

1. This appeal by the claimant succeeds. In accordance with the provisions of section 14(8)(a) of the Social Security Administration Act 1992 I set aside the decision made by the social security appeal tribunal on 11 November 1998. I substitute my own decision. This is to the effect that the prescribed time in this case for claiming Jobseeker's Allowance for the period from 21 January 1998 be extended to 21 April 1998, the date on which the claim was actually made or was treated as having been made. I remit to the Secretary of State questions relation to entitlement to and payment of Jobseeker's Allowance on this basis. It is agreed between the parties that there can be no entitlement prior to 21 January 1998.

2. I understand that an extra-statutory payment has been made in this case. I do not have the details. It is a principle of English common law that the courts will not make hypothetical decisions. There must be a real issue at stake. However, I am persuaded that in the present case my decision will have real consequences irrespective of the details of the extra-statutory payment.

3. The claimant was born on 1 December 1978 and, at the relevant time, was a single man living with his mother. In August 1997 he failed to achieve the A level results required for university entrance and decided to retake two of the subjects, on the basis of 8 hours study weekly. His mother had been receiving child benefit in respect of him, together with benefits in relation to being a lone parent, but these ceased, the claimant reaching the age of 19 on 1 December 1997. The claimant's mother contacted the child benefit centre and was advised of the child benefit situation. There then seems to be some dispute as to whether she was told that the claimant had no entitlement to benefit, or whether the child benefit centre declined to comment on other benefits. The claimant's mother made further enquiries of welfare rights agencies and was told (although apparently not in writing) that the claimant had no entitlement to any benefit. One of the sources of advice was from a phone-in programme on her local radio station where each month an official from the Benefits Agency answers welfare rights queries. The claimant's mother telephoned with her query and was told that the claimant would not be able to claim anything. It is on this latter piece of advice that my decision turns. The Secretary of State has apparently accepted that the claimant's mother was given the advice that she has stated she was given, and that the advice was incorrect. It was not until the claimant's mother contacted the claimant's present representatives that the true position was established. Accordingly, on 21 April 1998 the claimant made a claim for Jobseeker's Allowance which was allowed from that date. At the same time he claimed allowance backdated to 25 November 1997.

4. On 8 May 1998 the adjudication officer refused to backdate the allowance. On 9 July 1998 the claimant appealed to the social security appeal tribunal against the decision of the adjudication officer and on 11 November 1998 the tribunal confirmed the adjudication officer's decision. On 24 June 1999 the chairman of the tribunal granted leave to appeal to the Social Security Commissioner against the decision of the tribunal. The adjudication officer recently concerned with the matter supports the appeal but has suggested that I refer the matter to a new tribunal for a fresh hearing and decision. However, the basic facts in the case do not appear to be disputed and I am satisfied that there is adequate evidence on which I can make my own decision in this case, which is now two years old and involves a relatively short period of time.

5. 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)(d) covers the situation where:-

(d) the claimant was given information by an officer of the Department of Social Security ... which led the claimant to believe that a claim for benefit would not succeed.

6. The basis of the tribunal's decision, and where it went wrong in law, was that the advice given on the radio programme by the Benefits Agency Official had not been given directly to the claimant and therefore could not come within the provisions of regulation 19(5)(b). I agree with the adjudication officer that regulation 19(5)(d) can apply where "someone appointed or otherwise having authority to act on his behalf, is given information which leads the claimant to believe that a claim for a benefit would not succeed". I would not go so far as the claimant's representative and insert the words "directly or indirectly" into regulation 19(5)(d) but neither do I accept the adjudication officer's submission that it is necessary to seek further evidence as to the scope of the authority of the claimant's mother to act on his behalf. The claimant's representative has argued that in this case the claimant was dependant upon his mother until his 19th birthday, they had always lived together and they continued to do so after he became 19, the trail of false information had started when the claimant's mother contacted the Child Benefit Centre and there can be no doubt that the claimant's mother had his authorisation to make the relevant enquiries. In the circumstances, I have no doubt that the

case comes within regulation 19(5)(d) and that the claimant could not reasonably have been expected to make the claim any earlier than the date on which she ultimately made it.

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

(Signed) H Levenson
Commissioner

(Date) 4 May 2000