

SUPPLEMENTARY BENEFIT

Delay in claiming by person acting on behalf of claimant.

The claimant, who was aged 16 and mentally retarded, claimed a supplementary allowance on or about 12 October 1981. Although her claim was backdated to 24 September 1981, the payday following her father's claim to benefit, her mother asked that it be backdated to 25 February 1981, the claimant's 16th birthday. The supplementary benefit officer refused to do so and the mother, who had been appointed as her daughter's representative on 9 November 1981, appealed. The tribunal, however, confirmed the supplementary benefit officer's decision and, as a result, the claimant appealed to a Social Security Commissioner.

Held that:

1. the tribunal failed to enter into an enquiry as to whether the claimant's ignorance was reasonable; the claimant was a mentally handicapped girl and mental disablement can of itself be good cause for a late claim (paragraphs 2 and 3);

2. in determining whether the delay of a person claiming on behalf of a claimant is to be imputed to the claimant, the following rules should be applied:—

(1) a person who has personal good cause for delay will not (subject to 2 below) be prejudiced by the delay of someone who chooses to present his claim on his behalf;

(2) where some person has once made a claim on behalf of another and subsequently delays some matter, that delay will prejudice the person on whose behalf he presented the claim if the person concerned has to rely on the claim so presented;

3. the foregoing rules have no application where the person making the claim has been appointed as the representative of the claimant under provisions analogous to regulation 14 of the Supplementary Benefit (Claims and Payments) Regulations 1980. In relation to such persons the delay of the representative at any time (but not before) the appointment will be attributed to, and thus prejudice, the claimant (paragraph 3).

The appeal was allowed.

1. My decision is that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 10 March 1982 was erroneous in point of law and it is set aside accordingly. The matter must be referred to another tribunal.

2. The claimant is a mentally handicapped person, aged 16 at the time of her claim for a supplementary allowance, which was made on or about 12 October 1981. An award of the allowance was made to her backdated to 24 September 1981, the first pay date after a claim had been made by her father for a supplementary allowance. The claimant's mother (who was appointed by the Secretary of State for Social Services to be her representative in supplementary benefit matters under regulation 14 of the Supplementary Benefit (Claims and Payments) Regulations 1980 [S.I. 1980 No 1579] on (as I now know) 9 November 1981) appealed against the award on behalf of her daughter asking that it be dated back to 25 February 1981 when the claimant attained the age of 16. Under regulation 5(2)(a) of the above regulations the award could only be so dated back if the claimant had good cause for her failure to claim benefit before the day on which her claim was made. Before the coming into force of the above regulations the backdating of awards depended, under regulation 5(2) of the Supplementary Benefits (Claims and Payments) Regulations 1977 [S.I. 1977 No 1142], on there being exceptional circumstances and the concept of good cause for late claim long familiar under the Social Security Act 1975 and earlier National Insurance Acts did not apply. When the appeal came before the appeal tribunal the benefit officer, who was not very familiar with the decisions under the Social Security Act and earlier Acts about good cause, told the tribunal (according to the statement of findings of fact) about a National Insurance Commissioner's decision to the effect that ignorance of the system was not an excuse. The decision was not available to the tribunal, and either the presenting officer quoted it with too much conviction that he was quoting it correctly or the tribunal accepted it far too readily. It is correct that for social security purposes it has been stated that ignorance of one's rights is not of *itself* good cause for late claim. But it was pointed out in Decision R(P) 1/79 this does not mean that ignorance is necessarily fatal and that the words "of itself" invite a further enquiry whether there are facts leading to the conclusion that the ignorance was reasonable. Since the appeal tribunal decision was given the Commissioner has decided in the case reported as R(SB) 6/83 that the decisions on good cause for purposes of social security are relevant to the interpretation of the same words in the supplementary benefit legislation. It is perfectly clear that the appeal tribunal in this case never entered into any enquiry as to whether the ignorance was reasonable and their decision affirming the benefit officer's refusal to date the award back beyond 24 September 1981 seems to have relied on the supposed decision described by the presenting officer. On this ground alone the decision was erroneous in point of law.

3. But there are other grounds on which I consider the decision to have been erroneous. The claimant is a mentally handicapped girl and mental disablement can of itself be good cause for late claim. There is a celebrated, though not usually very helpful, definition of good cause in this context originating in the national insurance Decision C.S. 371/49(KL) and cited with approval in paragraph 12 of R(SB) 6/83 which includes the claimant's state of health as a material factor, and the tribunal to whom the matter is now referred must take that into account. The appeal tribunal seems to have considered the matter as if it were the claimant's mother, who made the claim on her behalf, who had to have good cause for late claim and not just the claimant herself. This matter too has been considered in national insurance cases from which three propositions emerge:—

- (1) a person who has personal good cause for delay will not (subject to (2) below) be prejudiced by the delay of someone who chooses to present his claim on his behalf (see Decision C.G. 2/79 not reported);
- (2) where some person has once made a claim on behalf of another and subsequently delays some matter, that delay will prejudice the person on whose behalf he presented the claim if the person concerned has to rely on the claim so presented (see Decision R(A) 2/81 at paragraphs 19 and 20);
- (3) the foregoing rules have no application where the person making the claim has been appointed as the representative of the claimant under provisions analogous to regulation 14 above referred to. In relation to such persons the delay of the representative at any time after (but not before) the appointment will be attributed to, and thus prejudice, the claimant (see Decisions C.W.G. 6/50(KL) and R(A) 2/81 at paragraph 19).

The tribunal to whom this matter is referred back should apply the decisions above referred to from which these rules were derived. I cannot now do so myself as the tribunal made no enquiry when the claimant's mother was appointed; and, although I now know, I am not able to give a decision based on evidence received since the tribunal hearing. The appeal is allowed.

(Signed) J. G. Monroe
Commissioner
