

SP claim under reg 10A - computation of 28 day time limit - if it expired on Sat but DSS arranges for mail not to be delivered on Sat date claim rec'd will be Sat if it would otherwise have been delivered on that day.

JJS/10/LM

Commissioner's File: CSB/788/1987

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Maria Donnery

Social Security Appeal Tribunal: Manchester

Case No: 069/01

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside. I refer the case to a differently constituted social security appeal tribunal for determination in accordance with the directions contained in the course of this decision.

2. The claimant appeals with leave of the tribunal chairman against the decision of the Manchester social security appeal tribunal given on 24 April 1987 which confirmed the decision of the adjudication officer refusing her a single payment for carpets.

3. The issue in this appeal relates to the computation of time for the purpose of regulation 10A(1) of the Supplementary Benefit (Single Payments) Regulations. The claimant sought a single payment for carpets for her new home. Taking the case at the most favourable to her she became the tenant of the new home on 13 September 1986. On Thursday 9 October 1986 she sent a registered letter to the correct benefit office in the Department of Health and Social Security. Her letter was not delivered by the Post Office until Monday 13 October. The Department of Health and Social Security office is closed on a Saturday and a Sunday and the Post Office does not deliver mail on those days. The adjudication officer found that the date of claim was 13 October 1986 and refused a single payment because in his opinion it was not made within 28 days of the commencement of the tenancy. The claimant appealed to the tribunal who found that her tenancy commenced on 13 September 1986 and that her claim for a single payment for carpets was received at the Department of Health and Social Security on 13 October 1986. It was further found that the appellant posted her claim on 9 October 1986. The members of the tribunal gave the following reasons for their decision:

"The appellant's tenancy commenced on 13.9.86 and rent was paid from that date. Therefore a period of 28 days from the commencement of the appellant's tenancy terminates on 10.10.86. Her application for a single payment was not therefore received within the time-limit set out in Reg 10(1)(2) of Single Payments Regulations if the claim was not delivered to DHSS on 10.10.86 either by hand or through the post."

The chairman of the tribunal gave the claimant leave to appeal.

4. Regulation 3(3) of the Supplementary Benefit (Claims and Payments) Regulations 1981 is as follows:

"(3) The date on which a claim for benefit is made shall be -

(a)

- (b) in any other case, the date on which it is received at an office of the Department."

The material part of regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981, as amended, is as follows:

"10A(1) Subject to the further conditions of paragraph (2) a single payment shall be made in respect of miscellaneous furniture and household equipment needs (other than any item to which regulation 9 applies) where the claimant or his partner has within the 28 days immediately preceding the date of claim become the tenant or owner of an unfurnished or partly furnished home, notwithstanding that he is not yet in actual occupation of that new home,

5. The claimant in her grounds of appeal argues that her claim was sent and should have been received at the office of the Department of Health and Social Security within 28 days of her being granted the tenancy of her new home and that it was frustrated because the office was closed on the Saturday and Sunday. She argues that since Monday 13 October was the first available date on which her claim could be received the time limit should be extended until that date. In support of her argument she relies upon the following passage from the judgment of Lord Denning in Pritam Kaur v S. Russell and Sons Limited (1973) 1 All ER 617 at 620

"So I am prepared to hold that, when a time is prescribed by statute for doing any act, and that act can only be done if the court office is open on the day when the time expires, then, if it turns out in any particular case that the day is a Sunday or other dies non, the time is extended until the next day on which the court office is open.

In support of this conclusion, I would refer to Hughes v Griffiths. It was on a different statute, but the principle was enunciated by Erle CJ

"Where the act is to be done by the court, and the court refuses to act on that day, the intendment of the law is that the party shall have until the earliest day on which the court will act!"

It is submitted by the adjudication officer now concerned that the claim cannot be regarded as having been made on any date other than 13 October 1986. In support of this contention he relies on regulation 3(3) of the Supplementary Benefit (Claims and Payments) Regulations which refers to the date upon which the letter was actually received at the office.

6. It seems to me that the starting point when considering a claim under regulation 10A is for the tribunal to ascertain the date of the claim, it then excludes the day of the claim and counts back 28 days. In this way the members can find whether or not the claim is defeated by virtue of the time limit. In the instant case the tribunal took as the starting point the date upon which the tenancy commenced and worked forward. No doubt this was an error, but I would regard it as a venial error if the matter had ended there. But in computing time the members of the tribunal did not exclude either 13 September (which would be the date to be excluded on the method adopted by them) or the date of claim. So in computing the period of 28 days the tribunal was one day out. On the method adopted by them it would have been Saturday 11 October which was the last day for the doing of the act. The method of dealing with time had another consequence, namely that the tribunal never made a finding as to the date of claim and that date is of great importance in the instant case.

7. The adjudication officer now concerned submits that the date of claim was the date upon which the letter was delivered by the Post Office to the offices of the Department, namely the Monday 13 October 1986. I have considered whether the "date of claim" as referred to in section 10A(1) could be said to be a different date to that on which a claim

for benefit is made. I do not think it is and it seems to me that the date of claim is to be found by reference to regulation 3(3) of the Supplementary Benefit (Claims and Payments) Regulations 1981. It is the date on which the claim is received at the office of the Department of Health and Social Security, but what is the position if the Department of Health and Social Security puts it out of its power to receive the claim. Kaur's case dealt with the limitation period prescribed by the Limitation Act 1939, section 2(1), as amended by The Law Reform (Limitation of Actions etc.) Act 1954 and the Court of Appeal considered the effect where periods of time expired on days when court offices are closed. It seems to me that the law was well summarised in the following passage from the judgment of Megarry J, as he then was, which appears at page 626 of the report:

"There are a number of cases which support the general rule that a statutory period of time, whether general or special, will, in the absence of any contrary provision, normally be construed as ending at the expiration of the last day of the period. That rule remains; but there is a limited but important exception or qualification to it which may be derived from a line of authorities which include Hughes v Griffiths, Momford v Hitchcocks, the judgment of Sellers (LJ) in Hodgson v Armstrong and the Scottish cases. If the act is to be done by the person concerned is one for which some action by the court is requisite, such as issuing a writ, and it is impossible to do that act on the last day of the period because the offices of the court are closed for the whole of that day, the period will prima facie be construed as ending not on that day but at the expiration of the next day upon which the offices of the court are open and it becomes possible to do the act."

Now it seems to me that this general principle of law is to be applied in a case such as the instant one. In order for the claim to be made it is not alone necessary for the claimant to despatch the form but it is also necessary for the office of the Department to receive it. In my judgment if the office of the Department puts it out of its power to receive the claim by closing its offices and also arranging with the Post Office not to deliver mail on the days upon which the office is closed, then, it puts it out of its power to receive the claim. It may be that the claim can be received by the office of the Department whether such office is open or closed, but it cannot be received in circumstances where the Department arranges that mail should not be delivered. In her submission to me the adjudication officer now concerned refers to no deliveries being made by the Post Office on days upon which the office of the Department are closed. It will be a question of fact for the new tribunal to find whether such is by arrangement between the Department and the Post Office, and then to consider whether the Department has put it out of its power to receive claims on a Saturday. If they come to the conclusion that it did and find that in the normal course of delivery the claim would have been delivered on that day then such is the date of claim. I am reinforced in the view which I have taken by the decision of the Court of Appeal in Hodgson v Armstrong [1967] 2 QB 299 (one of the authorities referred to in Kaur's case). It was a case where the office of a county court was closed on a Saturday and where there was a standing arrangement with the Post Office that all mail should not be delivered until Monday and where an application for a new tenancy under the Landlord and Tenant Act 1954 would have been delivered to the court offices if it had not been for such arrangement. Sellers LJ dealt with the law which has to be applied in such a case in the following passage at p. 322:

"But on the whole it seems to me that the right conclusion is that when the county court directed that mail would ordinarily be delivered on the Saturday should not be so delivered but should be held by the Post Office until the following Monday, or in this particular case Tuesday, the county court were constituting the Post Office their bailies of the mail and accordingly it could rightly be said that the tenant's application was made at the latest on the Saturday."

I have had regard, also, to Lang v Devon General Limited [1987] ICR 4 in which it was held that where an application would have been delivered by the Post Office to an industrial

tribunal office on a Saturday, but for an agreement between those offices that Saturday mail would be held by the Post Office and delivered on Monday, Saturday and not Monday was the day of presentation.

(Signed) J J Skinner
Commissioner

Date: 9 June 1988