

SUPPLEMENTARY BENEFIT

Claimant not notified of tribunal hearing.

The claimant appealed against an award of supplementary allowance and stated that he wished to ask the tribunal for some clothes and cooking utensils. The supplementary benefit officer treated the latter as a claim for single payments, refused the application and treated the claimant as also having appealed against the refusal. The tribunal dismissed the appeals on both points. The claimant appealed to a Social Security Commissioner on the main ground that he had not been notified of the hearing.

Held that:

1. it is desirable that when a claimant (who did not attend the tribunal) complains that he has not received notice of a hearing the Department should refer the complaint to the tribunal for consideration under regulation 3 of the Social Security (Correction and Setting Aside of Decisions) Regulations 1975 (paragraph 4);
2. it is the duty of the tribunal when a claimant does not attend and is not represented to ask the clerk if the claimant has been properly notified of the hearing; and the clerk should come to the hearing prepared to answer that question. If he is unable to show due notification to the satisfaction of the tribunal, they must adjourn the hearing (paragraph 7);
3. the supplementary benefit officer could have insisted on the claimant's giving a separate notice of appeal on the single payment question in compliance with rule 4 of the Appeals Rules. By not doing so, he waived strict compliance with the rule and could not now insist that the claimant should apply out of time for leave to appeal against the refusal of the single payments (paragraph 8).

The appeal was allowed.

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 21 January 1982 is erroneous in point of law for want of compliance with the rules as to notice of the proceedings and it is set aside accordingly. The matter must be referred back to another tribunal.

2. The claimant appealed against an award of a supplementary allowance from the week commencing 12 October 1981 complaining that it was inadequate but without giving very clear particulars of the respects in which it was inadequate. In his notice of appeal dated 24 November 1981 he stated that he wished to ask the tribunal for some clothes and cooking utensils. This latter was not a matter that had been the subject matter of any claim at that time and was not a matter that could be put before the tribunal except by way of appeal from a decision of the benefit officer. In fact it appears that the benefit officer treated the matter as a claim for single payments for clothes and cooking utensils, refused the application and treated the claimant as having appealed against the refusal. He therefore included in the form LT205 not only the appeal in relation to the amount of the supplementary allowance but also the appeal against the refusal (dated 30 November 1981) of the single payments.

3. The appeals came before the tribunal on 21 January 1982. The claimant was not present at the hearing. The appeal tribunal dismissed the appeals on both points without recording any evidence that the claimant had been notified of the hearing in accordance with rule 5(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] (the appeals rules).

4. The claimant applied for leave to appeal to the Commissioner putting forward as a main ground of appeal that he was not notified of the hearing. In granting leave to appeal I referred to the possibility of making an application to the tribunal itself to have the decision set aside under regulation 3 of the Social Security (Correction and Setting Aside of Decisions) Regulations 1975 [S.I. 1975 No 572]. It appears to me that in general it is desirable that when a claimant complains that he has not received notice of a hearing the Department of Health and Social Security should as a matter of course forthwith refer the complaint to the tribunal for consideration under regulation 3 of the last mentioned regulations. In the present case the application would by now be very much out of time and I think it best to deal with the matter myself on the appeal. The claimant asked for an oral hearing. But as I can allow the appeal without troubling the claimant to attend I decided not to hold one.

5. The benefit officer now concerned has caused inquiries to be made as to whether the usual form LT212 (notification of hearing) was sent to the claimant, but as the clerk concerned is no longer employed by the Department it has proved impossible to obtain a statement from him. Apparently no record of posting has been traced.

6. Rule 5(2) of the appeals rules at the relevant time read as follows:—

“Reasonable notice of the time and place of an oral hearing [of an appeal to an appeal tribunal] and copies of documents supplied to the tribunal for the purpose of the appeal shall be given to the following persons—

- (a) the person who has brought the appeal;
- (b) the benefit or supplement officer, as the case may be, against whose determination the appeal is brought;
- (c) where the appeal has been brought under paragraph (a) or (b) of rule 4, any other person—
 - (i) whose right to receive benefit may be directly affected by the appeal, or
 - (ii) who may appear to the chairman of the tribunal to be interested,

and, except with the consent of the interested persons, the tribunal shall not proceed with the hearing of the appeal unless such notice has been given.”

The words apparently at the end of and forming part of sub-paragraph (c) are in my judgment intended plainly to qualify the whole and when rule 3 of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I. 1982 No 40] amended rule 5 by inserting a minimum period of reasonable notice the opportunity was taken at the same time to state specifically that the closing words should be retained but not as part of sub-paragraph (c). In the present case it has not been shown that the required notice had been given to the claimant and the proceedings must be set aside.

7. As a practical matter it is the duty of the appeal tribunal when a claimant does not attend and is not represented on the appeal to ask the tribunal clerk if the claimant has been properly notified of the hearing; and the tribunal clerk should come to the hearing prepared to answer that question. It will be best if he can produce a completed copy of the form LT212 as sent to the claimant showing the day, time and place notified together with particulars derived from the Department's records of the date of posting to the claimant. And the record of the proceedings should show that this has been done or (where this is the case) how otherwise the tribunal was satisfied that the absent claimant was notified of the hearing. If the tribunal clerk is unable to show due notification to the satisfaction of the tribunal they must adjourn the matter. If they do not, the proceedings will probably prove abortive.

8. In the present case the benefit officer has made a further special submission about the claim for clothing and cooking utensils. It will be recalled that the claim was first made on the notice of appeal against the benefit officer's decision awarding a supplementary allowance. The benefit officer's decision refusing a single payment for those items was not given until some days after the notice of appeal itself so that the notice of appeal could not operate as a notice of appeal against the subsequent decision on the single payments question. No other notice in writing of the kind contemplated by rule 4 of the appeals rules has been given but the benefit officer treated the claimant as having appealed against the single payments decision. He would have been fully within his rights if he had insisted on the claimant's giving a separate notice of appeal in writing on the single payments question in compliance with rule 4. But he did not do so, but instead treated the claimant as having properly appealed. Having taken this course he in my judgment waived strict compliance with the rule, and cannot now insist that the claimant should apply to the appeal tribunal chairman for leave, out of time, to appeal against the decision on the single payments claim. Accordingly I set the decision aside on both points and direct that both points be referred to another appeal tribunal.

(Signed) J. G. Monroe
Commissioner