

JM/SH/2

Commissioner's File: CSB/026/1990

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 3 August 1989 which confirmed a decision issued by the adjudication officer on 8 June 1989. My decision is as follows:

- (1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.
- (2) Pursuant to section 101(5) of the Social Security Act 1975 (as amended) the case is referred to the appeal tribunal for determination in accordance with the principles of law set out and referred to in this decision.

2. The case turns upon regulation 6 of the erstwhile Supplementary Benefit (Conditions of Entitlement) Regulations 1981. It is now coming on for four years since those Regulations were revoked. Before the appeal tribunal the claimant's representative expressly confined her submissions to regulation 6(e). That paragraph has no direct equivalent in the income support legislation. Moreover, the fresh appeal tribunal must consider regulation 6(u) (the often invoked "analogous" paragraph), which has no equivalent at all in the income support legislation. Paragraph (u) was the subject of two decisions by a Tribunal of Commissioners (R(SB) 5/87 and R(SB) 6/87) and of a multitude of decisions by the Commissioner. Accordingly, if it can conveniently be arranged, it would be advantageous if the chairman of the fresh tribunal has had experience of trying supplementary benefit appeals. Indeed, it is with reluctance that, so late in the day, I send a supplementary benefit case back to the appeal tribunal. There is not, however, sufficient

material in the papers before me to permit me with any confidence to make my own findings of fact and to determine the appeal in the light thereof.

3. In a submission dated 30 March 1990 the adjudication officer now concerned supports the claimant's appeal upon grounds which are manifestly well founded. (A copy of that submission must be before the appeal tribunal which rehears the case.) In those circumstances, neither party will, I trust, take it amiss if I discharge my part in these proceedings very briefly. I make no attempt to rehearse the facts. I confine myself to certain comments which may be of assistance to the fresh tribunal.

4. The error of law identified in the first two sentences of paragraph 4 of the submission of the adjudication officer now concerned is similar to that which was the subject of paragraph 8 of the decision of a Tribunal of Commissioners in R(SB) 6/87. And I quote from paragraph 9 of that decision:

"If the tribunal find that the claimant does not succeed by reference to paragraph (e) they should go on to consider paragraph (u) relating to circumstances analogous to any of the circumstances mentioned in one or more of the preceding paragraphs. It seems to us to be unlikely that, if the claimant cannot succeed under (e), he will be able to succeed under (u). But the possibility cannot be ignored by the tribunal."

5. On 6 November 1987 the claimant attained his 60th birthday. From then on, in consequence, he satisfied the terse and wholly uncontroversial criterion set out in regulation 6(b). It was not until 30 May 1989 that he requested a review of the requirement that he should be available for employment as a condition of entitlement to supplementary benefit. (By that date, of course, the whole supplementary benefit system had been out of existence for more than a year.) By virtue of his satisfaction of regulation 6(p), he had been exempt from the requirement since 6 November 1987. Accordingly, if these proceedings are to be of any practical benefit to the claimant, he must bring himself within the erstwhile regulation 72 of the Social Security (Adjudication) Regulations 1986. When considering that regulation the fresh tribunal will find invaluable guidance in the decision on Commissioner's file CSB/1331/1989 (to be reported as R(SB) 10/91). The final sentence of paragraph 9 reads thus:

"The mere administrative action of putting the claimant onto quarterly signing could not of itself give rise to any case for involving regulation 6(e) and (u), or for the Department to initiate a review for that purpose."

And the last two sentences of paragraph 11 read thus:

"It [regulation 72(1)(a)] certainly does not impose a general duty on the officers etc of the Department of their own accord constantly to keep all cases under review in order to see whether or not any particular exempting

regulation might apply. The wording of regulation 72(1)(a) does not in my judgment bear that construction and to hold otherwise would be to place an impossible burden upon officers of the Department etc."

6. The claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

(Date) 3 February 1992