

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 unanimous decision of the Chesterfield social security appeal tribunal given on 10 May 1990 is not erroneous in point of law.

2. The claimant, Mr Geoffrey Redfearn, appeals with leave of the chairman against the decision of the tribunal confirming the decision of the adjudication officer, issued on 13 September 1989, that he was not entitled to the long-term scale rate of supplementary benefit.

3. Mr Redfearn, who is now aged 61, was a self-employed erector - presumably of steel or scaffolding - until 31 October 1986. He claimed sickness benefit until 15 December 1986 and has since then remained unemployed. Mr Redfearn claimed supplementary benefit on 15 December 1986. He then declared that he had no physical or mental disability and made no mention of any health problems on subsequent reviews. On 11 April 1988 supplementary benefit ceased to exist and income support, based upon the level of previous benefit, was introduced. On 18 August 1989 Mr Redfearn requested a review of his entitlement to supplementary benefit prior to 11 April 1988 and, in particular, that the requirement that he be available for work be waived and that he be awarded the long-term scale rate of benefit. He stated that he had developed a heart condition.

4. Mr Redfearn appealed against the adjudication officer's rejection of his application and, on 10 May 1990, it is clear from the tribunal chairman's notes of evidence that Mr Redfearn's representative sought backdating to December 1987 and based the case primarily on "age and not health problems". After what was plainly a full and careful hearing the tribunal dismissed the appeal. I do not need to recite the relevant law, which is clearly set out in the adjudication officer's submission on form AT2; it suffices to say that the tribunal held that Mr Redfearn did not satisfy paragraphs (e), (f) or (u) of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981; they found in relation to (a) that his age - he was then 59 - was not -

" ... ipso facto analogous to physical or mental disablement (in the context of paragraph (e)) ... "

5. It seems to me that that was a conclusion the tribunal were entitled to draw from the evidence before them but, however that may be, Mr Redfearn's claim had no prospect of success for the reasons set out in paragraph 5 of the submission dated 11 March 1991 by the adjudication officer now concerned with the case. It is clear that the earliest date on which Mr Redfearn could have qualified for the long-term scale rate would have been 13 September 1988, by which time supplementary benefit and consequently the long-term scale rate had ceased to exist for some 5 months.

6. In those circumstances it would be pointless for me to examine the matter further. I see no error of law in the tribunal's decision but, even if I should be wrong about that, then I would have had no alternative but to substitute my own decision dismissing Mr Redfearn's appeal.

7. The claimant's appeal is dismissed.

(Signed) M H Johnson
Commissioner

Date: 16 April 1992