

CPAC

ATH/SH/6

Commissioner's File: CSB/006/1991

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I disallow this appeal by the claimant. The decision of the social security appeal tribunal dated 27 April 1990 was not erroneous in law.

2. The claimant was born on 14 August 1937. In 1983 he developed diabetes and in 1987 or 1988 he developed angina. He reached 50 years of age on 14 August 1987. At that time he was unemployed and in receipt of supplementary benefit at the ordinary rate for himself and his wife and two dependent children. On 31 October 1989 the claimant, through his solicitors, requested that he be paid the long-term rate of benefit with effect from his 50th birthday, 14 August 1987. By a decision issued on 1 March 1990 the adjudication officer decided that the claimant's entitlement to supplementary allowance was not subject to the condition that he was available for employment from 14 August 1987. The ground for that decision was that the adjudication officer was satisfied that regulation 6(u) of the Supplementary Benefit (Conditions of Entitlement) Regulations applied in that the circumstances of the claimant's age, namely 50, and ill-health, namely diabetes, were analogous to the circumstances mentioned in regulation 6(e) and that it was unreasonable to require the claimant to be available for employment. The claimant, through his solicitors, appealed on the ground that regulation 72 of the Social Security (Adjudication) Regulations was satisfied for the reasons set out in the letter of appeal dated 9 March 1990. On 27 April 1990 the social security appeal tribunal confirmed the decision of the adjudication officer. The claimant appeals with leave of the tribunal chairman.

3. The law

Section 5(1)(a) of the Supplementary Benefits Act 1976 provided that the right of any person to a supplementary allowance was subject except in prescribed cases to the condition that he was available for employment. Regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations provided that a claimant should not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs applied:-

- " (a)-(d) [not relevant]
- (e) by reason of physical or mental disablement he has no further prospects of employment and in the 12 months immediately preceding has -
- (i) on average worked for less than 4 hours a week,
 - (ii) been available for employment under section 5 for not less than 39 weeks,
 - (iii) made reasonable efforts to find employment and not refused any suitable employment;
- (f)-(o) [not relevant];
- (p) he is a person aged not less than 60;
- (q)-(t) [not relevant];
- (u) the preceding paragraphs do not apply to him but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

Where a claimant was entitled to supplementary allowance without being subject to the condition of availability for employment, he might be entitled to the long-term rate under regulation 7 of the Supplementary Benefit (Requirements) Regulations: see paragraph 5 below.

4. Section 104(1) of the Social Security Act 1975 provides:-

- " 104. (1) Any decision under this Act of an adjudication officer, a social security appeal tribunal or a Commissioner may be reviewed at any time by an adjudication officer, or, on a reference by an adjudication officer, by a social security appeal tribunal, if -

- (a) the officer or tribunal is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or
- (b) there has been any relevant change of circumstances since the decision was given; ...

but regulations may provide that a decision may not be reviewed on the ground mentioned in paragraph (a) above unless the officer or tribunal is satisfied as mentioned in that paragraph by fresh evidence."

Where a decision was revised on review so as to make supplementary benefit payable or to increase the amount of benefit payable, the payment could not be backdated for any period longer than 12 months "before the date on which the review was requested or, where no request is made, the date of review": regulation 69(1)(b) of the Adjudication Regulations. However, that limitation did not operate by virtue of regulation 72(1) of those regulations if the adjudicating authority making the review was satisfied either -

- " (a) that the decision under review was erroneous by reason only of a mistake made, or of something done or omitted to be done by an officer of the Department of Health and Social Security [now the Department of Social Security] or of the Department of Employment acting as such, or by an adjudicating authority or the clerk or officer of such an authority, and that the claimant and anyone acting for him neither caused nor materially contributed to that mistake, act or omission; or
- (b) that where the grounds for review are that the decision was given in ignorance of or was based on a mistake as to a material fact, those grounds are established by evidence which was not before the adjudicating authority which gave the decision; that the claimant and anyone acting for him could not reasonably have produced that evidence to that authority at or before the time the decision was given, and that it has been produced as soon as reasonably practicable."

5. Regulation 7 of the Requirements Regulations provided a qualifying period for the long-term rate. It provided that in the case of a claimant under the age of 60 years, such a claimant must have been in receipt of supplementary benefit without the need to be available for employment for a period of 52 weeks before he or she qualified for the long-term rate: regulation 7(1)(a) and (2)(b). Thus, in the present case, if the claimant, when he attained the age of 50 on 14 August 1987, became entitled to supplementary benefit without the condition of being available for employment, he would need to be in receipt of supplementary

benefit without that condition "for a continuous period of not less than 52 weeks" i.e. until 14 August 1988. That point was appreciated by the appeal tribunal because in Form AT3, box 2 they stated:-

"... 31.10.89: request review: back to 50th birthday in fact intended to be assessed as to entitlement as from 49th so arrears paid from 50th birthday."

6. The appeal tribunal's decision was set out in Form AT3, box 3 as follows:-

"Decision is confirmed: condition of availability for employment waived as from 14/8/87. No entitlement to LTSR: as qualifying period of 52 weeks brings beyond period when SB applicable."

In their reasons for their decision in Form AT3, box 4 they stated:-

"Tribunal considered Conditions of Entitlement Regs and accepted from 14/8/87 i.e. 50th birthday, [claimant] satisfied 6(u) by analogy with 6(e) and at no date earlier i.e. age of 50 years coupled with health problems - diabetic and prone to bouts of pneumonia and pleurisy analogous to disability rendering no further prospects of employment [;] further requirements of 6(e) satisfied and unreasonable require [claimant] be available for employment. Therefore satisfied 52 weeks qualifying period for entitlement on 14/8/88. i.e. after outset IS. No notional entitlement as at 11/4/88. R72 not considered applicable: no error or omission: relevant health problems and 8/9/83 and decision taken in full knowledge these."

The word in the manuscript (at page T13) before "8/9/83" is illegible to me; it has been typed as "and" but that does not make sense. However, it is clear that the appeal tribunal found that the claimant satisfied regulation 6(u) of the Conditions of Entitlement Regulations as from 14 August 1987 (when the claimant attained the age of 50 years) by reason of his age and health problems and it follows that the claimant would not have been entitled to the long-term rate until he had satisfied the qualifying period i.e. after the end of the period of 52 weeks beginning on 14 August 1987. In other words, he would not have been entitled to the long term rate until 14 August 1988. On that date supplementary benefit had been replaced by income support and the claimant could not on that date i.e. 14 August 1988 have become entitled to the long-term rate of supplementary benefit. It follows that, if the claimant was not entitled to the long-term rate because it had been abolished, there was no question of backdating the long-term rate and regulations 69 and 72 of the Adjudication Regulations did not fall to be considered.

7. In their letter dated 29 June 1990 applying for leave to appeal the claimant's solicitors gave two grounds of appeal.

First, they stated:-

"We do not consider that the tribunal has given proper reasons as to why our application on a particular date was refused. The tribunal appears to have only given reasons as to why entitlement began at a later period.

The appeal was to establish entitlement from a particular date, which was refused without adequate reason for the decision."

The solicitors have, however, in their letter dated 30 October 1989 (requesting on behalf of the claimant the long-term rate to be payable to the claimant), expressly requested "arrears to our client's 50th birthday i.e. 14 August 1987". As I have said, the appeal tribunal accepted that on the claimant's 50th birthday, 14 August 1987, the claimant satisfied regulation 6(u) and that he was entitled to supplementary benefit without the condition of being available for employment. The appeal tribunal explained in their reasons that the claimant would have satisfied the qualifying period on 14 August 1988 and it seems to me that their reasons are perfectly adequate.

8. The second ground of appeal was that the tribunal "does not appear to have taken into consideration the complaint of angina suffered by our client and reported to the tribunal". The adjudication officer in paragraph 4 of his submission on the appeal has made a similar point and has submitted that the tribunal "have made no findings of fact as to whether the claimant suffered from angina nor, if he did, from what date". The adjudication officer has also submitted that the tribunal "failed to find what effect if any, such a condition would have on the claimant's prospects of employment". As I have said, the appeal tribunal found that the conditions of regulation 6(u) were satisfied on 14 August 1987 by reason of the claimant's age and ill-health. The claimant's solicitors had said in their letter dated 9 March 1990 that the claimant developed angina "in 1987/88". Even if the claimant had developed angina by his 50th birthday on 14 August 1987 any finding to that effect would have added nothing to the decision.

9. For those reasons I can find no error of law in the appeal tribunal's decision.

(Signed) A.T. Hoolahan
Commissioner

(Date) 2 March 1992