribunal found that the claimant was a 56 year old man living with his wife in a 3 apartment rented flat. He had been unemployed for 4 years and had chronic bronchitis. He had been a service and handyman in the carpet industry but could not now do that job because of his age and health. The tribunal found that he could do another job as long as it was not heavy labouring. In the reasons for their decision the tribunal examine and reject the applicability of regulation 6(e) and (f) but do not refer at all to regulation 6(u). It is submitted by the claimant and by the adjudication officer now concerned with the case that the tribunal erred in law by failing to consider, or in any event record the results of any consideration of, the possible application of regulation 6(u). I agree that the decision of the tribunal is erroneous in law in this respect.

6. The tribunal in my judgment fell into a further error in relation to regulation 6(e). In their reasons the tribunal state with reference to that paragraph that the claimant was "fit enough to have another type of employment" and they accordingly found that he did not come within its scope. It is to be noted however that paragraph (e) of regulation 6, unlike, for instance, paragraph (c)(ii), is not directly concerned with capacity for work but with prospects of employment. It does not necessarily follow that because he is physically capable of light work an elderly man with chronic bronchitis has further prospects of employment. In this respect also I consider that the tribunal fell into error of law.

7. It is submitted by the adjudication officer that the tribunal also erred by failing to make specific findings relevant to the past period within which review of the requirement to be available for employment might have been operative. I do not accept this criticism. It is not maintained that there was any evidence or submission put forward to support the possibility of the claimant satisfying the conditions for

relief/

relief from the requirement to be available for employment in any past period if he was unable to do so as at the date of review. In these circumstances I do not consider that it was necessary for the tribunal specifically to deal with that matter.

8. In the circumstances however the decision of the tribunal must be set aside as erroneous in law and the claimant's case referred to a differently constituted tribunal for consideration afresh. The new tribunal will require to bear in mind the observations made above with regard to regulation 6(e) and (u). The tribunal will also require to bear in mind that in the event of their finding that for the purposes of regulation 6(u) that "the circumstances are analogous to any circumstances mentioned in one or more" of the other paragraphs of regulation 6, their findings should clearly identify the analogy found by them. Only in the event of their finding such an analogy of course will it fall to the tribunal, acting in place of the adjudication officer, to form an opinion as to whether or not it would be unreasonable to require the claimant to be available for employment. The tribunal will in addition require to bear in mind the purpose and scope of the application for review. The tribunal should therefore consider the situation as at the date of the claimant's application for review and also, if relevant, the position prior thereto for any period up to two years before that date. See the provisions of regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983 and regulation 89 of the Social Security (Adjudication) Regulations 1984.

9. The appeal of the claimant is allowed.

(signed) J. G. Mitchell
Commissioner
Date: 5 February 1986