JM/2/LMM

Commissioner's File: CSB/055/91

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, bought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 20 September 1990 which confirmed a decision issued by the adjudication officer on 15 February 1989. My decision is that the aforesaid decision of the appeal tribunal is not erroneous in point of law.

2. It is now more than four years since supplementary benefit disappeared from the statute book. If in April 1988 anyone had told me - or, I suspect, told any of my colleagues - that in May 1992 we would still be giving decisions in supplementary benefit cases, I suspect that that person would have encountered rank disbelief. But such appeals are still coming regularly before us.

3. This case turns upon the well-known 'analogous' provision in regulation 6(u) of the erstwhile Supplementary Benefit (Conditions of Entitlement) Regulations 1981. The claimant was born in December 1934. The papers do not indicate the type of work he did when he was in employment. They simply indicate that he is unskilled. Sadly, his wife died several years ago, leaving him to bring up five young children. Very properly, in view of his domestic commitments, he was not required to be available for employment as a condition of receiving supplementary benefit.

4. In June 1985 the claimant reported that his youngest child, a daughter then aged 17, had embarked on a Youth Training Scheme. Since he no longer had any dependent children under the age of 16, he was advised that, unless his doctor certified him as medically or mentally unfit for work, his entitlement to supplementary benefit would thereafter be subject to the condition that he was available for employment. It is obvious that no such medical evidence was forthcoming - for on 28 June 1985 the claimant registered himself as available for employment. In consequence, he ceased to receive supplementary benefit at the long-term rate. He was put on quarterly signing on 23 September

1986. It is, of course, now well established - although I personally was never under any misconception - that quarterly signing has no relevance whatever to the interpretation and application of regulation 6 of the Conditions of Entitlement Regulations (see R(SB) 10/91).

5. On 28 March 1988 - in the very twilight of supplementary benefit - the claimant applied for the long-term rate to be reinstated. Technically, of course, that was an application for review. It was made upon a standard form furnished by his representative and was singularly lacking in particularity. Only the 'analogous' provision was relied upon; and there was a wholly unparticularised request for backdating. So far as I can see from the papers, it was not until his representative's letter of 15 August 1989 that it was contended that the condition of availability for employment should have been waived 'when his youngest child ceased to be dependent'.

6. As I have frequently found when perusing the papers in this type of case, something of a veil is drawn over the adjudication processes which immediately ensued. But by some reasoning or another, the local adjudication officer came to the conclusion that the claimant had been entitled to the long-term scale rate from 28 March 1987 (ie from one year prior to his application for review). That, in turn, imported that the claimant had not been subject to the condition of availability since 28 March 1986. There is no indication in the papers as to how so generous a conclusion was reached. At the date of his application for a review the claimant was only 53 years old. The only medical evidence in the papers is a doctor's certificate (the date of which is illegible on the copy before me). I have difficulty in reading the doctor's brief comments; but they end 'is suffering from bronchitis'. Certainly that certificate seems a somewhat tepid document upon which to base an 'analogous' conclusion. There is no evidence whatever in the papers to indicate that the claimant had ever been refused employment by reason of bronchitis - or on any other ground connected with his health. There is not in fact any direct evidence - even from the claimant himself - that he has ever applied for a job. However, all that is now water under the bridge. From the many such cases which have been before me, I am aware that the Merseyside area was blessed with local adjudication officers who took a surprisingly generous view of the interpretation and application of regulation 6 of the Conditions of Entitlement Regulations. I am also well aware that claimants' representatives, instead of resting upon their good fortune, regularly came back to ask for even more. That is what has happened here. It is contended that the local adjudication officer should have awarded the long-term scale rate for a period prior to 28 March 1987. That, of course, would have involved bringing the case within the now revoked regulation 72 of the Social Security (Adjudication) Regulations 1986.

7. I can see no conceivable way in which regulation 72 could have applied to this case. I have already expressed my reservations about the review and revision which the local adjudication officer did effect. To argue that he - or any other

officer of the Department of Health and Social Security (as it was then known) - was at fault because no such review and revision had been effected at an earlier date seems to me to be little short of proposperous. The claimant's representative advanced to the appeal tribunal a somewhat refined argument based upon the difference between the pensionable age of a man and the pensionable age of a woman. So long after the disappearance of supplementary benefit from the statute book, I have no intention of entering into a detailed discussion of that argument. At best, it goes only to the possibility of drawing an analogy. At no time prior to 28 March 1988 was the argument laid before the local adjudication officer. He certainly cannot be criticised because such argument did not leap spontaneously to his mind. So far as possible error of law is concerned, I cannot think that even so generous a local adjudication officer as this one appears to have been would have allowed that argument to influence his assessment of any relevant 'analogy'. In my view, he would have been correct. I agree with the appeal tribunal's approach to this issue. I have myself warned many times of the dangers that lurk in the attempt to rewrite what Parliament actually prescribed in regulation 6.

8. The claimant's appeal is disallowed.

(Signed) J Mitchell
Commissioner

(Date) 5 May 1992