

JGM/GJH

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision CFIS 2/82

≡ R(FIS) 3/82

1. My decision is:-

- (a) that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 19 August 1981 was erroneous in point of law and is set aside;
- (b) that the matter must be referred back to another appeal tribunal.

2. The claimant made a claim for family income supplement dated 18 May 1981 which is recorded as having been received in the Family Income Supplement Office of the Department of Health and Social Security on 27 May 1981, and this date has been taken as the date of the claim. It appears to have been returned thereafter for further signature. The supplement officer refused to award the supplement to the claimant on the ground that the claimant's family did not include a man or single woman engaged and normally engaged in remunerative full-time work.

3. The claimant appealed against this decision to the appeal tribunal who found that in terms of regulation 5(2) of the Family Income Supplements (General) Regulations 1980 [S.I. 1980 No. 1437] (the general regulations) the claimant was normally engaged in full time work and allowed the appeal accordingly. The supplement officer now appeals to the Commissioner with my leave contending that it is not enough for a claimant to be normally engaged in employment, and that he must also be engaged in employment at the relevant time, a matter which was not considered by the appeal tribunal.

4. It is provided by section 1(2) of the Family Income Supplements Act 1970 (the Act) that a benefit known as family income supplement shall be paid for any family if certain conditions are satisfied. Section 1(1) provides that a family consists among other things of a man or single woman engaged and normally engaged in remunerative full-time work. It is clear from this that it is not sufficient that the family should include a man or single woman who is engaged in remunerative full-time work without being normally so engaged, or who is normally

engaged in full-time work without being so engaged. On that ground alone the decision of the tribunal was defective in point of law inasmuch as they decided that family income supplement was payable without deciding whether or not the claimant was at the relevant time engaged in remunerative full-time work. The supplement officer now concerned goes further and submits that on the evidence he was not so engaged, and I think it right that I should deal with this aspect of the case.

5. On this issue the following statutory and other provisions are in point:-

(A) Section 6(2) of the Act which provides that unless regulations otherwise provide any such question [i.e. a question as to the right to or amount of family income supplement] is to be determined as at the date when the claim to the family income supplement is made.

(B) Section 10 (2) of the Act which permits regulations to be made:- (inter alia)

"(a) for determining the circumstances in which a person is to be treated as being, or as not being, engaged or normally engaged in remunerative full-time work;"

"(f) for treating claims to family income supplement made in such circumstances as may be prescribed by the regulations as having been made at such date earlier than that at which they are made as may be so prescribed and for requiring references in this Act to the date such a claim to be construed accordingly;"

(C) Regulation 5 of the general regulations which so far as material to this appeal provides as follows:-

"(1) A person shall be treated as being engaged in remunerative full-time work only if he undertakes activities in the course of remunerative full-time work for not less than the minimum weekly hours during -

(a) the week of claim; or

(b) either of the two weeks immediately preceding the week of claim; or

(c) the week immediately following the week of claim.

(2) [deals with the meaning of normally engaged in remunerative full-time work, which is not in issue]

(3) For the purposes of this regulation -

"minimum weekly hours" shall mean 30 hours a week .... "week" shall mean a period of 7 days beginning with midnight between Saturday and Sunday; "week of claim" shall mean the week which includes the date on which the claim is made."

(D) Regulation 2(2) of the Family Income Supplement (Claims and Payments) Regulations 1980 [S.I. 1980 No. 1438] which provides as follows:-

"The date on which a claim is made shall be the date on which it is received at an office of the Department [of Health and Social Security] hereafter in this paragraph referred to in this paragraph as "relevant date", so however if -

- (a) a person making a claim requests the Secretary of State [for Social Services] to treat the claim as having been made on a date earlier than the relevant date, or the Secretary of State is aware that a claim which has been sent by post has not been delivered in the ordinary course of the post; and
- (b) the Secretary of State is satisfied that it was through no fault on the part of that person that the claim was not made on a date earlier than the relevant date;

the Secretary of State may treat the claim as having been made on a date earlier than the relevant date, being a date not more than three months before the relevant date."

6. The evidence before the tribunal was that the claim was date stamped as received on 27 May 1981 though itself bearing date 18 May 1981, and that the claimant worked for 32 hours in the week ending 9 May 1981 but did not thereafter work as much as 30 hours per week in any of the four weeks ending 16 May 1981, 23 May 1981, 30 May 1981 or 6 June 1981 thus neatly ensuring that if the date of claim was in the third of those weeks his claim was bound to fail.

7. 27 May 1981 was in that week; and the Secretary of State has decided that he is not prepared to treat the claim as made on an earlier date. It will however be for the tribunal to whom the matter is referred back to determine the date on which the claim was made and what accounts for the fact that a claim dated 18 May did not receive a date stamp in the office until 27 May. In this connection I would point out that I do not find anything in section 10(2)(f) of the Act which authorises the making of regulations fixing the date on which a claim is made as any later than the date on which it is actually made. As however under the general law a claim is (in the absence of a provision like section 79(6) of the Social Security Act 1975) not made until it is communicated to the person to whom it is made (see Watts v Vickers Ltd (1916) 10 BWCC 126) I doubt if this will make any difference in the present case. The benefit officer's appeal is allowed and the matter is referred to a different tribunal.

(Signed) J G Monroe  
Commissioner

Date: 26 April 1982

Commissioner's File: CSB/693/1981  
S.O. File: S.O. 2012/FIS/81