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Commissioner's File: CSB/159/1985

C A O File: AO 2243/SB/85

Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

Name: James Shackleton

Social Security Appeal Tribunal: Bradford

Case No: 162/8/12

1. This appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 7 November 1984 is erroneous in law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.
2. The claimant requested an oral hearing of this appeal. Since, however, his appeal succeeds for the reasons given by his representative, the adjudication officer is in agreement, and I agree with them both, I am satisfied that the appeal can properly be determined without such a hearing and I refuse this request.
3. The circumstances leading up to this appeal are not in dispute and are set out in paragraph 1, 2 and 3 of the written submission dated 25 March 1985 of the adjudication officer now concerned. That submission should be before the social security appeal tribunal to whom the case is now referred and it is unnecessary to set those paragraphs out again here.
4. The claimant, who was already in receipt of supplementary benefit under an existing award, had been awarded a heating addition from 15, 17 or 23 August 1982 (it is not clear from the papers which date is correct). He asked for this to be awarded from an earlier date but on 30 November 1982 a supplementary benefit officer refused to alter his earlier determination. It is from this refusal that the claimant appeals. The appeal tribunal, whose decision is dated 7 November 1984, treated this as a claim to backdate the award, applied regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 and decided that the claim could not be back-dated because "good cause" for the delay in claiming had not been shown.
5. The decision of 7 November 1984 was erroneous in law because since there was an existing award of supplementary benefit in existence (which must have been made in pursuance of a previous claim) the supplementary benefit officer could

not entertain a further claim for supplementary benefit (other than for a single payment). Regulation 5 of the Claims and Payments Regulations was inapplicable. The case should have been treated as an application for review under the provisions of what was then regulation 4 of the Supplementary Benefit (Determination of Question) Regulations 1980: see Commissioner's decision R(SB) 48/83 and the explanation of the law set out in the written submission made by Mr Roger Smith, of the Child Poverty Action Group, in the application for leave to appeal in this case, with the reasoning of which I am in agreement and adopt as my own. A copy of that submission should be before the tribunal to whom the case is now referred.

6. I set aside the decision of 7 November 1984. The tribunal considered backdating (which turns on good cause) as opposed to review (which at that time turned on ignorance of or a mistake as to a material fact or a relevant change of circumstances). The necessary facts have accordingly not been found and it is neither expedient nor possible for me to give the decision which the tribunal should have given. The case must be referred to another social security appeal tribunal which should, in accordance with the usual practice, be entirely differently constituted. That tribunal should treat the question of review by reference to the request for a visit in connection with a hearing addition made by the claimant on 17 August 1982. They should make findings on all the points raised in this decision and in the submissions referred to in paragraphs 3 and 5 above and on all other relevant points raised by or on behalf of the claimant or the adjudication officer. The chairman should ensure that the findings of fact and reasons for decision are recorded as required by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 as amended.

7. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 15 July 1985