

See also CSB/964/1985

DGR/SH/8/MD

COMMISSIONERS DECISION
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Commissioner's File: CSB/1021/1985

C A O File: AO 3232/85

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

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 26 March 1985 is not erroneous in point of law, and accordingly this appeal fails.
2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 26 March 1985. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was present, was represented by Miss Lorna Findlay of the Child Poverty Action Group, whilst the adjudication officer was represented by Mr C A M E d'Eca, of the Solicitor's Office of the Department of Health and Social Security.
3. The claimant, a Dutch citizen, entered the United Kingdom on 28 April 1982 with limited leave to remain here until 28 October 1982. A letter from the Home Office dated 14 November 1984 states that "no application has been received for leave to remain" and that the claimant was told "to leave the United Kingdom in a letter of 4 November 1982". On 6 May 1982 the claimant claimed supplementary benefit and was awarded an allowance until 1 December 1982. A further claim for benefit was made on 23 May 1985 and one payment was in fact made. However, on 10 August 1983 the benefit officer (now the adjudication officer) decided the claimant was not entitled to benefit. On 6 September 1983 the claimant appealed to the tribunal.
4. However, on 17 April 1984 the claimant, having moved to Devon, made a further claim for supplementary benefit and on 4 May 1984 payment was made by the local office for the period from 18 April 1984 to 2 May 1984. But the adjudication officer contacted the Ashford local office, and on 15 May 1984 decided that there was no entitlement. On 20 May 1984 the claimant appealed against that decision. On 26 May 1985 the tribunal heard both appeals.
5. Needless to say, exactly the same considerations applied in both cases, and the tribunal confirmed the benefit officer's and adjudication officer's decisions. They gave as the reasons for their decision the following:

the letter of the Home Office, an application had been made, but she was unable to support this allegation by any copy or other documentary evidence of any such application. In any event, documentary evidence that an application had been made was not before the tribunal, and once again they had no option but to conclude that the claimant had made no such application and was therefore unable to rely on the one provision under regulation 21(1) which might otherwise have been of assistance to him. Moreover they explained the position with sufficient particularity.

9. However Miss Findlay went on to contend that the claimant could rely on the two judgments of the European Court - Hoeckx v. Openbaar Centrum Voor Maatschappelijk Welzijn, Kalmthout and Scrivner v. Centre Public D'aide Sociale De Chastre. According to Miss Findlay, the effect of these two cases was to prevent discrimination between British and foreign nationals where there is entitlement to something which might be regarded as "a social advantage" within the meaning of Regulation (EEC) No 1612/68. Supplementary benefit is such a social advantage. However, I am satisfied that those two cases of the European Court have no bearing on the present issue. The claimant was at the relevant time either an employed or self-employed person within the definition contained in Article 1(a) of Regulation (EEC) No.1408/71 (as amended) or he was not. If he was not an employed or self-employed person, then he could obtain no benefit from any part of the community law. But if he was an employed or self-employed person, then he could on proper application obtain a residence permit, and with that he would be taken out of the provisions of regulation 10(6)(b) and the question of discrimination simply would not arise. An employed or self-employed person who has a residence permit is in exactly the same position as a British national resident here.

10. Accordingly I do not see in what respect it can be said that the tribunal erred in point of law and this appeal necessarily fails.

(Signed) D.G. Rice
Commissioner

Date: 5th August 1986