

DGR/SH/15

Commissioner's File: CSB/273/1990

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons set out below, the decision of the social security appeal tribunal given on 21 February 1990 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 21 February 1990.

3. The question for determination by the tribunal was whether the claimant could, by virtue of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, for any period, escape the obligation, imposed on her by section 5 of the Supplementary Benefits Act 1976, of being available for employment as a condition of receiving supplementary benefit. If she could, then she was in a position to qualify for the long-term scale rate of benefit for the relevant period.

4. Regulation 6 provided as follows:-

" 6. A claimant shall not be required to be available for employment under section 5 in any week in which one or more of the following paragraphs apply

(a)-(d)

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has -

(i) on average worked less than 4 hours a week,

(ii) been available for employment under section 5 for not less than 39 weeks,

(iii) made reasonable efforts to find employment and not refused any suitable employment;

(f)-(t)

(u) the proceeding paragraphs do not apply to him but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to be available for employment."

5. Accordingly, the crucial issue, before considering any possible application of paragraph (e), or, for that matter paragraph (u), was whether the claimant was, as at the day from which waiver was sought, without realistic prospects of employment.

6. The tribunal gave as the reasons for their decision the following:-

"It is argued that because of her age and her medical problems this is analogous to a disability within the meaning of regulation 6 of the Conditions of Entitlement Regulations and that in consequence of that she has no reasonable prospect of securing employment within the foreseeable future. It is further contended that this condition has been present since April 1986 and that any award should be from that date. The tribunal cannot be satisfied on the balance of probabilities that her circumstances fall within the provisions of regulation 6 for the following reasons:-

Claimant did succeed in finding employment at the Dorville Hotel, Weston-Super-Mare, in November 1986 and at St George's School, Windsor in May of 1987. The original reason for leaving the first employment at Weston-Super-Mare was sexual harassment. The claimant now states that she also had a foot problem which would not have permitted her to continue in that employment. The claimant states that she left the school job for medical reasons. The claimant has considerable experience - about 11 years - doing general office duties in a legal practice. It is within the knowledge of members of this tribunal that in the Manchester area there are employment opportunities in this area of work. So far as this type of work is concerned Manchester is not an area of high unemployment. The tribunal does not feel able to find that the claimant

has no reasonable prospects of employment within the foreseeable future."

I see nothing wrong with the tribunal's decision. They simply reached the conclusion, on the facts, that the claimant was not without reasonable prospects of employment, and that was fatal to her claim either under paragraph (e) or paragraph (u) of regulation 6.

7. The claimant appears to be complaining that the work done by the claimant was not employment as defined in regulation 4 of the Conditions of Entitlement Regulations, 4 and that this point was not considered by the tribunal. However, the tribunal carefully considered the type of employment which might be suitable for the claimant, and concluded that she would still be able to perform general office duties. This was a conclusion they were entitled to reach on the evidence. That was clearly employment within regulation 4, and accordingly there is no substance in the claimant's grounds of appeal.

8. In short, I see nothing wrong with the tribunal's decision, and accordingly I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 6 April 1992