Useful Comment para 5

JM/AG

SUPPLEMENTARY BENEFITS ACT 1976 Non-dependants deduction

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

- Check dating, 'Good Cause'

Name: [redacted] 580/1981

Supplementary Benefit Appeal Tribunal: Bradford

Case No: 02/155

1. This is a claimant's appeal, brought by my leave and supported by the benefit officer, against a decision of the supplementary benefit appeal tribunal dated 27 May 1981 which varied a decision of the benefit officer issued on 24 March 1981.

2. At the material time the claimant was a single man, aged about 20, living as a non-dependant in the house of his father. His father was in receipt of supplementary benefit. The claimant was unemployed and in receipt of £20.65 a week by way of unemployment benefit.

3. On 24 November 1980 the new supplementary benefit scheme came into operation. The claimant was entitled to nothing thereunder. His weekly requirements totalled £19.20. These were, of course, exceeded by his weekly resources of £20.65. Accordingly, the claimant had not then any motive for making any claim on his own account. On 15 February 1981, by reason of the exhaustion of his unemployment benefit, he became entitled to a supplementary allowance. This situation did not last long, fortunately. He obtained full-time work on 23 February 1981.

4. I turn to the father's position. Regulation 22 of the Supplementary Benefit (Requirements) Regulations 1980 (as amended) was headed "Reduction in amounts applicable for certain occupants of the home". Its effect was to reduce, in the specified cases, the amount attributed to a claimant's housing requirements. Paragraphs (3) and (4) provided as follows:-

> "(3) Subject to paragraph (5) /which has no application to this appeal/, where the home is also occupied by a non-dependant the reduction shall be by the amount of a housing contribution calculated in accordance with paragraph (4).

(4) For the purposes of paragraph (3) a housing contribution shall be assumed in respect of each non-dependant, or group of non-dependants, who -

(a) form an assessment unit for the purposes of a current entitlement to a pension or allowance; or

(b) are not members of such a unit but would if a pension or allowance were payable, or were payable to one of them, be members of a single assessment unit,

and the amount of the reduction shall be -

(c) in respect of -

(i) an assessment unit within sub-paragraph (a),

(ii) an assessment unit within sub-paragraph (b) where the person to whom the pension or allowance would be payable is aged less than 18,

(iii) an assessment unit within sub-paragraph (b), where a claim has been made and if the maximum instead of some lesser, amount had been applicable under regulation 23(1) (non-householder's contribution), a pension or allowance would be payable to a person aged not less than 18, the sum of £2.15;

the sum of £2.15;

(d) in any other case, the sum of £4.60."

At the material time the maximum amount applicable under regulation 23(1) was £4.60.

5. I think that I can say without fear of contradiction that the meaning of the foregoing provisions would not leap readily to the mind of a young man of 20, with no legal training, even if he had appreciated that he ought to read them. So far as their bearing upon the present appeal is concerned, I summarise their effect thus:

(a) The father's housing requirements fell to be reduced by the sum of £4.60 a week unless he could establish that the claimant fell within the scope of regulation 22(4)(c)(iii).

(b) To establish that, the father had to show that -

(i) the claimant had made a claim for supplementary benefit; and

(ii) such claim would have emanated in an allowance payable to the claimant if the claimant's non-householder's contribution had been assessed at £4.60 instead of some lesser amount.

6. We are, of course, in the realm of hypothesis. Had the claimant made a claim in respect of the period with which I am concerned, his own entitlement to benefit would have been assessed upon the basis of a non-householder's contribution of £2.15. As I have already pointed out, that sum was insufficient to bring his total requirements above his total resources. On the other hand, had his non-householder's contribution been £4.60, he would have been entitled to exactly £1.00 a week by way of supplementary allowance. I repeat that, from the claimant's personal point of view, such entitlement was merely notional. Any claim by him in the relevant period would have resulted in a nil award. On the other hand, his father would have benefitted by having his housing requirements reduced by only £2.15 instead of by £4.60. No one has suggested that, at the material time, any of this was brought to the notice of either the claimant or his father.

7. The benefit officer took the view that it was not until 7 January 1981 that the claimant made any claim for supplementary benefit. With effect from that date the father's weekly supplementary allowance was adjusted appropriately. The benefit officer refused to treat the claimant's claim as having been made on any day earlier than 7 January 1981. The appeal tribunal heard, and believed, evidence to the effect that the claimant had visited the local office of the Department of Health and Social Security on 18 December 1980 and that he had good cause for regarding that visit "as initiating his claim". It decided that the claim should be treated as having been made on 18 December 1980. The relevant form LT 235 contains the following useful finding:

> "There was confusion, in our view, in the minds of the appellant and his father regarding rent deductions under the new Regulations."

8. The claimant was not satisfied with what he had achieved before the local tribunal. He applied for leave to appeal to the Commissioner. I granted such leave.

9. Regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1980 provided, so far as material to this appeal, as follows:

> "5. (1) Subject to paragraph (2), a claim for a pension or allowance shall be made no later than the first day of the period in respect of which it is made.
>
> (2) Where a claim for a pension or allowance is made in respect of a period earlier than the day on which it is made, it shall be treated as if it had been made -

(a) where in any case the claimant proves that throughout that period there was good cause for failure to make the claim before the day on which it was made, on the first day of that period;

(b) ... etc."

This imported into supplementary benefit the concept of "good cause" which has for decades been entrenched in the national insurance jurisdiction. There are in the precedents many dicta directed to the concept. Attention was drawn to some of these dicta in the recently reported Decision R(SB) 6/83. For my part, however, I should be sorry to see the supplementary benefit appeal tribunals burdened by prolix pronouncements from a more restrictive age. The Commissioner who decided unreported Decision C.S. 15/79 had this to say in respect of the two passages which are cited in paragraph 12(1) of Decision R(SB) 6/83:

> "In my view, the attempted definition which was approved in the above mentioned Decision R(S) 2/63 is not helpful. I do not consider that it is possible to define what constitutes a good cause, for the simple reason that I consider that Parliament allowed such a vague phrase to be included in this part of the law so as to enable the determining authorities to exercise a sensible judgment in each case depending on the circumstances of that case. 'There have been many cases when it has been recognised that complication in the law does excuse delay; because on many occasions ordinary people cannot be expected either to know what the law is or to know that they ought to enquire about it. In my view, the test for every case must be one of reasonableness. The question for the determining authority to answer is: has the person concerned done or omitted what can reasonably be expected of him having regard to his rights and duties under the social security scheme?"

10. In my view, those simple words furnish the benefit officer and the appeal tribunal with surer guidance than is to be found in the early authorities. I should be happy to see such guidance, and none other, in the written submissions which benefit officers lay before the appeal tribunal. It is to be noted that in the Court of Appeal case of Crewe v Anderson /1982/ 1 W.L.R. 1209, Lord Denning MR was prepared to equate "good cause" with reasonableness (at p 1213).

11. Characteristic of the modern approach is Decision R(P) 1/79, a retirement pension case. The Commissioner quoted from the decision of the local tribunal:

> "Claimant was unaware that the earnings rule was altered and because his wife worked he thought he could not claim. The Commissioners have held that ignorance of your rights is not good cause for failing to claim, everyone is expected to take steps to find out about their rights."

The Commissioner's comments were trenchant:

> "It will be seen that this closely echoes the local insurance officer's submission quoted in paragraph 3 above. That submission is a frequently used formula. The trouble with it is that it **impliedly suggests that even if a claimant** could not reasonably have been expected to have been aware of his rights, or even if his failure to assert them was due to a mistaken belief reasonably held, his failure to make enquiries of itself defeats a plea of good cause for delay. That suggestion is wrong in law." (paragraph 6)

12. The claimant's grounds of appeal to the appeal tribunal contained the words: "I feel that my ignorance of the details of the benefit scheme is excusable ...". He stressed the complexity of the relevant regulations and the fact that they had only been in force for a few weeks at the date when he actually made his claim. Nevertheless, as the benefit officer now concerned points out, the appeal tribunal made no attempt to consider this aspect of the case. (I am not inclined to be over censorious. These were early days of the new system; and no adequate guidance appears to have been offered by the local benefit officer.)

13. The decision of the appeal tribunal is clearly erroneous in law and must be set aside. I am satisfied that this is a case in which it is expedient that I myself should give the decision which the appeal tribunal should have given. The material facts are fully before me. There was nothing in the claimant's personal situation to put him upon enquiry about anything. In the colloquialism, there was nothing in it for him. A claim by him was necessary if a third party was to be able to take advantage of regulation 22(4)(c)(iii) of the Requirements Regulations 1980. But by no conceivable stretch of the imagination can it be suggested that the claimant, as a reasonable man, ought to have known that - or ought to have known that there was something which called for enquiry on his part.

14. My decision, accordingly, is as follows:

(i) The claimant's appeal to the Commissioner is allowed.

(ii) The decision of the appeal tribunal dated 27 May 1981 is erroneous in law and is set aside.

(iii) The claimant's appeal to the appeal tribunal is allowed.

(iv) The claim for supplementary allowance made by the claimant on 7 January 1981 falls to be treated as if it had been made on 24 November 1980 because the claimant has proved that throughout the period 24 November 1980 to 7 January 1981 he had good cause for his delay.

(Signed) J Mitchell
Commissioner

Date: 18 May 1983

Commissioner's File: C.S.B. 580/1981
CSBO File: 626/81