



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CIB/583/2001

SOCIAL SECURITY ACTS 1992- 1998

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW**

DETERMINATION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER E A L BANO

Claimant : Ms Velda Christine Lewis
Tribunal : Sutton
Tribunal Case No : S/45/154/1999/00001

DETERMINATION OF THE SOCIAL SECURITY COMMISSIONER

My decision is that the application to the chairman for a statement of reasons for the tribunal's decision was made late and was properly refused. The application to the chairman was therefore not made within the specified time and was rejected, and I also do not accept the application as I consider that there are no special reasons for doing so.

REASONS

1. This is an application for leave to appeal against the decision of the tribunal given on 24 January 2000, dismissing the claimant's appeal against a decision disallowing incapacity benefit from 27 November 1998 on the ground that the claimant did not satisfy the all work test of incapacity for work. The application raised the question of whether the amendments to the Social Security and Child Support (Decisions and Appeals) Regulations 1999 made by the Social Security and Child Support (Miscellaneous Amendments) Regulations 2000 had the effect of validating an application for a statement of reasons which was made after the expiry of the one month period provided for the making of the application by regulation 53(4) of the 1999 Regulations. On 11 May 2001 I directed the Secretary of State to make written observations on that issue and the Secretary of State responded to my direction on 10 July 2001.

2. Following an earlier adjournment, the hearing of the claimant's appeal took place on 24 January 2000. The claimant was represented by a solicitor and gave evidence to the tribunal, and a decision notice was issued on the day of the hearing dismissing the appeal. On 3 July 2000 a decision was made by a district chairman refusing to accept a late setting aside application, although the application itself is not in the case papers. On 14 July 2000 the claimant faxed to the appeals service an application for a statement of reasons, which was refused by the tribunal chairman on 9 August 2000 on the ground that the application had been made more than 3 months after the date of the sending or giving of the decision notice. On 15 September 2000 the claimant applied to the tribunal for leave to appeal. The application was forwarded by the Appeals Service for consideration by the Commissioner and was received at this office on 9 February 2001.

3. Regulation 54(1) of the Decisions and Appeals Regulations enables the time for applying for a statement of reasons to be extended by up to 3 months from the date of the sending or giving of the decision notice, but regulation 54 was amended with effect from 19 June 2000 by the Social Security and Child Support (Miscellaneous Amendments) Regulations 2000, so as to provide for the time for applying for a statement of reasons to run from the date of the refusal of an application to set aside a tribunal's decision. Regulation 54(13), in its substituted form, provides:

"In calculating the time specified for applying in writing for a statement of the reasons for the tribunal's decision there shall be disregarded any day which falls before the day on which notice was given of -

- (a) a correction of a decision or the record thereof pursuant to regulation 56; or**
- (b) a determination that a decision shall not be set aside following an application made under regulation 57."**

The issue on which I directed a submission from the Secretary of State was whether the decision refusing the claimant's late set aside application was a "determination" within sub-

paragraph (b): so as to stop time for applying for a statement of reasons from running until notice of that decision was given.

4. I have come to the conclusion that the Secretary of State's representative is correct in submitting that the chairman's refusal to accept the late setting aside application was not a "determination that a decision shall not be set aside" within the meaning of regulation 54(13) of the 1999 regulations, as amended. Regulation 57(5) of the Decisions and Appeals Regulations provides:-

"Notice in writing of a determination on an application to set aside a decision shall be sent or given to every party to the proceedings as soon as may be practicable and the notice shall contain a statement giving the reasons for the determination."

By regulation 57(3), an application to set aside a tribunal's decision must be made within one month of the date on which the decision notice is sent or given to the parties, or the statement of reasons for the decision is given or sent, whichever is the later. However, regulation 57(6) provides:

"The time within which an application under this regulation must be made may be extended by a period not exceeding one year where the conditions specified in paragraphs (7) to (11) are satisfied."

Regulation 57(7) provides:-

"An application for the extension of time shall be made in accordance with paragraph (3)(b) to (d), shall include details of any relevant special circumstances for the purposes of paragraph (9) and shall be determined by a legally qualified panel member"

5. I consider that, where a late set aside application is made, regulation 57 provides for two separate decision making processes. In such cases, the legally qualified panel member must first consider whether to grant an extension of time for the application, taking into account the matters in paragraphs (8) to (11) of regulation 57. If an extension of time is granted, the panel member must then consider whether to set aside the decision on any of the grounds permitted by regulation 57(1), and whether the additional requirements of regulation 57(2) are satisfied if the application is made under regulation 57(1)(b). Regulation 57(8) provides that the application for an extension of time shall not be granted unless the panel member is satisfied that there are reasonable prospects that the application to set aside will be successful, and that it is in the interests of justice for the application for an extension of time to be granted. That seems to me to make it clear that the decision whether to grant the application for an extension of time and the decision whether to set aside the tribunal's decision are separate and distinct, and in my view, the term "determination" in regulation 57(4) refers to the outcome of the substantive application to set aside, made under the preceding paragraphs. If no extension of time for making the application is allowed under regulation 57(6), there is therefore no "determination" within the meaning of regulation 54(13)(b). Since the legally qualified panel member in this case decided not to extend the time for the making of the set aside application, the time for applying for a statement of reasons for the decision ran continuously from the issue of the decision notice, and the application for a statement was therefore made after the expiry of the maximum permitted period.

6. Although I have therefore concluded that the application for a statement of reasons was correctly refused, I have nevertheless considered whether to accept the application for

leave to appeal to the Commissioner on the basis of special reasons for doing so. I have, however, come to the conclusion that no such reasons exist in this case. The claimant has drawn attention to the existence of other appeals, giving rise to the possibility that there was some confusion regarding the time limits for challenging the tribunal's decisions in each of her cases. In her letter of 14 July 2000 requesting a statement of reasons, the claimant also said that her illness meant that she had to rely on her family and friends to deal with her paperwork. However, the claimant was represented at the hearing by a solicitor and, even making every possible allowance for her medical condition and the existence of the other cases, she has in my view come nowhere near justifying a delay of approximately 6 months in applying for a statement of reasons. I therefore do not accept for consideration the application for leave to appeal.

**(Signed) E A L Bano
Commissioner**

(Date) 27 May 2002