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JM/1/LM Commissioner's File: CSB/073/92

**SUPPLEMENTARY BENEFITS ACT 1976**
**SOCIAL SECURITY ADMINISTRATION ACT 1992**

**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 28 November 1991 which confirmed a decision issued by the adjudication officer on 18 June 1991. My own decision is that the aforesaid decision of the appeal tribunal is not erroneous in point of law.

2. This appeal concerns yet another extravagantly delayed application for the review of a claimant's supplementary benefit entitlement - the application having been made on 18 April 1991, ie more than three years after supplementary benefit had been abolished. It is now dawning upon me that at that time the claimant's representative must have encouraged a substantial number of erstwhile supplementary benefit beneficiaries to try their luck at -

(a) obtaining a retrospective waiver of the requirement to be available for employment as a condition of their entitlement to supplementary benefit; and

(b) establishing, in consequence, a backdated entitlement to have that benefit assessed in the light of the long-term scale rate.

I am not to be taken as in any way suggesting that this mass application approach should be allowed to count against any given claimant from the relevant group. My concern is otherwise. Throughout the 12 years that I have been a Commissioner there has been a backlog of appeals awaiting the Commissioner's attention. Our time is not unlimited. It is already apparent to me that many of the appeals stemming from the mass application are doomed - upon my interpretation of the relevant law - to founder upon the composite rock of regulations 69 and 72 (now revoked) of the Social Security (Adjudication) Regulations 1986. It can hardly be in anybody's interest that each of the appeals stemming from the mass application should command from the Commissioner a full length decision in which the whole of the

relevant law is set out as if each particular appeal had been brought in total isolation. So what is to be done?

3. The position is ameliorated by the fact that on 5 October 1992 I held a long oral hearing in what I now recognise to have been an appeal stemming from the mass application. On behalf of the claimant in that appeal appeared the representative who acts for the claimant in this appeal. On 22 October 1992 I signed an eight page decision. As I said in paragraph 2 of that decision, the hearing was conducted with the greatest good humour on all sides. There was full and uninhibited discussion of the general issues presented by greatly delayed applications for waiver of the requirement to be available for employment; and it was quite clear that the representative takes a much more radical view of the effect of the legislation and of relevant Commissioners' decisions than do I (or, indeed, than do other Commissioners). The decision is on Commissioner's file CSB/077/1992. Set out therein are my own views upon the issues which were canvassed at the hearing. Obviously, accordingly, those views are now known to the claimant's representative. To the ordinary layman, the issues are somewhat technical. I rather doubt whether the claimant in this appeal is himself interested in reading my views thereon. This is, however, <u>his</u> case; and if his representative so requests, the Office of the Social Security Commissioners will send to the representative a copy of CSB/077/1992 (with the relevant claimant's name blocked out) so that such copy may be passed to the claimant in this appeal.

4. That said, I intend in this decision to do no more than will suffice -

(a) to render the decision intelligible; and

(b) to indicate my reasoning with sufficient clarity to enable the claimant or his representative to identify the ground to which - should the claimant or his representative be so minded - any application for leave to appeal should be directed.

5. The claimant was born on 16 July 1932. He was made redundant on 1 March 1985. When his unemployment benefit was about to become exhausted, he claimed and was awarded supplementary benefit. The Department of Health and Social Security knew that he was blind in one eye. He had, however, worked for many years and in more than one job with that disability. At the time when supplementary benefit passed to income support, that was all that the Department had been told about any physical or mental disability. At no time prior to the application for review (in April 1991) did the claimant raise any query about being required to be available for employment. By then, of course, the 12 months limit prescribed by regulation 69(1) of the Adjudication Regulations inhibited any award of the long-term scale rate unless regulation 72 could be brought into play.

6. In CSSB/1/88 the Commissioner (not myself) said this:

> "As I read them section 5 of the Supplementary Benefits Act 1976 and regulation 6 of the Conditions of Entitlement Regulations are designed to provide a standard condition of being available for employment to recipients of supplementary benefit, unless or until a recipient seeks its removal, and that on sufficient grounds. The onus is thus clearly on the recipient - that is to say the claimant. To suppose otherwise would, I consider, make the scheme of section 5 of the Act and regulation 6 virtually unworkable."

The Commissioner who gave the decision in CSB/1331/1989 (to be reported as R(SB) 10/91) cited that passage with approval - and added this:

> "11. In my judgment, where regulation 72(1)(a) of the above cited Social Security (Adjudication) Regulations 1986 refers to a decision under review being "erroneous by reason only of a mistake made, or of something done or omitted to be done by an officer of the Department of Health and Social Security ...." etc., that refers only to clear mistakes of fact or law in relation to an actual issue in a given case at a time when the officer of the relevant Department etc. was actively required by his duties under the social security legislation to arrive at a decision or take some administrative act. It 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."

7. I respectfully agree with what is said in both of the passages which I have set out in paragraph 6 above. In consequence, I am quite satisfied that the claimant in this appeal had no possible prospect of successfully invoking regulation 72. From that it follows that, from the practical point of view, any further consideration of his case is otiose.

8. In his submission dated 26 May 1992 the adjudication officer now concerned -

(a) points to what are - in the overall context of this case - somewhat technical shortcomings in the manner in which the appeal tribunal's decision was recorded on the relevant form AT3;

(b) offers no comments whatsoever upon the essential merits of the case;

(c) submits that the appeal tribunal's decision dated 28 November 1991 should be set aside; and

(d) invites me to remit the case for rehearing by another tribunal.

I do not consider the alleged shortcomings to be vitiating. It is manifest from the form AT3 that the appeal tribunal went into this matter with the very greatest care. It came to the correct conclusion - and the processes by which it did so very clearly appear. Were I to send the case back, it would be with directions which would render the decision of the fresh tribunal a foregone conclusion.

9. In the course of the oral hearing on 5 October 1992, I was given to understand by the claimant's representative that there are dozens more of this type of case in the pipeline. (What I did not then appreciate was that so many of them stemmed from applications made on or about the same day.) The representative also stated plainly that he did not agree with all that is said in CSB/1331/1989. In the attempt to staunch the torrent of time-consuming and (presently) doomed appeals to the Commissioner, might I suggest to the representative that - if he really is minded to go on encouraging these claimants - he should attempt to get leave to appeal to the Court of Appeal in a case in which the Commissioner has founded upon CSB/1331/1989. (He must not assume that I myself, if asked, will grant such leave.)

10. The claimant's appeal is disallowed.

**(Signed)** J Mitchell
**Commissioner**

**Date:** 13 November 1992