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662/1984

Backdating of  
SB

VGHH/BC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Frederick Thomas Lambert

Supplementary Benefit Appeal Tribunal: Burnley

Case No: 13/234

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 29 February 1984 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

2. By a decision dated 24 October 1983 a supplementary benefit officer refused "to backdate a claim for supplementary allowance from 11 March 1983 to 21 August 1983". The claimant appealed against this decision, writing "I wish to appeal against the Benefit Officer's decision on 24.10.83 not to change the original decision concerning my claim for benefit for the period 11.3.83 to 21.8.83 ..... The reasons for my appeal are the same as my reasons for requesting a review".

3. According to form LT 205, the benefit officer's reasons for his decision were that the original claim had not been verified and under the circumstances was deemed to have been withdrawn. A repeat claim was made on 22 August 1983 and the claimant was paid from that date but the benefit officer refused to backdate the claim because the claimant had not provided reasonable cause for failing to claim benefit at an earlier date.

4. The tribunal heard the appeal on 29 February 1984. The record of their decision is as follows:

"Findings of Tribunal on question of fact material to decision

The appellant lived at 14 U---- St, Blackburn which he was buying from his brother in law on a rental purchase but there had been no form of transfer of deeds. He then proposed to sell the house to Y----- C----- for £5,000 writing a note that £500 had been paid to him and the rest was to be paid at £20 a week. Y----- C----- took possession on 7.2.83 and has been in possession ever since. On 18.2.83 after the appellant had been paid Supp Ben under the Short term regulations he wrote to say the property could not be sold or rented and a Burnley solicitor wrote to the Dept to confirm this. On 8.3.83 the appellant's Blackburn Solicitor confirmed the deeds were now in his name and there was an interested buyer but on 10.3.83 the Dept were informed that Mr Sharples was no longer acting and when [the claimant] was then refused further benefit because of

insufficient evidence he was asked for permission for the Dept to seek further information which he did not give. On 25.4.83 Mr Sharples purported to send a copy of [the claimant's] original note. This did not reach the Dept until 12.5.83 and it was then not acceptable as a legal document. The appellant did nothing further until 22.8.83 when the unemployment benefit officer started to assist him and a renewed application was made on the basis of payments being made. In September 1983 a legal charge was completed between Mrs C----- and the appellant on the security of U---- St providing for re-payment of £4,500 with weekly instalments of £20, backdated to 7.2.83. The appellant and his solicitor say no such payments have been made and legal proceedings for possession or repayment are to be taken. On receipt of a letter from the Solicitor to this effect the appellant was paid Supp ben on 27.9.83 backdated to 22.8.83.

Tribunal's unanimous decision

To refuse to backdate a claim for Supplementary Allowance for 31.8.83 to 11.3.83.

Reasons for decision (including Acts and Regulations and reported Commissioners' Decisions considered by the Tribunal)

The appellant provided insufficient information to the Dept to clarify the nature of his agreement with Mrs ----- and in fact gave certain inaccurate information in the early stages. He took no action with the Dept from 12.5.83 to 22.8.83 to support his claim for Supp Ben and having regard to all the circumstances and conflicting evidence the Dept were entitled to have regard to Reg 5(a) of the Claims and Payment Regs for failure to provide sufficient evidence. The Tribunal are not satisfied that the circumstances of the case substantiate reasonable cause by the appellant for failure to give all the necessary information to the Department and his various conflicting statements over the period leave doubt in the Tribunal's mind of the value of his evidence."

5. The first question that fell to be decided was whether the benefit officer's decision of 24 October 1983, which was that appealed against, was a decision on a request for his claim of 2 August 1983 to be backdated or a decision on a request for an earlier claim to be reviewed and revised.

6. The second question for decision depends on the answer to the first question. If the question before the tribunal related to a decision refusing to review an earlier decision, then it was necessary to consider whether there were circumstances justifying a review and, if so, whether the earlier decision should be revised. If the question before the tribunal was whether to backdate the claim made on 22 August 1983, then it was necessary to consider whether the claimant had good cause for the delay in claiming, applying the principles explained in decision R(SB) 6/83.

7. The decision of the supplementary benefit appeal tribunal was erroneous in law because they failed to identify the relevant questions for determination or, if they did identify them, to record that they had done so, and to give their reasons for their conclusion: see paragraphs 5 and 6 above. In considering the question of backdating

the claim of 22 August 1983, the tribunal were in error in failing to apply the principles relating to "good cause" explained in decision R(SB) 6/83. The fact that a claimant failed to provide some information that was considered by the Secretary of State to be relevant to an earlier claim is not by itself fatal to a contention that a subsequent claim was delayed for "good cause". It is necessary to consider why the subsequent claim was delayed and whether in all the circumstances that delay was reasonable, applying the principles referred to in the above-mentioned decision.

8. For these reasons, and also for the reasons given by the adjudication officer in her written submission dated 22 August 1984, with which I am in agreement, the decision of the supplementary benefit appeal tribunal dated 29 February 1984 is erroneous in point of law. Since the material facts relating to the questions discussed in paragraphs 5 and 6 above have not been found, it is not possible or expedient for me to give the decision that the tribunal should have given.

9. The case must accordingly be referred to a social security appeal tribunal for determination. That tribunal should be differently constituted. They should have regard to all the questions and make findings of fact and give reasons on all the points considered in the above-mentioned submission dated 22 August 1984, a copy of which should be before them, and also on all relevant points raised by the claimant. The record of their decision should comply with regulation 19(2) of the Social Security (Adjudication) Regulations 1984.

Signed V G H Hallett  
Commissioner

Date: 4 October 1984

Commissioner's File: CSB/662/1984  
C A O File: AO/9056/84  
Region: North Western

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CSB 662/1984

VGHH/BC

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