

SOCIAL SECURITY ACTS 1975-1990

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL
TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 23 August 1989 is erroneous in law and is set aside. The claimant's case is referred to another tribunal for consideration afresh.

2. This is an appeal by the claimant with leave on a question of law against the above-mentioned tribunal decision. The appeal was dealt with at an oral hearing held before me in Edinburgh at which the claimant, who did not attend, was represented by Mrs Claudine Freeman, Welfare Rights Officer with Durham County Council, and the adjudication officer was represented by Mr David Cassidy of the Office of the Solicitor in Scotland to the Department of Social Security. After the lodging of the present appeal there supervened a number of Commissioners' decisions on review issues in supplementary benefit cases. In these decisions the nature and requisites of valid decisions given on review under section 104 of the Social Security Act 1975 were scrutinised and commented upon. This development has unfortunately further delayed disposal of the present appeal.

3. The claimant's appeal arises from a request dated 22 December 1988 and received by the Department on 30 December 1988 made on behalf of the claimant which requested a retrospective review of the claimant's entitlement to supplementary benefit prior to 11 April 1988 with particular reference to the inclusion in the claimant's assessment of additional requirements for heating, additional baths, laundry and wear and tear of clothing. Specification was given of the amounts of these additional requirements which were said to arise from the incontinence of a grandson, Joseph, living with the claimant and his wife. Further details were given by a letter dated 6 February 1989 which related the additional requirements claimed to an accident to Joseph on 29 October 1986 which had caused him brain damage.

4. An adjudication officer duly reviewed and revised the claimant's supplementary benefit assessment and awarded arrears of additional requirements for baths, heating and wear and tear of clothing from 18 January 1988. He refused further backdating of these requirements and refused any review as regards an additional requirement for laundry. The claimant appealed to a social security appeal tribunal. The adjudication officer thereupon did review the claimant's assessment as regards an additional requirement for laundry and awarded arrears in that respect from 27 September 1986. That in effect removed that item from contention and the claimant's appeal proceeded against the adjudication officer's refusal to backdate the remaining additional requirements from any earlier date than 18 January 1988.

5. On 23 August 1989 the social security appeal tribunal unanimously refused the claimant's appeal. The tribunal's findings of fact merely repeated the summary of facts narrated by the adjudication officer. The tribunal's reasons for their decision were stated in the following terms:-

"That at the time the Adjudication Officer made his decision the evidence that Joseph was handicapped and required extra baths, heating and replacement clothing was not before the Adjudication Officer when the original decision was made. Notwithstanding that Mrs Sarah Sample had attended at the DSS Office on 4 November 1986 to claim the money for transport costs between Bishop Auckland and Newcastle Hospital as she had paid out some £30.00 out of her housekeeping to a relative to cover the costs and notwithstanding at that time she had said to the Department could she obtain help for bedding and underclothing for Joseph who was bed-wetting. The Tribunal were of the opinion that her application was mainly for transport costs and her request for bedding was in the nature of an enquiry for which the Department had made no record. Mrs Sample had already been in receipt of a single payment of £165.00 in June of 1986 for bedding in respect of Joseph's bed-wetting."

6. I do not find the tribunal's reasons easy to understand, but in addition it is apparent that certain fundamental issues arising on a review which, to be fair, were not generally appreciated at the date of the decision of the tribunal or of the adjudication officer, were not addressed at all by the tribunal. It was common ground before me, and I accept, that it was necessary for the tribunal (1) to identify the decision or decisions sought to be brought under review, (2) to decide if grounds for review were shown under section 104 of the Social Security Act 1975 and if so from what date they were applicable, (3) to consider whether any revision found to be justified was affected by the limitation contained in regulation 69(1)(b) of the Social Security (Adjudication) Regulations 1986, and (4), if so, to decide whether that limitation could be avoided by the claimant satisfying the provisions of regulation 72 of those Regulations.

7. The decision of the tribunal does not contain adequate findings and reasons and is clearly erroneous in law. I set that aside. There is no alternative but to refer the claimant's case to another tribunal for consideration afresh. The claimant's benefit history since benefit was first awarded on 5 May 1986 is unfortunately complicated and incomplete. Salient dates after the original award appear to include 21 January 1987 when the claimant's supplementary benefit ceased because his receipt of invalidity benefit caused his income to exceed his requirements as those were then assessed, and 18 January 1988 when the claimant re-applied for supplementary benefit (when he became eligible for the long term scale rate) but was, on a revised assessment, found by a decision of 8 March 1988 to be entitled only to housing benefit supplement. Certain documents have been produced relating to these changes and to the decisions said to have been made at those times and also on 6 October 1986, but the new tribunal will require the assistance of a further submission from the adjudication officer listing in chronological order the various decisions made awarding, revising or terminating the claimant's benefit and explaining the changes made and the basis upon which they were made.

8. Then when considering afresh the claimant's application for backdated review of the additional requirements already mentioned the tribunal will have to have regard first to the question whether grounds of review under section 104 of the Social Security Act 1975 are shown warranting review of the last relevant supplementary benefit decision, which appears to be the decision of 8 March 1988 which took account of additional requirements for heating and laundry but not baths or clothing. The adjudication officer may in my view fairly be expected to explain the basis upon which he accepted that there were grounds for review of that decision when, in the decision now under appeal, he awarded additional requirements for baths, heating and wear and tear of clothing from 18 January 1988. However the tribunal will also have to consider whether there are statutory grounds for review of any earlier decision or decisions which regulated the claimant's entitlement to benefit within the period of backdating contended for by the claimant. Insofar as grounds of review and revisal are accepted the tribunal will of course have to bear in mind the impact of regulations 69 and 72 of the Adjudication Regulations as mentioned above.

9. I would lastly note that the adjudication officer conceded in his summary of facts, accepted by the tribunal, that the claimant's grandson, Joseph, in fact needed extra baths, heating, laundry and clothing after his accident on 29 October 1986. That would appear to be a concession that the conditions for awards of these additional requirements were then satisfied. Of itself it does not of course entitle the claimant to awards of these additional requirements when, as here, they are claimed by way of backdated review, the other conditions of which as mentioned above must also be fulfilled.

10. The appeal of the claimant is allowed.

(signed) J G Mitchell
Commissioner
Date: 4 May 1992