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THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CJSA/4613/2001

SOCIAL SECURITY ACTS 1992-1998

**APPEAL FROM DECISION OF AN APPEAL TRIBUNAL ON A QUESTION OF
LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

COMMISSIONER: Mr C. Turnbull

Claimant : Mr. Mark Blissett
Tribunal : Wrexham
Tribunal Case No : U/03/209/2000/01143
Date of Tribunal Hearing : 30 April 2001

1. This is an appeal by the Claimant, brought with the leave of the Chairman, against a decision of the Wrexham Appeal Tribunal made on 30 April 2001. For the reasons set out below that decision was in my judgment erroneous in law. I allow the appeal and set aside the Tribunal's decision. Further, in exercise of the power in s.14(8)(a)(i) of the Social Security Act 1998 I make the decision which the Tribunal should have made, namely to allow the Claimant's appeal against the decision made on 6 July 2000 and to substitute a decision that for the purpose of entitlement to and calculation of housing costs in respect of his award of jobseeker's allowance made as from 27 May 2000 (the date of claim) the Claimant is to be treated as having been entitled to jobseeker's allowance throughout the period between 2 March 2000 and 26 May 2000.
2. The issue in this appeal has arisen out of the following facts. The Claimant claimed jobseeker's allowance on 27 May 2000, and was awarded it from that date. However, under para. 6(1)(b) of Schedule 2 to the Jobseeker's Allowance Regulations 1995 (the applicable provision in this case) entitlement to housing costs does not start until the claimant "has been entitled to a jobseeker's allowance for a continuous period of not less than 8 weeks" Further, under para. 6(1)(a) the amount of housing costs doubles after 26 weeks' continuous entitlement.
3. There are, however, provisions in para. 13 of Schedule 2 for linking periods of entitlement to jobseeker's allowance which are not continuous, but the primary provision in para. 13(1)(a)(ii) applies only if the gap between periods of entitlement is 12 weeks or less. The Claimant had last been in receipt of jobseeker's allowance on 1 March 2000, which was 12 weeks and 2 days before entitlement recommenced on his fresh claim on 27 May 2000. For that reason the decision maker decided that the Claimant was not entitled to housing costs until 8 weeks after the date of the fresh claim on 27 May 2000.
4. The reason for the gap of 12 weeks and 2 days between the periods of entitlement to jobseeker's allowance was that the Claimant was working during that time. However, his argument to the Tribunal was that there was a period of 4 days during that time when he was off sick, and that other provisions of para. 13 enabled him to treat that 4 day period as one during which he was entitled to jobseeker's allowance and so to be linked up (for this purpose) with the periods of actual entitlement. More specifically, the Claimant was sick from 24 to 27 April 2000, and was advised by his employer to and did claim incapacity benefit, which was paid in respect of 27 April (that benefit not being payable for the first 3 days).
5. The Tribunal rejected that argument, holding that under the relevant provisions the Claimant could only have been treated as entitled to jobseeker's allowance in respect of the 4 day period if he had actually claimed income support (notwithstanding that it is common ground that such a claim would have been refused because his income was in excess of his applicable amount).

6. The immediately relevant provisions of Schedule 2 are these:

13(1)for the purposes of this Schedule –

- (a) a person shall be treated as being in receipt of a jobseeker's allowance during the following periods –
 - (i)
 - (ii) any period of 12 weeks or less in respect of which he was not in receipt of a jobseeker's allowance and which fell immediately between periods in respect of which
 - (aa) he was, or was treated as being, in receipt of a jobseeker's allowance,
 - (bb) he was treated as entitled to a jobseeker's allowance for the purposes of sub-paragraphs (5), (6) and (7), or
.....
- (4) Where, for the purposes of sub-paragraphs (1) a person is treated as being in receipt of a jobseeker's allowance, for a certain period, he shallbe treated as being entitled to a jobseeker's allowance for the same period.
- (5) For the purposes of this Schedule, sub-paragraph (6) applies where a person is not entitled to an income-based jobseeker's allowance by reason only that he has –
 - (a) capital exceeding £8,000; or
 - (b) income exceeding the applicable amount which applies in his case; or
 - (bb) a personal rate of contribution-based jobseeker's allowance that is equal to, or exceeds, the applicable amount in his case; or
 - (c) both capital exceeding £8,000 and income exceeding the applicable amount which applies in his case.
- (6) A person to whom sub-paragraph (5) applies shall be treated as entitled to a jobseeker's allowance throughout any period of not more than 39 weeks which comprises only days –
 - (a) on which he is entitled to a contribution-based jobseeker's allowance, statutory sick pay or incapacity benefit; or
 - (b)
- (7) Subject to sub-paragraph (8), a person to whom sub-paragraph (5) applies and who is either a person to whom regulation 13(4) applies (persons with caring responsibilities) or a lone parent shall, for the purposes of this Schedule, be treated as entitled to a jobseeker's allowance throughout any period of not more

than 39 weeks following the refusal of a claim for a jobseeker's allowance made by or on behalf of that person.

(8) Sub-paragraph (7) shall not apply in relation to a person mentioned in that sub-paragraph who, during the period referred to in that sub-paragraph –

(a) is engaged in, or is treated as engaged in, remunerative work or whose partner is engaged in or treated as engaged in, remunerative work:

.....

18(1) For the purposes of providing continuity between income support and a jobseeker's allowance –

.....

(c) for the purposes of any linking rule or for determining whether any qualifying or other period is satisfied, any reference to a jobseeker's allowance in this Schedule shall be taken also to include a reference to income support.”

12. On the above facts, the correct analysis was in my judgment this:

- (1) It was common ground (and I assume) that, but for the fact that his income was in excess of his applicable amount, the Claimant would have been entitled to income support during the 4 days. In my judgment para. 13(5) (the reference there to jobseeker's allowance being read as including a reference to income support – see para. 18(1)) therefore applied to him during that 4 day period in that he was “not entitled to [income support] by reason only that he has income exceeding the applicable amount which applies in his case.” In my judgment the Tribunal was wrong in holding that, because the Claimant had not actually claimed (and been refused) income support, he did not fulfil the requirement that he was “not entitled by reason only of his income.” It is in my judgment clear that those words refer to substantive conditions of entitlement, and not to the requirement that a claim should have been made. It cannot have been the intention that, for para. 13(5) to apply, a necessarily hopeless claim for jobseeker's allowance or income support should have been made. In my judgment para. 13(7), which contains a special provision for persons with caring responsibilities and lone parents who have made a claim and been refused, does not indicate to the contrary: those persons do not have to satisfy sub-para (6) in order to benefit from the deeming provision.
- (2) Because para. 13(5) applied in respect of the 4 day period, the Claimant was therefore, under para. 13(6), treated as entitled to jobseeker's allowance on 27 April 2000, the day for which he was entitled to incapacity benefit. Under para.

13(1)(a)(ii)(bb) he was therefore treated as in receipt of jobseeker's allowance on that day. Although that provision refers to a person who is treated as entitled to a jobseeker's allowance "for the purposes of sub-paragraphs (5), (6) and (7)", it is in my judgment clear that it is not necessary to satisfy both sub-paras (6) and (7). That provision only makes sense if it is in effect read as meaning "(5) and (6) or (7)", because any other reading would deprive the special provision for carers and lone parents in sub-para (7) of its intended significance.

- (3) Under para. 13(1)(a)(ii)(aa) the Claimant was therefore treated as in receipt of jobseeker's allowance in respect of the periods (both less than 12 weeks) on either side of 27 April 2000 – i.e. between 2 March and 26 April and between 28 April and 26 May 2000. Under para. 13(4) he was therefore treated as entitled to jobseeker's allowance in respect of those same periods, thus fulfilling the requirements of continuous entitlement in para. 6 of Schedule 2. Hence my decision in paragraph 1 above.

(Signed)

Charles Turnbull
(Commissioner)

(Date)

15 April 2002