

HL/SH/CW/1

*Late claim for SSA - written notice  
of written determination of appeal  
submitted by the claimant*

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/1136/1998

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER H LEVENSON

Claimant : Andrew G Reddy  
Tribunal : Birkenhead  
Tribunal Case No : S/06/062/1997/00790

**Wirral Welfare Rights and  
Housing Advice Units  
Wallasey Citizens Advice Bureau**



Our ref: SM/WR/2/98/AR/DG

Your ref:

237 - 243 Liscard Road  
Wallasey  
Merseyside L44 5TH

17 February 1999 Telephone: 0151 639 8829

Fax: 0151 630 5118

*Sinner*

F.A.O. The Editor  
Welfare Rights Bulletin  
Child Poverty Action Group  
1-5 Bath Street  
London  
EC1V 9PY

Please find enclosed a Commissioners Decision regarding the backdating of claims regulations.

Briefly, where regulation 19[5][E] refers to written advice by a solicitor....etc verbal advice which is later confirmed in writing is equally valid.

I also enclose copies of our own and the Adjudication Officers submissions for background. I feel this decision could be of help to other applicants/advisers and would be grateful if you could report it.

Yours faithfully,

*Dave Glass*  
Dave Glass  
Welfare Rights Caseworker



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Approved by The Legal Aid Board

VAT REGISTRATION No. 6289 157 06  
CHARITY REGISTRATION No. 510343



MINICOM FACILITY



1. This appeal by the claimant succeeds. In accordance with the provisions of section 23(7)(a) of the Social Security Administration Act 1992 I set aside the decision made by the social security appeal tribunal on 19 January 1998. I substitute my own decision. This is to the effect that the prescribed time for claiming jobseeker's allowance in this case is extended from 3 September 1997 to 16 September 1997, the date on which the claim was treated as having been made. I remit to the adjudication officer the question of entitlement to jobseeker's allowance on this basis.

2. The claimant was born on 30 September 1956. He was employed by the same company from 29 March 1974 to 1 September 1997 when he was dismissed from his employment. An official of his trade union branch advised him not to register as unemployed or to claim any benefit until the reasons for his dismissal had been fully investigated through his employers internal disciplinary and appeals procedure (the fact and details of this advice are confirmed in a letter of 15 January 1998 sent to the claimant's representative by the official concerned and subsequently produced to the tribunal). The claimant eventually approached the Jobcentre on 16 September 1997, on which date he is treated as having made a claim for jobseeker's allowance. He asked for it to be backdated to 3 September 1997 and in a decision issued on 2 October 1997 the adjudication officer refused backdating. On 25 November 1997 the claimant appealed to the social security appeal tribunal against the decision of the adjudication officer. The tribunal considered the matter on 19 January 1998 and confirmed the decision of the adjudication officer. On 26 February 1998 the claimant applied for leave to appeal to the Social Security Commissioner against the decision of the tribunal. Leave was granted by the chairman of the tribunal on 9 March 1998. The adjudication officer now concerned with the matter takes the view that the tribunal's decision was made in error of law because it did not address all of the arguments put forward on behalf of the claimant, but that it must have reached the same decision even had it done so, and has invited me to substitute my own decision to the same effect. I am not persuaded that in this case the tribunal would have been in error of law if all it had done was to fail to address submissions on the law which could not have affected its decision. However, my own decision is based on a different point.

3. By virtue of the provisions of regulation 19(1) of and schedule 4 to the Social Security (Claims and Payments) Regulations 1987 the prescribed time for claiming jobseeker's allowance is the first day of the period in respect of which the claim is made. However, by virtue of regulation 19(4) the prescribed time shall be extended for up to three months to the date on which the claim is made, where any of the circumstances specified in regulation 19(5) applies and as a result the claimant could not reasonably have been expected to

make the claim earlier. Regulation 19(5)(e) covers the situation where:-

"(e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed."

4. There is no dispute that advice from a trade union official is capable of coming within regulation 19(5)(e). The claimant argues that because the advice which was initially given verbally was confirmed in writing before the tribunal hearing, it amounts to written advice for the purposes of that provision. The adjudication officer now concerned with the matter argues that the advice must be in writing at the time and contrasts the provisions of regulation 19(5)(d) which refers to advice from an officer of the Department but does not contain the words "written advice".

5. In my opinion the reason for the insertion of the requirement for the advice to be written is to avoid any doubt, argument, mistaken memory or deception as to the contents of the advice. If, before the decision made by the adjudication officer or the tribunal, the advice is confirmed in writing then the above difficulties are avoided and this amounts to written advice for the purposes of regulation 19(5)(e).

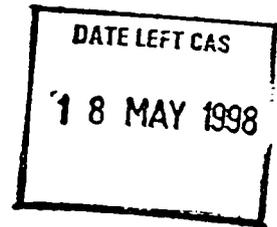
6. It is well over a year since the claim was made in this case, the period of benefit in question is less than a fortnight, and it is expedient that I give my own decision. The claimant gave evidence that he approached the trade union for advice on the options open to him. This included advice on what to do in case he did not get his job back. I have no doubt that faced with the advice from the trade union to which I have referred, the claimant believed that a claim for benefit would not succeed during that period and that it was reasonable for him not to make the claim at any earlier date.

7. For the above reasons this appeal by the claimant succeeds.

(Signed) H Levenson  
Commissioner

(Date) 1 February 1999

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ADJUDICATION OFFICER'S SUBMISSION  
TO THE COMMISSIONER

Name of claimant: Andrew Reddy      Reference No: CJSJA/1136/98

Appeal tribunal: Birkenhead      NI No: YZ 76 79 55 C

Benefit: Jobseeker's Allowance      Date of decision: 27.1.98

Type of case: The meaning of regulation 19(5)(e) of the Social Security (Claims and Payments) Regulations.

1. The claimant appeals against the unanimous decision made on 27.1.98 of the Birkenhead social security appeal tribunal. Leave to appeal was given by the chairman on 9.3.98. I support the appeal, but only to the extent that the tribunal have not adequately complied with regulation 23(3A) of the Social Security (Adjudication) Regulations.

2. The following provisions and Commissioners' decisions are relevant to this appeal -

Regulation 19 of the Social Security (Claims and Payments) Regulations 1987 [S.I. 1987 No. 1968]

Regulation 23 of the Social Security (Adjudication) Regulations 1995 [S.I. 1995 No 1801]

Commissioners' decisions R(SB)20/84, R(SB)40/84, CSB/688/1982

3. The claimant last worked on 1.9.97. He contacted the Jobcentre on 16.9.97 and was given a claim form for jobseeker's allowance (JSA). He completed the form and attended an interview there for the purpose of making a claim on 18.9.97. He said that he wished to claim from 3.9.97 and that he had not claimed earlier because he had contacted his union to approach his employer on his behalf, and to find out about other options open to him. The adjudication officer decided that the prescribed time for claiming JSA could not be extended because the claimant satisfied none of the provisions of regulation 19(5) of the Claims and Payments Regulations, and disallowed the claim from 3.9.97 to 15.9.97. The claimant appealed but his appeal failed before the tribunal. He now appeals to the Commissioner, contending that the tribunal's decision is erroneous in law because they have given insufficient reasons for rejecting the arguments put forward by the claimant's representative.

4. Regulation 19(1) of and Schedule 4 to the Claims and Payments Regulations provides that the prescribed time for claiming JSA is the first day of the period in respect of which the claim is made.

5. Regulation 19(4) of the Claims and Payments Regulations provides -

"Subject to paragraph (8), the case of a claim for income support, jobseeker's allowance, family credit or disability working allowance, where the claim is not made within that time specified for that benefit in Schedule 4, the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of three months, to the date on which the claim is made, where -

(a) any of the circumstances specified in paragraph (5) applies or has applied to the claimant; and

(b) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier."

Regulation 19(5)(e) provides -

The circumstances referred to in paragraph (4) are -

(e) the claimant was given written advice by a solicitor or other professional adviser, a medical practitioner, a local authority, or a person working in a Citizens Advice Bureau or a similar advice agency, which led the claimant to believe that a claim for benefit would not succeed;"

6. In his letter of appeal the claimant's representative says that it was argued before the tribunal that although regulation 19(5)(e) stipulates that the incorrect advice relied upon must be in writing, written confirmation of verbal advice could be equally valid. He compares the provision with the requirement in regulation 32(1) of the Claims and Payments Regulations for a claimant to disclose changes of circumstance and cites R(SB)20/84, R(SB)40/84 and CSB/688/82 in support.

7. In decision R(SB)20/84 the Commissioner held (paragraphs 4 and 5) that disclosure can be made otherwise than by a declaration, and that the tribunal erred in failing to decide whether what took place in that case ought to be regarded as a disclosure of the relevant matters.

8. In decision R(SB)40/84 the Commissioner referred to decision CSB/688/82 and said that it was not a necessary ingredient to effective disclosure for the purposes of section 20 of the Supplementary Benefits Act that the "disclosure" be in writing. In CSB/688/82 the claimant had told an officer orally at the counter that he was receiving a mine-worker's pension but the officer failed to record it in writing. The Commissioner held that the claimant had not failed to disclose the receipt of his mine-worker's pension and that a resulting overpayment was not recoverable. He said that there was nothing in section 20(1) of the Supplementary Benefits Act 1976 to suggest that disclosure of a material fact had to be in writing.

9. It is my submission that the decisions cited above are not applicable to regulation 19(5) of the Claims and Payments Regulations. They are concerned with an entirely different question, namely whether an overpayment of benefit is recoverable from a claimant because he has failed to disclose a material fact. In each of the cases it was accepted by the tribunal that the claimant had indeed disclosed the fact in question. It was held that the fact that there had been disclosure was fatal to recovery under section 20(1) of the Supplementary Benefits Act. What was established by those decisions is that whilst the Supplementary Benefits (Claims and Payments) Regulations require a claimant to report any change in circumstances in writing, a disclosure in writing is not essential for the purposes of section 20 of the Supplementary Benefits Act.

10. The circumstances prescribed in regulation 19(5)(e) of the Claims and Payments Regulations are that a claimant or his partner was given written advice by a "solicitor or other professional adviser .... a person working in a Citizens Advice Bureau or a similar advice agency". The secretary of the claimant's trade union has said that he advised the claimant not to register as unemployed or to claim any benefit until the reasons for his dismissal had been fully investigated. This advice was not given in writing. I submit that the circumstances prescribed in regulation 19(5)(e) do not apply to the claimant since sub-paragraph (e) specifies that the advice be given in writing.

11. By contrast, the circumstances in sub-paragraph (d) are that a claimant was given "information by an officer of the Department of Social Security or of the Department for Education and Employment". In my submission, if it had been the intention of the draftsman that advice given by a solicitor etc. need not be in writing, sub-paragraph (e) would not have contained the words "written advice".

12. The tribunal's decision and the statement of material facts and reasons (pages 17 to 19) do not record that the claimant's representative advanced the arguments mentioned in the grounds for appeal, nor what the tribunal made of those arguments. I submit that the decision does not adequately fulfil the requirements of regulation 23 of the Adjudication Regulations and that as a result the decision is erroneous in law.

13. Should the Commissioner accept my submission, I respectfully request that he set aside the tribunal's decision and substitute his own to the same effect, that the claimant does not fulfil the requirements of regulation 19(5) of the Claims and Payments Regulations and that the prescribed time for claiming JSA is not to be extended.



19 May 1998

E Newell  
Adjudication officer

**We fare Rights and  
ousing Advice Units  
Wallasey Citizens Advice Bureau**



Our ref: LK/2/98/WR/AR/DG

Your ref: Tribunal Ref No: S/06/062/1997/00790

237 - 243 Liscard Road  
Wallasey  
Merseyside L44 5TH

Independent Tribunal Service  
36 Dale Street  
Liverpool  
Merseyside  
L2 5UZ

Telephone: 0151 639 8829

Fax: 0151 630 5118

25  
-2 MAR 26 1998  
February 1998

Dear Sir/Madam,

**Re: Mr Andrew Reddy, Flat 3, 208 Seabank Road, New Brighton, Merseyside**

We respectfully request leave to appeal to the Commissioners against the decision of the Birkenhead Social Security Appeal Tribunal held on 19th January 1998 for the following reason.

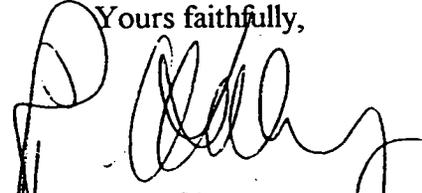
I believe the Tribunal have not given sufficient reasons for rejecting the arguments put to them by the representative, which were:-

1. Although Regulation 19(5)(E) stipulates that the incorrect advice relied upon must be in writing, it was put to them that written confirmation of verbal advice could be equally valid and comparison was drawn with the situation regarding claimants duty to disclose change of circumstances when under Social Security (claims and Payments) regulations 1987, Reg 32(1), must be in writing but which a Tribunal can find, did occur, based on the evidence before them, eg. they believe the appellant made a telephone call etc. The Tribunals right to reach such finding is supported by Commisioners Decision CSB/688/1982, R(SB)20/84, R(SB)40/84.

2. It was further argued that the logical purpose of Regulation 19(5)(E) is to protect claimants against the mistakes or ignorance of those organisations/individuals whom it is reasonable to rely upon. In this case, the failure to confirm the advice in writing at the time it was given was another mistake on Mr Morgans part, and to use this to penalise Mr Reddy is both illogical and unjust.

I enclose a signed form of authority from Mr Reddy and copies of the relevant documents.

Yours faithfully,

  
Dave Glass  
Welfare Rights Adviser

leave to appeal  
to the commissioners  
granted,  
Goodman  
9/3/98.



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CHARITY REGISTRATION No. 510343



HEARING FACILITY



WHEELCHAIR FACILITY



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GRAPHICAL, PAPER  
& MEDIA UNION

MERSEYSIDE, CENTRAL LANCASHIRE & NORTH WALES BRANCH  
PM/RVP

15th January 1998

Mr D Glass  
Wallasey CAB

Dear Mr Glass,

Re: Mr A Reddy

I write to confirm that I advised Mr Reddy not to register as unemployed or to claim any benefit until the reasons for his dismissal had been fully investigated through his employers internal disciplinary and appeals procedure.

Yours sincerely,

*P Morgan*

P MORGAN  
Industrial Secretary