

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT
APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Clare Sutcliffe

Supplementary Benefit Appeal Tribunal: West Sussex

Case No: 05/71

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 29 October 1982 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.
2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 29 October 1982. In view of the difficulty of this case and the unsatisfactory nature of the benefit officer's submissions, I directed an oral hearing. At that hearing the claimant was represented by Mr Roger Smith, solicitor, of the Child Poverty Action Group, and the benefit officer by Mr E O F Stocker of the Solicitor's Office of the Department of Health and Social Security. I am grateful to them both for their submissions.
3. On 21 July 1982 the claimant, who was then in receipt of supplementary benefit, received a payment of £470.50 representing a royalty due to her by reason of a repeat-performance of a television play in which she had taken part some 10 years earlier. The benefit officer decided that this payment should be treated as an income resource, and that it should be attributed to a period of 15 weeks. The effect of this was to extinguish all entitlement of benefit for the first 14 weeks and to reduce such entitlement in the 15th week by £11.16.
4. Mr Smith conceded, and I think properly so, that the payment of £470.50 was an income payment, to be taken into account in calculating the claimant's income resources under regulation 10 of the Supplementary Benefit (Resources) Regulations 1981. The real question at issue is the period to which that payment should be attributed. The relevant regulation is Regulation 9(2) of the aforesaid regulations, which provides as follows:-

"9(2) Earnings and other income shall be calculated on a weekly basis and shall be attributable as follows:-

(a) subject to the following sub-paragraphs a payment of income shall be taken into account -

- (i) where it is payable in respect of a period, for a period equal to the length of that period, and
- (ii) in any other case, for the period to which it is fairly attributable."

5. Mr Smith argued that, as the claimant spent only 10 days in playing her part in the television play, and as the royalty payment of £470.50, which was in addition to an initial fee paid at the time of the original performance, arose out of her contract, it necessarily followed that the royalty was payable in respect of the original 10 day period. He contended that the case fell within sub-paragraph (i) and that the forward period to which the payment should be attributable was the period of 10 days commencing from the date of its receipt. Unfortunately for the claimant, this argument proceeds on the basis that the claimant was initially employed for a specific number of days, namely 10, and not simply to execute a performance, which although it might reasonably be expected to take 10 days, might in practice take some other period of time. If on the facts the claimant contracted to execute a performance, and was not employed on a time basis, then it is difficult to see how it could be argued that sub-paragraph (i) applies. Analogous situations spring readily to mind. For example, an author might be commissioned to write a book and the publisher might well envisage that it would take a specific period of time, eg 6 months or one year. However, the author is not employed on a time basis - at least normally; he is required to produce a book and the time he takes is not a direct consideration. The same applies to an artist who paints a picture. It is the final object, namely the picture, which counts; not the time taken to produce it. Unfortunately, it is impossible from the findings of the tribunal or, for that matter, from the evidence actually put forward in this case to determine the basis on which the claimant was in fact employed. It was something that the tribunal should have investigated. Instead, they were content to attribute the £470.50 to a period of 15 weeks, **so as** to extinguish benefit wholly for the first 14 weeks and partially for the 15th week. They do not give their reasons why they consider this an appropriate course of action, and both Mr Smith and Mr Stocker were of the view that I should set aside the tribunal's decision on the ground that it was in breach of regulation 7(2)(b) of the Appeals Rules. I agree.

6. The new tribunal will consider the nature of the claimant's contract, and if it transpires as a matter of fact that the claimant was employed for a specific number of days, then I consider that it is open to the tribunal to reach the conclusion that the case falls within sub-paragraph (i) and that the period to which the royalty payment is attributable is a period of 10 days from the date of receipt of that payment. However, if the tribunal come to the conclusion the claimant

was employed to execute a performance, which might take 10 days or any other period of time, then I consider that sub-paragraph (i) is not applicable and that consideration must then be given to sub-paragraph (ii). The relevant period is the period to which the payment is fairly attributable.

7. What constitutes "fairly attributable" is a matter of fact, which a tribunal is peculiarly qualified to determine. I do not think that any restriction should be imposed on how tribunal members reach their conclusion. They must consider all the facts, including the original time taken to execute the performance, and in the light of all the circumstances determine what is a fair period to which the payment should be attributable.

8. Mr Stocker suggested that one principle which the tribunal might seriously consider was that adopted in R(P) 8/59 (paragraph 4). The tribunal might take the view that over the years the claimant had built up a "bank" of recorded performances, which might produce an income from time to time as and when such performances came to be repeated. It might be thought that the revenue so arising was applicable to the financial year in which the royalty fee was earned, and that it should be divided by 52 to ascertain the amount of the royalty to be attributed to each week. This could form the basis for calculating the claimant's income during any week of entitlement to supplementary benefit. However, I do not think that the tribunal would be bound to adopt any such approach nor did Mr Stocker himself suggest any such thing. However, it is a possible approach.

9. At the end of the day the matter is one for the tribunal, and the tribunal alone. They must, having taken into account all the circumstances, determine to what period the royalty payment is fairly attributable. They must, of course, give their reasons and make appropriate findings of fact on which to base their decision.

10. My decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 1 February 1984

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