

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 this appeal must be allowed. The case is remitted for reconsideration by a differently constituted social security appeal tribunal.

2. The claimant made a claim for supplementary benefit on 19 May 1987. The adjudication officer decided on 21 May 1987 that the claimant was not entitled to benefit as she was in remunerative full-time work. The claimant appealed against this decision on 22 December 1988. The grounds were that the business she had been engaged in was not making any profit and she had ceased involvement in that business on 19 August 1987.

3. The appeal was heard by the Southampton social security appeal tribunal on 31 August 1989. The tribunal dismissed the appeal. The claimant gave evidence to the tribunal that she continued in the business until 19 August 1987; that she had kept the business going to meet outgoings, but drew no wages; and that she worked 48 hours per week.

4. The claimant now appeals to the Commissioner with leave. It is submitted on behalf of the adjudication officer that in the light of the evidence noted above it follows that, so far as it relates to the position as at the date of claim, (19 May 1987), the tribunal's decision is not erroneous in law and that the necessary findings of fact have been made and reasons given to support the decision. In my view, this submission is correct, and accordingly, limited in the way described, the decision should be upheld.

5. However the adjudication officer further submits that there was an error of law in the proceedings before the tribunal, since in her letter dated 30 January 1989 the claimant stated that she wished to claim from 20 August 1987 to January 1988. The tribunal have made no mention of events subsequent to the date of the adjudication officer's decision, and in this respect the tribunal's decision is erroneous in law. The submission goes on to refer to Commissioner's decision R(SB) 4/85, where at paragraph 13 the decision said:-

"The appeal tribunal however clearly looked at the position only as at the date of the claim, whereas with a claim for a continuing benefit like supplementary allowance the facts must, if the situation is fluid, be looked at week by week (see decision CSB/1120/83) not yet reported)".

I accept this submission in a similar situation, it was incumbent upon the tribunal to consider the claimant's entitlement to benefit down to the date of their decision.

6. Accordingly the appeal is allowed, and the case remitted for reconsideration by a differently constituted social security appeal tribunal.

(Signed) M Heald
Commissioner

Date: 7 April 1992