

1. This is an appeal by the claimant, brought by my leave, against the decision of the appeal tribunal held on 26 July 2001. The tribunal upheld the decision that Jobseeker's Allowance could not be paid for the period from 21 April 1999 to 29 April 1999. The tribunal did not, in my judgment, err in law and accordingly I dismiss this appeal.

2. The claimant was required to sign fortnightly for Jobseeker's Allowance. He attended the Job Centre on 20 April 1999 but failed to attend the next appointment on 4 May 1999. His claim to JSA was terminated on 12 May 1999 because he had failed to keep his appointment to sign on and had not provided, within the prescribed time, an explanation showing "good cause" for his failure to attend the Job Centre. By a letter dated 27 September 1999 the claimant wrote to the Job Centre explaining that he had been in custody from 29 April 1999. He declared in that letter that he was available for employment for the period in issue and actively seeking work during that period.

3. The decision maker considered the claimant's letter and decided that the decision to terminate his claim had been made in ignorance of the material fact that he had been taken into custody on 29 April 1999. It was also decided that that decision could not be revised because the claimant's application was made outside the prescribed time limit of one month in which a request for revision of a decision can be made. The decision maker further decided that no special circumstances had been made out to justify an extension of the time limit. Although it was decided that the original decision could be superseded it was also decided that payment could not be made for the period in question.

4. The claimant appealed to the tribunal, maintaining in essence that he was unable to notify the Job Centre of the fact that he had been remanded into custody. He maintained also that he was not aware of any time limit of claiming benefit although that does not affect the application of the relevant legislative provisions. The claimant did not attend the hearing but was represented. The tribunal recited the history of the claim and reasoned that regulation 3 of the Social Security Child Support (Decisions and Appeals) Regulations 1999 could not assist the claimant because the application for revision had not been received within one month of the notification of the decision and that there were no special circumstances which would have made it impracticable for an earlier application for revision to be made. The tribunal reasoned also that a supersession could not benefit the claimant because it would only take effect from the date on which the application to supersession was made. The tribunal referred to regulation 19 of the Social Security (Claims and Payments) Regulations 1987 and reasoned that this, also, could not assist the claimant since the effective claim, made on 29 September 1999 (the date when the claimant's letter was received at the Benefits Agency) was outside the maximum 3 month period. The tribunal reasoned that special circumstances did not exist which would have made it impracticable for an earlier application for revision to be made given that the appellant was in custody from 29 April 1999 to 29 September 1999 and there had been no effective change in his circumstances in that period, with the result that, given his ability on the latter date to make an application, there was no reason why he could not have made an application earlier.

5. The tribunal recorded a document from the claimant, dated 19 July 2001. It appears that this was a letter from the claimant, to his Advice Agency, saying that the representative should emphasize at the hearing that the claimant's sister had, on 29 April 1999, made a telephone call to the Job Centre to request payment. That is consistent with the record of proceedings (document 5) which says "the day after he was remanded he says his sister told them he was in custody". There is, at document 9, before me a letter, dated 30 July 2001.

That is from the claimant's sister and it confirms that she telephoned the Job Centre twice on 29 April 1999 to inform them that the claimant had unexpectedly been remanded into custody. That letter, however, post-dates the decision of the tribunal. The grounds of appeal refer to this document, contending that the tribunal may well have reached a different decision had they seen it. I see no express, or indeed, implied contention before the tribunal that it should have adjourned for production of further evidence or for the attendance of the claimant or for any other reason. The tribunal were entitled to proceed in the absence of the claimant and, in particular, in the light of the documentary evidence before them.

6. The claimant effectively reasserts his grounds of appeal in response to this submission, dated 10 September 2002, made on behalf of the Secretary of State. That submission contends that the tribunal erred in law but that nonetheless it reached a decision reasonably and properly open to it. It is contended that the tribunal provided inadequate reasons in relation to the contention that the claimant's sister had effectively made an application for revision, timeously, on his behalf. It is also contended that the tribunal should have addressed the question of whether the claimant had good cause for his failure to attend and whether he had provided this within 5 working days of his failure to comply with his attendance instructions. The Regulations referred to in connection with the question of good cause, however, were not referred to in the decision maker's submission to the tribunal nor were they relied on on behalf of the claimant. Those provisions could not, however, in any event have assisted the claimant because there was no contention that the claimant had, within the prescribed time limit of 5 days of his failure to attend the Job Centre, provided any explanation which might satisfy the "good cause" provisions.

7. The contention that the claimant's sister had contacted the Benefits Agency was before the tribunal, given the tribunal's record of proceedings and the fact that they listed the claimant's letter dated 19 July 2001. The fact that the tribunal did not refer to that contention does not, to my mind, vitiate their decision because that evidence could have commanded little or no probative value. That is because it was provided well over two years after the date of the decision under appeal and was of a self serving nature. The tribunal could not easily or reasonably have ignored the significant delay in the making of that contention, taking account also of the fact that no reference had been made to it in the letter of appeal to the tribunal. The failure of the tribunal specifically to address that evidence does not, in the circumstances of this case, in my judgment amount to an error of law. In other respects the tribunal fully addressed the legislative provisions before it and applied them to the appeal. The decision of the tribunal was one eminently open to it on a proper application of those provisions to the circumstances of the appeal and I see no reasonable basis upon which it could be said that the tribunal erred in law. In consequence I dismiss this appeal.

(Signed) S J Pacey
Commissioner

(Date) 30 October 2002