

C.P.R.G.

JBM/SH/13

Commissioner's File: CSB/224/1990

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 the decision of the Liverpool social security appeal tribunal dated 16 March 1990 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.
2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer first involved in these appeals.
3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submissions of the adjudication officers then and now involved in these appeals dated 16 October 1990 and 21 June 1991 (the latter made in response to the direction of the nominated officer dated 15 April 1991) the claimant through his representatives has had the opportunity to comment and I have their observations dated 5 November 1990 and 18 July 1991. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to in paragraph 2 of the submission dated 16 October 1990 of the adjudication officer then involved in these appeals. Nothing is to be gained by my setting out these references afresh here.
5. In my judgment the decision of the appeal tribunal is erroneous in point of law as they have breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in that the claimant is left guessing as to how the appeal tribunal arrived at their conclusion. The appeal tribunal have

failed to identify or make findings as to the earliest date from which the conditions under regulation 6(u) of the Conditions of Entitlement Regulations were satisfied. It was incumbent on the appeal tribunal first to establish that there were grounds for review and then to establish the earliest date from which the revised decision would otherwise take effect. Thereafter it was incumbent upon them to consider the restriction on payability of arrears imposed by regulation 69 of the Adjudication Regulations 1986 and whether regulation 72 of the same regulations applied to lift this restriction. This the appeal tribunal have failed to do. I accept as part of my judgment paragraph 5 of the submission dated 16 October 1990 of the adjudication officer then involved in these appeals. There is no merit in my setting out those matters afresh here. The nominated officer by a direction dated 15 April 1991 made the following direction:-

" Direction

1. The Adjudication Officer was requested to make a further submission within 30 days of the issue of this Direction dealing with the following matters -

- (a) whether any, and if so what, circumstances other than error of law, existed to support the request made on 9th August 1989 on the claimant's behalf for review of this award of benefit;
- (b) whether any, and if so what circumstances, other than error of law, existed which should have caused the Department to review the claimant's award of benefit in November 1985 without the need for the claimant to request such a review;
- (c) if any such circumstances as is mentioned in (b) above did exist, whether the decision in R(SB) 5/87 is now to be applied in the determination of that review.

2. The claimant's representative is to have 30 days from the date of issue to him with a copy of the submission requested in paragraph 1 above to make such observations thereon as he may wish."

In response to that direction I have the submission of the adjudication officer now involved in these appeals dated 21 June 1991. There is no merit in my setting out in other words what has there in my judgment been adequately dealt with. I would only add that the date in paragraph 4 of that submission should be "15.11.85" I set out below the relevant parts of paragraphs 9 and 11 of Decision CSB/1331/89 (to be reported as R(SB) 7/91) which in my judgment adequately states the law:-

- " 9. .. the mere administrative action of putting the claimant onto quarterly signing could not of itself give rise to any case for involving regulation 6(e)(u) or for the

Department to initiate his review for that purpose."

and

" 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."

I respectfully agree with the above statement of the law by the Commissioner and do not deviate therefrom in the light of Decision CIS/11/91. The decision of the Commissioner in R(SB) 7/91 to my mind correctly states the law.

The claimant's representatives in the observation dated 5 November 1990 and 18 July 1991 refers to decision R(SB)5/87 and in the observation dated 5 November 1990 - repeated in the observations dated 18 July 1991:-

"And would request that the Commissioner make a direction on whether or not R(SB) 5/87 can be applied retrospectively .."

To my mind no question of retrospection arises here - a decision of the Commissioner or of the court sets out what the law is and always has been in regard to the particular legal issues dealt with in that decision. A case may for example be appealed from the Commissioner to the Court of Appeal and thereafter to the House of Lords - the Commissioner, the Court of Appeal and the House of Lords (with possible reference to the European Court of Justice as well) may take differing views on the legal issues involved - however it is the final decision in respect of the legal issues involved that is the law and always has been in respect of those legal issues involved.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they should consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material

facts and give reasons for their decision. Specifically they should:-

- (a) identify the decision or decisions for which review is sought;
- (b) establish the grounds for review in accordance with section 104 of the Social Security Act 1975;
- (c) if grounds for review exist consider the substantive provision, and make sufficient findings of fact and provide adequate evidence as to whether, and if so from what date, a revised decision should take effect; and
- (d) if appropriate go on to decide whether regulation 69 of the Social Security (Adjudication) Regulations 1986 applies to limit the arrears of supplementary benefit payable.
- (e) The appeal tribunal should then go on to consider regulation 72 of the Adjudication Regulations 1986 and to determine whether regulation 72 is satisfied so as to remove the limitation on payment of arrears imposed by regulation 69.

I would only add that this is a supplementary benefit case and no doubt every effort will be made to secure as early a rehearing of the issues involved in this supplementary benefit case - as possible.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 11 May 1992