

CPC

JJS/1/LM

Commissioner's File: CIS/014/90

SOCIAL SECURITY ACT 1986

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 erroneous in point of law and accordingly I set it aside; I remit the case for determination to a new social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is a claimant's appeal against the decision of the Sheffield social security appeal tribunal, given on 17 May 1989, which confirmed a decision of the adjudication officer that the claimant was not entitled to income support from 8 March 1988 to 3 May 1988 because she was deemed not to be available for work under the provisions of regulation 10(1)(e) of the Income Support (General) Regulations 1987 (the Regulations).

3. Regulation 10 deems certain claimants not to be available for work, and thus not entitled to income support, even though they might otherwise be treated as available under the provisions of regulation 9 of the Regulations; it is regulation 10(1)(e) which is material to the present appeal and I must set it out:

"(1) The claimant shall not be treated as available for employment if he is a person to whom any one of the following sub-paragraphs applies -

.....

(e) having failed to comply with a written notice given or sent to him by or on behalf of the Secretary of State or the Manpower Service Commission requesting him to report at a specified time, place and date to an officer of the Department of Health and Social Security, the Department of Employment, the Manpower Service Commission or a local education authority for an interview in connection with his prospects of employment, he fails without good cause to comply with the requirement of a further notice given or sent to him within 14 days of the date specified

in the first notice by or on behalf of the Secretary of State or, as the case may be, the Manpower Service Commissioner and requesting him to report as aforesaid at a time and place and date specified in the further notice for the purpose of such an interview;"

The period of disentitlement is dealt with in paragraph (2) of the same regulation and it is sub-paragraph (e) of that paragraph which is relevant:

"(2) A determination that a claimant is not to be treated as available for employment -

.....

(e) under paragraph (1)(e), shall apply on the day specified in the further notice and any subsequent day falling before the day on which the claimant reports to an official of the Department of Health and Social Security, the Department of Employment, the Manpower Services Commission or a local education authority at the place specified in the notice and there attends an interview in connection with his prospects of employment or before the day on which the Secretary of State or, as the case may be, the Manpower Service Commission rescinds the further notice, whichever event first occurs;"

I have set out the regulations in the form in which they stood at the material time; they have since been amended, lastly by the Income Support (General) Amendment Regulations 1991 (SI 1991 No. 236); such amendments do not alter the substance of the regulations but are designed to take account only of the abolition of various bodies who were empowered to give the notice.

4. I now turn to the facts. The claimant is a single woman. She has been in receipt of supplementary benefit and subsequently income support since the month of March 1986. She registers for employment on a fortnightly basis as a condition of receiving income support. On 24 February 1988 a written notice was posted to her inviting her to attend a restart interview at the Sheffield Job Centre on 26 February 1988 in connection with her work prospects. She failed to attend this interview. A further notice was issued to the claimant on 1 March 1988 requesting her to attend for an interview on 8 March 1988 and she again failed to attend. She was interviewed at the unemployment benefit office on a date which is not specified in the papers but which must have been between 8 March 1988 and 21 March 1988. The adjudication officer in his submission to the tribunal said that she explained that she did not attend the interviews as she had not opened the letters requesting her attendance and that she further stated that she did not open any correspondence unless she was certain of its contents and he went on to say that it was

then explained fully to her that failure to attend for an interview at the restart office could result in a disallowance of benefit. A further appointment was made for her to attend another interview at the restart office on 21 March 1988 and it was said that she was verbally notified of this and once again failed to attend for the interview. On 6 May 1988 the adjudication officer decided that the claimant was not entitled to income support from 8 March 1988 to 3 May 1988 because in his opinion she was not to be treated as available for employment as she had failed, without good cause, to comply with the second notice requesting her to attend for an interview at a prescribed place in connection with her employment prospects.

5. The claimant appealed to the tribunal. In her grounds of appeal she stated that she had not attended the interview because she was looking for full-time work in London at the dates of the interview. She explained why she found it necessary to go to London at that time.

6. The tribunal sat on 17 May 1989. The claimant was not present. She had been given notice of the hearing. She completed the form stating that she would be present but not until the day before the hearing and such form was received by the tribunal officers after the actual hearing. In any event the tribunal decided to conduct the oral hearing in the absence of the claimant. There is a further note on the record which reads as follows

"The Claimant appeared at 11.45, her case having been listed for 10.15 and the case had already been dealt with."

The findings of the tribunal on questions of fact were as follows
"1. The Applicant is a single girl of 19 previously receiving supplementary benefit from March 1988 and then income support. She had no savings.

2. Written notice to attend restart interviews were given to her on the 24.2.88 and the 1.3.88 for interviews respectively on the 26.2.88 and the 8.3.88. Further attempts to make appointments for interviews on the 21.3.88 and the 26.4.88 were made and she attended none of them.

3. She did attend on the 3.5.88 and claimed income support from the 4.5.88."

The members decided that her appeal should be disallowed and that no income support was payable in respect of the period 18 March 1988 to 3 May 1988. The reasons for their decision were stated in the following passage

"By Section 20(3)(d)(i) of the Social Security Act 1986 availability for employment is made a condition of receiving income support. By Regulation 10(1)(e) of the Income Support (General) Regulations 1987 it is provided that the Claimant is not to be treated as available for employment if she fails to comply with a request to attend

hardship if income support was not paid.

11. The questions which the new tribunal will have to determine are well stated in the submission of the adjudication officer made to the earlier tribunal, and I see no need to repeat them. However I would point out that the time when the claimant was seeking work in London must be considered but the date is important as to be of use to her it must provide good cause for failing to attend the interview intended to take place on 8 March 1988. I further emphasise the provisions of regulation 8(3) of the regulations.

(Signed) J J Skinner
Commissioner

Date: 11 January 1992