

When is ^{valid} claim for SB "made" — see also CSB 900/85

RFMH/SH/10/MD/LS

Commissioner's File: CSB/868/1985

C A O File: AO 2965/85

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name: Michael Costello

Social Security Appeal Tribunal: Lewisham

Case No: 13/18/07

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 18 February 1985 is not erroneous in point of law, and accordingly this appeal fails.
2. This is the claimant's appeal on a point of law against the decision of a social security appeal tribunal dated 18 February 1985, leave having been granted by me. The claimant asked for an oral hearing of the appeal, a request to which I acceded. At the hearing held before me, the claimant attended and was represented by Mr J Luba, a legal officer from the Child Poverty Action Group. The adjudication officer was represented by Mr E O F Stocker, Barrister. I am grateful to them both for their detailed and helpful submissions.
3. Following a two year period of lecturing in psychology at the University of Zambia the claimant, a single man then aged 40, returned to Great Britain on 5 November 1984 and lived as a member of his father's household. On 7 November 1984 he registered as unemployed at his local unemployment benefit office and made an oral claim for a supplementary allowance. Claim form B1 was issued to him on that date but it was not in fact received back by the local social security office until 4 December 1984. It was accompanied by another form B1 dated 4 December 1984 which had been issued by the same unemployment benefit office. The claimant claimed to be entitled to backdate the claim to 7 November 1984. The Secretary of State accepted the date of claim as 4 December 1984 and the adjudication officer refused to backdate the claim, as he was not satisfied that the claimant had established continuous good cause for the delay in submitting his claim. Thereupon the claimant appealed to the tribunal.
4. The claimant attended and was represented at the hearing before the tribunal on 18 February 1985. The tribunal dismissed the appeal and their findings on questions of fact were:-

"The appellant is single and lives in his father's household. He claimed supplementary benefit on 7 Nov 84, and was given a B1. He went to Aberdeen on 9 Nov 84, returned 20 Nov 84, had a chest infection after this, tried to contact DHSS week commencing

26 Nov 84, but unsuccessful, went to local office 30 Nov 84, large queues, and finally on 4 Dec completed one B1 and handed in the original one from 7 Nov 84. He had previously completed a B1 in Sept 1983, which resulted in an urgent payment being made. Previously in 1982, he said that B1 was not sent through post. He did not think that it needed to be returned immediately, once he had made his claim."

The reasons for decision were:-

"[The claimant] is a literate person who has dealt with a B1 in 1983, after which he received an urgent payment and in 1982, before the postal claim system came into operation. He stated he did not appreciate the urgency of B1 which he collected on 7 November 1984, being under the impression that once the claim was made, it would be dealt with in due course, although the notation on the top of form B1 stressed the need to return the form quickly. [The claimant], even with his chest complaint, and after, could still have returned the form before 4th December and taking into consideration R(SB)6/83 and the ruling therein the Tribunal did not accept that [the claimant] had advanced any substantial fact or reason to show good cause for his failure to present his B1 before 4 December 1984. Regulation 3(2) and (3), and 5(2)(a) of the Claims and Payments Regulations have been correctly interpreted and payment was not operative for receipt of the B1 on 4 December 1984."

5. The claimant submits that the tribunal erred in law on various grounds, in particular in concluding that the date of claim was 4 December 1986. As this issue is crucial, I propose to consider it first.

6. In pursuance to section 14(2)(a) of the Supplementary Benefits Act 1976 ("the Act"), the Supplementary Benefit (Claims and Payments) Regulations 1981 as amended, ("the Regulations") so far as relevant to the present appeal, provide as follows:-

- "3. - (1) Subject to the following provisions of this regulation, every claim for benefit shall be made in writing to the Secretary of State either -
- (a) in the case of a claim for a pension or allowance, on a form approved for the purpose by him and supplied without charge by such persons as he may appoint or authorise for the purpose; or
 - (b) ...
- (2) A claim for benefit -
- (a) in the case of a claim for an allowance by a claimant required to be available for employment pursuant to section 5, shall be delivered or sent (for forwarding to an office of the Department) to the relevant unemployment benefit office, unless in any case or class of cases the Secretary of State directs that sub-paragraph (b) shall apply;
 - (b) in any other case, shall be delivered or sent to an office of the Department.
- (3) The date on which a claim for benefit is made shall be -
- (a) in a case to which paragraph (2)(a) applies, the date on which it is received at the relevant unemployment benefit office;

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

(4) Where -

(a) ...

(b) a claim for a pension or allowance is made other than in writing, but is subsequently made in writing,

the Secretary of State may treat the claim as if it had been duly made in the first instance.

4. Every person who makes a claim for benefit shall furnish such certificates, documents, information and evidence for the purposes of determining the claim... as may be required by the Secretary of State and, if reasonably so required, shall for that purpose attend at any office or place as the Secretary of State may direct.

5A. Where, before the determination of any claim, the Secretary of State, pursuant to regulation 4, requests the claimant -

(a) to furnish the information requested on a form given to him for that purpose; or

(b) to attend at an office or place in the manner directed,

and the claimant fails to furnish such information within 21 days of being so required or, as the case may be, fails to attend as directed, the Secretary of State may, unless he is satisfied that such failure was reasonable in all the circumstances, treat the claim as having been withdrawn."

7. Mr Luba based his contention that the claimant had made a valid claim for a supplementary allowance on 7 November 1984 on the following argument. It was not in dispute that the claimant was required to be available for employment pursuant to section 5 of the Act. Prior to 6 December 1982 a claimant was required under regulation 3(2)(a) of the Regulations to submit his claim to the relevant unemployment benefit office, who then forwarded the completed form B1 to the relevant social security office. Subsequently the procedure was changed, so that although the relevant unemployment benefit office still issued form B1, the claimant was responsible for sending it to the relevant social security office. In the present case the claimant had properly submitted his claim to the relevant unemployment benefit office as required by regulation 3(2)(a). There was no evidence that the Secretary of State had directed that regulation 3(2)(b) should apply nor was the claimant put on the alert that such a direction had been issued. Further, even if such a direction had been made, it was ultra vires, invalid and of no effect as it affected a class of cases, (presumably on the basis of the Court of Appeal judgment in Secretary of State for Social Services v. Cotton (11 December 1985 not reported). Any other interpretation of the position would make nonsense of regulation 3(2)(a). Whilst Mr Luba conceded that regulation 3(1) required every claim for benefit to be made in writing, he submitted that this meant reduced to writing. He found support for this interpretation by the fact that the requirement in regulation 3(1) was "subject to the following provisions of this regulation," and regulation 3(4)(b) made specific provision for a claim made other than in writing but subsequently made in writing. He argued that on 7 November 1984 the claim was admitted, the date being noted on form B1, which was issued to obtain further information for the purposes of determining the claim pursuant to regulation 4. Mr Luba agreed that the required information had not been furnished within 21 days, so that the Secretary of State had a discretion under regulation 5A to treat the claim as having been withdrawn. He did

not exercise this discretion. It followed that the claim was still subsisting on 4 December 1984, when form B1, duly completed and signed by the claimant, was received by the social security office. The note at the top of form B1 "you could lose benefit if we do not get your form within three weeks.." referred to the Secretary of State's discretion contained in regulation 5A. The claimant had made a valid claim on 7 November 1984 so that the question as to whether he had established good cause for the delay in submitting his claim did not arise.

8. Mr Stocker submitted that regulation 3(1) of the Regulations required a claim for supplementary benefit to be in writing to the Secretary of State. However this was qualified by regulation 3(4)(b). He referred me to the unreported decision on Commissioner's file CSB/900/1985 in which he had explained the application of that regulation as follows (paragraph 12):-

"Mr Stocker told me that the Secretary of State had indeed taken notice of the complexities posed by form B1. In effect, he uses the discretion conferred upon him by regulation 3(4)(b) to give claimants three weeks' grace. The oral request for a form B1 is regarded as "a claim for a pension or allowance.. made other than in writing. "The date is established by stamping on the form B1 (as was done in the case before me) of the date upon which it was issued. If within three weeks thereafter (or such longer period as the Secretary of State may in particular cases allow) form B1 is returned duly completed, the Secretary of State invokes regulation 3(4)(b) and treats the claim as if it had been made on the occasion when the form B1 was issued. But if Form B1 is returned more than three weeks after its issue - and the Secretary of State is not disposed to enlarge that period -he declines to treat the request for and issue of form B1 as the making of the claim. In such case the claim will be "made" on the day upon which form B1 is received at an office of the Department of Health and Social Security. To the extent that it is "late", it will then be for the adjudicating authorities to consider the issue of "continuous good cause for failure to make the claim before the day on which it was made" (regulation 5(2) of the Claims and Payments Regulations). Mr Stocker rightly stressed that in such circumstances the adjudicating authorities are concerned only with what the Secretary of State has or has not done pursuant to regulation 3(4)(b). They are not concerned with why he has so acted."

9. Mr Stocker referred me again to the above unreported decision with regard to the application of regulation 4 (paragraph 13):-

"..Regulation 4 opens: "Every person who makes a claim for benefit shall furnish.. etc". Regulation 3(4)(b) does not permit the Secretary of State to treat a non-written claim as a claim "duly made" until that claim "is subsequently made in writing". The local benefit officer appears to have regarded the issue of this claimant with form B1 as a requirement by the Secretary of State (under regulation 4) for furnishing of "information... for the purpose of determining the claim". But, of course, that will not do. At that stage no claim had been made either actually or by virtue of the "treating" provision in regulation 3(4)(b). The Chief Commissioner expressly decided so much in decision on Commissioner's file CSB/287/1984."

Mr Stocker argued that before regulation 4 could apply it was a precondition that a valid claim had been duly made. He found further support for this conclusion in regulation 5(A) which provided "Where, before the determination of any claim, the Secretary of State, pursuant to regulation 4 required the claimant..." thereby presupposing the existence of a valid claim. The evidence clearly indicated that the Secretary of State had not exercised his discretion under regulation 3(4) but instead had treated the claim as made afresh on 4 December 1984. The question then arose whether there was good cause to treat the claim as made from a date earlier than 4 December 1984 pursuant to regulation 5(1) and (2)(a) of the Regulations. I agree with this submission.

10. I reject Mr Luba's submission because it is based on the fallacy that a valid claim existed on 7 November 1984, when Form B1 was issued. Further, I do not accept that the warning on top of form B1 "You could lose benefit if we do not get your form within three weeks." was a direct reference to the 21 day period mentioned in regulation 5(A). If it had been so intended, the warning would have specifically stated 21 days and not three weeks, albeit that the length of the period is the same. In view of my conclusion that the claimant did not make a valid claim for a supplementary allowance on 7 November 1984, I do not propose to comment on Mr Luba's arguments on the validity of any direction issued by the Secretary of State with regard to regulation 3(2)(a) and whether the claimant complied with that condition. In my view the matter is not decisive of the issue.

11. For the reasons stated above the tribunal right concluded, in my view, that the date of claim was 4 December 1984. Next I have to consider whether the claim should be backdated to 7 November 1984 under regulation 5(2)(a) of the Regulations.

12. The effect of regulation 5(1) of the Regulations is that the prescribed time for claiming a supplementary allowance is the day for which a claim is made, and that if a claim is not made at that time the claimant is disqualified for receiving benefit. However, regulation 5(2) provides that if a claimant can show that he had continuous good cause for being late throughout the period of delay, the prescribed time can be extended to the date of the claim, with the result that no disqualification is incurred.

13. The claim in respect of the period from 7 November 1984 was made on 4 December 1984 and was clearly out of time. The claimant can only escape disqualification if he can establish that he had continuous good cause for being late throughout the period of delay.

14. Good cause means some fact, which having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as he did, (R(SB)6/83 approving C.S.371/49 (KL)). The onus of proving good cause lies on the claimant.

15. It is well established that a person's ignorance of his rights - or the time limits for claiming - is not in itself good cause for a late claim. However there can be good cause for the delay, if the delay was due to a mistaken belief reasonably held. The principle has been frequently applied by the Commissioner in cases where the claimant has made no enquiries, but the circumstances have been such that the Commissioner has held that there was nothing about which the claimant could reasonably be expected to enquire.

16. In the present case form B1 was issued on 7 November 1984. The note at the top of the form states "Please do your best to fill in this form. If you have problems... don't be afraid to ask at your Social Security Office. Their address is on the envelope.. when you have filled in the form send it to us quickly. You could lose benefit if we do not get your form within three weeks. We may visit you later or ask you to visit us at the Social Security Office." These instructions are clear and if the claimant was uncertain about the significance of the three week period, he should have made enquiries. The claimant could have returned the form prior to leaving for Aberdeen or, in the alternative, he could have sent it duly completed any time thereafter in the envelope provided. In my view the tribunal were justified in concluding that the claimant had not established continuous good cause throughout the period of delay based on the evidence before them. Further I agree with their conclusion that the claimant's belief that there was no urgency to return the form because he had already made a valid claim was not based on reasonable grounds. Box 12 of form B1 clearly states "Sign here... I claim supplementary benefit.". The claimant is "a literate person" and this should have been enough to put him on the alert that mere personal attendance did not constitute a valid claim.

17. Finally I have to consider the other grounds of appeal. Mr Luba submitted that as the tribunal had found as fact that the claimant "claimed supplementary benefit on 7 Nov 84," their conclusion that supplementary benefit was not payable from that date was perverse and erroneous in law. I reject this argument. The findings of fact must be read in their context which clearly mean that although the claimant made a claim on 7 November 1984, it was not in due form as he was then given a form B1.

18. Regulation 19(2)(a) of the Social Security (Adjudication) Regulations 1984 provides that "The chairman of an appeal tribunal shall record in writing all decisions.." Mr Luba submitted that the tribunal chairman failed to comply with the statutory requirements in that the text of the actual decision was written by the clerk and not by the chairman, although signed by him. I do not agree. In the unreported decision on Commissioner's file CSSB/1/82 (paragraph 9 and approved in R(SB)13/83, paragraph 13)

"it was a matter of complaint on behalf of the claimant that the record of the tribunal's decision showed that it was not written by the chairman of the tribunal although signed by him. In my opinion a chairman of a supplementary benefit appeal tribunal makes himself responsible for the contents of the record of the tribunal decision by signing that record. The record of the tribunal's decision, findings and reason should however be made by the chairman himself or at least under his specific direction, it being his responsibility also to ensure that the record represents the corporate view of the members."

In the present case there is no evidence to support a finding that the entry made by the clerk in Box 4 of form AT3 was not made under the specific direction of the chairman, who signed the decision. I do not accept that the tribunal's decision was erroneous in law on this ground.

19. For the reasons stated above the tribunal's decision dated 18 February 1985 was not erroneous in law and accordingly I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

Date: 13 February 1987