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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 1 July 1992 which confirmed a decision issued by the adjudication officer on 24 November 1991. My own decision is as follows:

(1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.

(2) It is expedient that I should make fresh and/or further findings of fact and, in the light thereof, give the appropriate decision.

(3) On a date in 1986, which cannot now be better particularised, the adjudication officer decided that the claimant was not entitled to supplementary benefit.

(4) No grounds have been established by the claimant such as would justify a review of the decision referred to in sub-paragraph (3) above.

2. I note that -

(a) on form OSSC 3, signed by the claimant's representative on 24 May 1993, an oral hearing before the Commissioner was requested; but

(b) that request appears to have been, hitherto, overlooked.

That oversight is regrettable. Somewhat belatedly, I refuse the request. I can see no way in which an oral hearing could, in the circumstances of this case, contribute anything of significance to the determination of the appeal.

3. The central facts are as follows:

(a) The claimant was born on 21 November 1934 and is single.

(b) The claimant has a history of chronic anxiety state. It is significant, however, that, although she has for some years been a regular attender at the Cwmbwrla Day Centre in Swansea, it has never been suggested that she should have an appointee to look after her social security concerns; and her representative in this appeal - Ms L. Harris, of the Welfare Rights Resource Team ("the WRRT") of the Social Services Department of the West Glamorgan County Council - has never urged that the claimant should have at any time had an appointee. (I return to this in paragraphs 5 to 7 below.)

(c) The claimant has - or has access to - independent means. (I develop this in paragraph 8 below.)

(d) In 1986 the claimant made a claim for a single payment for a cooker. That claim was refused.

(e) At no time was supplementary benefit paid to the claimant.

(f) From the refusal referred to in sub-paragraph (d) above, it falls to be inferred that at that time the adjudication officer made a decision that the claimant was not entitled to a supplementary allowance. No decision to that effect was issued to the claimant; although the claimant <u>was</u> informed that her single payment claim had been refused.

(g) On 15 April 1991 (more than three years after supplementary benefit had disappeared from the statute book) the claimant applied for a review of "all decisions relating to the amount of Supplementary Benefit which was in payment to me before April 1988, on the grounds that ... etc". That application was made on a form furnished by the WRRT. The "grounds" were standardised and made no attempt to refer to any circumstances particular to this claimant.

(h) Unsurprisingly (since no supplementary benefit ever <u>had</u> been in payment to the claimant), the adjudication officer decided that there was no decision which could be the subject of any review. It is equally unsurprising that he was at that time wholly unaware of the matters referred to in sub-paragraphs (d) and (f) above. Pursuant to routine procedures, the Department had destroyed documents which no reasonable person would have thought would ever be referred to again.

(i) The letter of appeal to the appeal tribunal was also in standard form, prepared by the WRRT. It was as

inappropriate to this claimant's case as was the initial application (cf sub-paragraph (g) above). I have no intention of sounding offensive, but it does seem permissible to wonder whether anyone from the WRRT had ever actually spoken with this claimant before the matter was on its way to the appeal tribunal. I appreciate that full-time representatives have their work cut out in areas where the recession has been long and deep, but I have, in many recent supplementary benefit decisions, expressed concern at the public time (and, therefore, public money) which are wasted by the total lack of thought and of preparation given to the launching of this class of proceedings.

(j) So far as I can see from the papers, it was not until the appeal tribunal hearing that either the claimant or her representatives made any reference to the matters which are summarised in sub-paragraphs (d) and (f) above. (I have used "representatives" in the plural. It is obvious from the careful note in Box 1 of the relevant form AT3 that the hearing was something of a round-table. No less than three ladies from the WRRT contributed upon behalf of the claimant and one lady and one gentleman put the case for the adjudication officer.) Only in the course of that hearing did it emerge that the claimant's real case was that - single payment or no single payment - she should have been awarded a supplementary allowance in 1986.

(k) The unanimous decision of the appeal tribunal was that there was no decision to which could be related the application for a review. That, of course, echoed the local adjudication officer's decision (cf sub-paragraph (h) above); but the appeal tribunal - unlike the local adjudication officer - had heard about the claim for a single payment for a cooker.

4. It is quite extraordinary that - $5^1/_2$ years after its abolition - supplementary benefit should still be engaging the attention of the adjudicating authorities. Supplementary benefit was - like national assistance before it and income support after it - a non-contributory benefit of last resort. It was designed to maintain at a modest standard of subsistence those who would otherwise have been unable to attain that standard. Almost by definition, then, it imported a measure of contemporaneity. "How are things now?" was the crucial question, not "How were things one (or five or ten) years ago?". Of course, that latter type of question properly fell to be answered in certain cases. (Mentally handicapped claimants who had had no appointees spring to mind.) The legislation was adequate for that purpose. But in the ordinary case, grossly delayed applications for review fall to be looked at with informed scepticism. Firm and clear evidence must be produced in support of such applications. Speculative inferences are not firm and clear evidence.

5. But is this an "ordinary case"? The claimant's representative contends strenuously that it is not. She is recorded as having told the appeal tribunal:

> "Claimant is mentally handicapped and has no appointee."

Before the tribunal was a letter dated 13 June 1991 written by the manager of the Cwmbwrla Day Centre who is a State Registered Nurse with additional qualifications in mental health. The letter furnishes graphic illustrations of the effects of the claimant's chronic anxiety state. I set out four passages:

> "This [extreme agitation] is likely to occur, almost, on a daily basis, at any time, day or night and requires intensive one-to-one attention in order to pacify her. During these episodes, [the claimant] is totally unable to think rationally and demands the attention and immediate help from whatever source comes to mind."
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> "[The claimant] requires constant help with the management of her finances and her medication, both of which she is totally incapable of managing alone."
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> "As the postman arrives at [the claimant's] house after she has left for the Centre, [the claimant] often receives her mail on returning to the house in the evening. Her anxiety on opening the mail often leads her to sit up all night worrying, or telephoning anybody that she thinks may be able to help her. It is not uncommon for her to be waiting outside the Day Centre at 6.00 a.m. for the Centre to open, at 8.30 a.m. It frequently takes the whole day to pacify her."
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> "It is my firm opinion, that without the high level of support that [the claimant] receives from the staff at the Centre, her niece and the high level of tolerance shown by her neighbours, [the claimant] would be totally unable to function in the community."

6. I have no hesitation in saying that I should have been in no way surprised to have been told that this claimant had had - at all material times - an appointee. The claimant's representative has invoked R(SB) 56/83. It was I myself who gave that decision. All things being equal, I should have extended to this claimant the sympathetic - even generous - treatment appropriate to a mentally handicapped claimant who has no appointee. But in this case all things are not equal. It seems to be clear that someone has - with the best of intentions - taken a considered decision not to seek any appointment; probably, indeed, to discourage the claimant from looking for an appointee. I quote from the written observations made by the claimant's representative on 24 May 1993:

> "I would also like to point out that West Glamorgan Social Services do have many clients who, despite having a mental handicap, do not have an appointee. Clients are encouraged

to live as independently as possible and the absence of an appointee does not indicate that a client does not need substantial support with everyday living."

7. But where does all that leave the adjudicating authorities, to whom Parliament has assigned the decision-making functions which are an essential element in any system of social security? It may well be that a therapeutic course has been resolved upon by those to whom has been entrusted the welfare of the respective claimants. But how can the adjudicating authorities take account of that course without according to such claimants an unjustifiably privileged position? Are such claimants to be allowed - in the everyday idiom - to have their cake and eat it; to have daily access to the assistance and advice of experienced social welfare workers but to be treated, when things go amiss with their social security, as unaccompanied babes in the wood of social security? I have no wish to be unsympathetic, but - after giving careful thought to this aspect of the case - I have concluded that this claimant falls to be judged by the standards appropriate to a disadvantaged claimant who does have an appointee.

8. I stress that what I have just said applies only to the proceedings which were initiated by the application made on 15 April 1991 (cf paragraph 3(g) above). What competent help - if any - was available to the claimant in 1986 I cannot tell; but that is not material to this case. Although the form A1 which must have been completed by the claimant in 1986 is no longer extant, that form must have indicated resources which were in excess of the claimant's requirements. (Such excess was, of course, one of the most common reasons for the rejection of claims for supplementary benefit.) That is not mere speculation on my part. I point to the following reasons which underlie that view:

(a) In his submission to the appeal tribunal the local adjudication officer wrote that there was no record of the claimant's having made any claim for either supplementary benefit or income support. (That was, of course, written before the claim in respect of a cooker had been brought to his notice; see the recital of facts in paragraph 3 above.) The claimant's representative has offered no challenge to the absence of any claim for income support by the date of the local adjudication officer's submission. From 1986 to 1991 the claimant must have been living on <u>something</u>. Moreover, had she been in a state of destitution when she first arrived at the Day Centre, it can be taken for granted that someone at the Centre would have assisted her to make a claim for income support.

(b) The "something" to which I have just referred must have been relatively substantial. Before the appeal tribunal was a "Statement of evidence" completed by or on behalf of the claimant and signed by her on 8 March 1992. (She herself did not attend the

tribunal hearing.) The Statement contains a long list of the clothing and shoes which the claimant "needed each year". That list specifies - among other items - 104 pairs of tights, 12 blouses, 12 skirts, 24 nightdresses/pyjamas and 150 pairs of briefs/underpants. Where the Statement deals with laundry expenses this was written:

> "N.B. More laundry than this would have been required but due to mental illness soiled clothing and bedding was often just thrown away."

I bear in mind the claimant's mental illness and do not, accordingly, condemn what would have been wanton profligacy on the part of a normal person. But the point is that a normal person living at the supplementary benefit level of resources would simply - without receipt of that benefit along with appropriate additional requirements - have been unable to afford such an enormous bill for clothing. Yet the claimant <u>was</u> able to afford it; and nevertheless entered the days of income support with such capital and/or income that she did not qualify for that benefit.

(c) But most significant of all, in this context, is the total absence from the papers of any reference whatever to the claimant's means in 1986 - or at any other time, for that matter. Her Statement of evidence purports to demonstrate that the decision in respect of which review is sought (not identified in the Statement, but it must be the refusal of supplementary allowance in 1986) was "based on a mistake about or ignorance of a material fact in that my circumstances have always been as outlined below". One does not have to be a Social Security Commissioner to realise that if a person is to challenge a refusal of a means tested benefit, the means of that person are a crucial element in that person's circumstances. But the Statement is entirely silent as to means. Moreover, the trio from the WRRT came to the tribunal with the set purpose of attempting to establish that the claimant <u>had</u> been entitled to a supplementary allowance in 1986. Ms Harris is recorded as having said this in her opening observations:

> "Had they assessed her at that time [ie in 1986] she would have been entitled."

In paragraph 3(i) above I adverted to the pressure of work upon full-time representatives in times of recession. But in this case no less than three of the WRRT were involved in the claimant's affairs. I am well aware that - as with adjudication officer's representatives - trainee claimant's representatives often attend hearings in order to learn therefrom.

But such trainees do not intervene in the relevant hearing. Since each of the trio from the WRRT contributed to the proceedings before the appeal tribunal (cf paragraph 3(j) above), it can be confidently assumed that each was well experienced in supplementary benefit matters. It can also, accordingly, be confidently assumed that at least one of those three must at some stage have asked the claimant about her means. (As I have explained above, those means were central to the entitlement case.) But whatever the answer that was received, no one from the WRRT saw fit to disclose it.

9. It is trite law that the burden of establishing that a review is justified lies on the party seeking that review. In this case that party is the claimant. There is not - and never has been - any firm and clear evidence which demonstrates (or, indeed, even suggests) that the decision given by the adjudication officer in 1986 was given in ignorance of, or was based on a mistake as to, any material fact; or that there is satisfied any of the other conditions in section 104(1) and (1A) of the Social Security Act 1975, replaced by section 25(1) and (2) of the Social Security Administration Act 1992.

10. The appeal tribunal erred in law in that it gave no explanation of its rejection of the submission made on behalf of the adjudication officer that there had - in 1986 - been a decision in respect of the claimant's entitlement to a supplementary allowance. That submission should have been more amply dealt with; although I am not for one moment suggesting that the tribunal should have given a decision approaching the length of this one!

11. The claimant's appeal is disallowed.

(Signed) J. Mitchell
Commissioner

(Date) 10 January 1994