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RAS/2/LMM/LM

Commissioner's File: CSB/004/91

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal dated 31 October 1990 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant had been in receipt of supplementary benefit for some time when, on 17 June 1988, he wrote asking that he be put onto the long-term, higher, rate of benefit as from 16 July 1977 when apparently benefit was first awarded. In response to that letter an Adjudication Officer appears to have made two decisions, recorded in the papers before me as follows -

"The claimant is entitled to Supplementary Benefit at the Long Term Scale Rate from February 1988.

This has now been reviewed, the claimant is entitled to Supplementary Benefit at the Long Term Scale Rate from 27.4.87."

The claimant then appealed to the tribunal whose decision was that "the appellant is entitled to benefit at the long-term rate from 27.4.86 but not for any period before that." They gave as their reasons that -

"1. Entitlement from 1986 and not 1987 because in 1986 he was signing quarterly and therefore did not have to wait 52 weeks. (Reg.7(3)(b) of the Requirements regs.)

2. Appellant is not entitled to long term rate prior to 1986 by virtue of Reg.69 of the Adjudication Regs. Reg.72 does not apply because it does not appear that any mistake or omission was made by any officer of the department, since the appellant continued to sign as available for work and sought work. His ear trouble was not such as to make him incapable of any sort of

work, and the department had no grounds for deciding that he was incapable of work and therefore no mistake or omission was made."

The claimant now appeals to the Commissioner with leave of the tribunal chairman in effect on the ground that the reasons given by the tribunal were insufficient.

3. In the ordinary course the claimant could not have had his entitlement to the long-term rate of benefit backdated for more than 12 months before the date he asked to go on to that higher rate. That is the effect of regulation 69 of the Social Security (Adjudication) Regulations 1986 as in force at the material time. But if he can show that regulation 72 of those Regulations applies the 12 months' restriction is lifted. The adjudication officer who gave the second of the two decisions mentioned above accepted that regulation 72(a) applied because " he had omitted to consider regulation 6(e)[of the Social Security (Conditions of Entitlement) Regulations 1981] at the date on which the medical evidence mentioned above was received." That date appears to have been 27 April 1986 and, according to the current adjudication officer's written submission dated 8 November 1991, there was a decision in relation to the claimant's benefit on 16 July 1986 for the period 27 April 1986 to 2 May 1986. The original adjudication officer having decided that regulation 72(a) allowed back-dating to 27 April 1986 then went on to decide that, because of the 52 weeks condition imposed by regulation 7(2)(b) of the Supplementary Benefit (Requirements) Regulations 1983, the long-term rate would not start until 27 April 1987. The tribunal however pointed out that, as regulation 7(3)(b) of those Regulations applied, the claimant was entitled to be treated as having satisfied the 52 weeks condition and therefore was entitled to the long-term rate from 27 April 1986. But, as the current Adjudication Officer points out, the tribunal fell into error in on the one hand giving the claimant the benefit of regulation 72 of the Adjudication Regulations while on the other hand saying that provision did not apply.

4. I agree with the claimant's representative and with the current adjudication officer that the tribunal's reasons are defective and I accordingly allow this appeal.

5. The new tribunal must of course rehear the case in its entirety but their principal concern may well be the application of regulation 72(a) of the Adjudication Regulations. As to that matter they will need to identify "the decision under review" because that is the decision which has to be investigated as to whether there was a mistake etc. It appears from the current adjudication officer's submissions that there have been several decisions concerning the claimant's supplementary benefit over the years since benefit was first awarded. The tribunal will need a submission from the adjudication officer identifying the various decisions which have been made so that they can then identify the relevant decision for the purposes of regulation 72(a), and, in relation to that matter, they may be assisted by

CSB/1331/1989, particularly paragraph 11, in which the operation of what had by then become regulation 72(1)(a) of the Adjudication Regulations is explained.

(Signed) R A Sanders
Commissioner

Date: 12 May 1992