

CS 8
278/1984

JGM/RDS

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Mrs Maureen Tebbs, appointee for Kathryn Tebbs

Supplementary Benefit Appeal Tribunal: Leeds

Case No. 07/25

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 22 November 1983 was erroneous in point of law and is set aside. The matter must be referred back to another tribunal.

2. The claimant is a woman aged nearly thirty who is incapable of managing her affairs and she is looked after by her mother. It appears that she has been in receipt of the attendance allowance and non-contributory invalidity pension for some years and that in connection with the claims for these benefits her mother was on 12 March 1976 appointed to represent her by the Secretary of State for Social Services pursuant, no doubt, to regulation 26 of the Social Security (Claims and Payments) Regulations 1975, among other things. The instrument of appointment was on the then current form BF 56, and was expressed as appointing a person to act for the purposes of a variety of Acts including the Ministry of Social Security Act 1966 now replaced by the Supplementary Benefits Act 1976.

3. On 23 July 1982 the claimant's mother made a claim on behalf of her daughter for a supplementary allowance. This claim is not in the case papers, and I am unable to say whether it contained anything to indicate the date as from which the allowance was claimed. On this claim a supplementary allowance was awarded from 30 July 1982. On 15 May 1983 the claimant's mother asked for the award to be back-dated. The benefit officer refused to back-date the claim before 23 July 1982 on the ground that the claimant's mother as the person appointed to act for her daughter had not shown that she had good cause for her failure to claim earlier. An appeal to the supplementary benefit appeal tribunal was dismissed broadly on the same grounds. The claimant through her mother now appeals to the Commissioner and her appeal is supported by the benefit officer now concerned. Since the appeal tribunal decision was given, the decision of a Tribunal of Commissioners R(SB) 9/84 has been published and it throws a good deal of light on the problems that arise in this appeal.

4. It is clear from the decision last mentioned that the claimant herself would be regarded as having good cause for delay personally and that delay on the part of her mother is not to be imputed to her during any period during which her mother was not effectively appointed to represent her for the purpose of the present claim. In fact a further appointment has been made (which was also before the appeal tribunal) dated 6 August 1982. And this undoubtedly was a relevant appointment of the claimant's mother to act for her in connection with the present matter.

5. The appeal tribunal, like the original benefit officer, relied on the earlier of the two appointments and considered that it was permissible to impute the mother's delay to the claimant for the entire period since then; and they concluded that the claimant's mother did not have good cause for delay continuing throughout that period down to the date of the claim or possibly down to the date of the application for back-dating; and I infer from the terms of their decision that they were considering the entire period and not just the period from the 1982 appointment. I do not find anything at fault in the way they dealt with the matter if it was right for them to impute the mother's delay to the claimant throughout the whole period from 1976. But the Decision R(SB) 9/84 shows that they were incorrect in doing this or at least casts very grave doubt on whether they were correct and I hold that they were not.

6. In that decision the tribunal, at paragraph 10 adverted to the fact that there is no statutory provision for making an appointment common to all the various Acts listed in the heading to form BF 56. And it was stated that a person is not regarded by the Secretary of State as holding an appointment to act under the Supplementary Benefits Act just because he has been appointed (albeit under an all embracing form BF 56) to act for the purpose of the Social Security Acts. I have some difficulty in understanding the implications of what was there said and I propose here to reconsider them. Although there is no statutory provision authorising a common appointment, there is no statutory provision forbidding such an appointment or laying down the form of an appointment. I therefore see no reason why a common appointment should not be made, if it is otherwise in conformity with the various regulations, which have the effect of appointing a person for a variety of purposes. A limitation does, however, emerge from the relatively restricted terms of the enabling provisions. If an appointment is to operate for the purposes of the Supplementary Benefits Act (or its predecessor the Ministry of Social Security Act 1966) it has to be within the terms of the enabling provisions of the regulations in force at the time. In 1976 the relevant regulation was regulation 11 of the Supplementary Benefit (Claims and Payments) Regulations 1966 and the power was limited (then as now) to making appointments in the case of a person (1) to whom benefit is payable or (2) who is alleged to be entitled to benefit or (3) on whose behalf a claim for benefit has been made. It is clear that the 1982 appointment made after a claim had been made by the claimant's mother was within the corresponding provision now in force (regulation 26 of the Supplementary Benefit (Claims and Payments) Regulations 1981). But in 1976 the claimant was not a person on whose behalf a claim for supplementary benefit had been

made, nor was supplementary benefit payable to her as she had not claimed it. Nor was she at that time (though she is now) a person alleged to be entitled to benefit. Accordingly in my judgment the appointment of 1976 did not operate as an appointment for the purposes of supplementary benefit. It follows that if and so far as good cause for any delay has to be established the fact that the claimant's mother may have not had such good cause is irrelevant in relation to any period before the 1982 appointment.

7. The next problem for the new tribunal will be to decide whether the claim for the allowance made on 23 July 1982 included a claim for back-dating the award. Decision R(U) 9/84 at paragraph 11 shows that a claim can only be treated as made in respect of a back period if it appears from the claim itself that it is so made or if the matter is raised with the benefit officer (or now the adjudication officer) before he gives his ruling on the claim. If the claim was not a claim for any back period then the decision given on it that a supplementary allowance was payable from 30 July 1982 was not by implication a rejection of a claim for any back period and the claim made in May 1983 was a fresh claim. If it was a fresh claim the first matter for consideration will be whether, in terms of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 there was good cause throughout the period of delay for failure to make the claim before it was made. In the light of Decision R(SB) 9/84 the tribunal will presumably conclude that the claimant personally had good cause for all delay; but in relation to the period between the 1982 appointment and the 1983 claim the delay of the claimant's mother will be relevant and it will be necessary to consider whether she also during that period had good cause for delay.

8. The foregoing will apply only in relation to the period from 24 November 1980. In relation to any earlier period the question will be whether in terms of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1977 or the corresponding provisions of the 1986 regulations there were exceptional circumstances justifying the back-dating of the claim. There is no requirement that the exceptional circumstances should continue down to the date of the claim, but the fact that they do not (if they are thought not to do so) is no doubt relevant to the question whether they justify the back-dating. On the meaning of exceptional circumstances I can do no more than refer the tribunal to what was said on this point in paragraphs 15 and 16 of Decision R(SB) 9/84.

9. The position will be entirely different if it is found that the 1982 claim was a claim both for the past and the future and that the decision awarding the allowance from 30 July 1982 was in effect a decision refusing the allowance from any back-date. If that is the case the application of May 1983 will be treated as an application for review to which the very different provisions of regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980 in force at the date of the application will apply. Under those provisions the review may, irrespective of good cause for delay,

be dated back infinitely far subject only to the restrictions contained in paragraph (2) of regulation 4. In this connection I point out that it was held in paragraph 19 of Decision R(SB) 9/84 that those restrictions on going back more than 52 weeks from the date of the application applied only in cases where the revision would involve increasing the amount of benefit payable and do not apply to a case where the revision would make benefit payable where none was previously payable. This has been altered in the regulations now in force but this will not affect the present case (see Social Security (Adjudication) Regulations 1984, regulations 87(1) and 92(7)).

10. The claimant's appeal succeeds.

Signed: J G Monroe
Commissioner

Date: 5 November 1984

Commissioner's File: C.S.B. 278/1984
C SO File: 320/84
Region: North Eastern

CSB 278/1984

JGM/BDS

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Mrs Maureen Tebbs, appointee for Kathryn Tebbs

Supplementary Benefit Appeal Tribunal: Leeds

Case No. 07/25

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 22 November 1983 was erroneous in point of law and is set aside. The matter must be referred back to another tribunal.

2. The claimant is a woman aged nearly thirty who is incapable of managing her affairs and she is looked after by her mother. It appears that she has been in receipt of the attendance allowance and non-contributory invalidity pension for some years and that in connection with the claims for these benefits her mother was on 12 March 1976 appointed to represent her by the Secretary of State for Social Services pursuant, no doubt, to regulation 26 of the Social Security (Claims and Payments) Regulations 1975, among other things. The instrument of appointment was on the then current form BF 56, and was expressed as appointing a person to act for the purposes of a variety of Acts including the Ministry of Social Security Act 1966 now replaced by the Supplementary Benefits Act 1976.

3. On 28 July 1982 the claimant's mother made a claim on behalf of her daughter for a supplementary allowance. This claim is not in the case papers, and I am unable to say whether it contained anything to indicate the date as from which the allowance was claimed. On this claim a supplementary allowance was awarded from 30 July 1982. On 15 May 1983 the claimant's mother asked for the award to be back-dated. The benefit officer refused to back-date the claim before 28 July 1982 on the ground that the claimant's mother as the person appointed to act for her daughter had not shown that she had good cause for her failure to claim earlier. An appeal to the supplementary benefit appeal tribunal was dismissed broadly on the same grounds. The claimant through her mother now appeals to the Commissioner and her appeal is supported by the benefit officer now concerned. Since the appeal tribunal decision was given, the decision of a Tribunal of Commissioners R(SB) 9/84 has been published and it throws a good deal of light on the problems that arise in this appeal.

4. It is clear from the decision last mentioned that the claimant herself would be regarded as having good cause for delay personally and that delay on the part of her mother is not to be imputed to her during any period during which her mother was not effectively appointed to represent her for the purpose of the present claim. In fact a further appointment has been made (which was also before the appeal tribunal) dated 6 August 1982. And this undoubtedly was a relevant appointment of the claimant's mother to act for her in connection with the present matter.

5. The appeal tribunal, like the original benefit officer, relied on the earlier of the two appointments and considered that it was permissible to impute the mother's delay to the claimant for the entire period since then; and they concluded that the claimant's mother did not have good cause for delay continuing throughout that period down to the date of the claim or possibly down to the date of the application for back-dating; and I infer from the terms of their decision that they were considering the entire period and not just the period from the 1982 appointment. I do not find anything at fault in the way they dealt with the matter if it was right for them to impute the mother's delay to the claimant throughout the whole period from 1976. But the Decision R(SB) 9/84 shows that they were incorrect in doing this or at least casts very grave doubt on whether they were correct and I hold that they were not.

6. In that decision the tribunal, at paragraph 10 adverted to the fact that there is no statutory provision for making an appointment common to all the various Acts listed in the heading to form BF 56. And it was stated that a person is not regarded by the Secretary of State as holding an appointment to act under the Supplementary Benefits Act just because he has been appointed (albeit under an all embracing form BF 56) to act for the purpose of the Social Security Acts. I have some difficulty in understanding the implications of what was there said and I propose here to reconsider them. Although there is no statutory provision authorising a common appointment, there is no statutory provision forbidding such an appointment or laying down the form of an appointment. I therefore see no reason why a common appointment should not be made, if it is otherwise in conformity with the various regulations, which have the effect of appointing a person for a variety of purposes. A limitation does, however, emerge from the relatively restricted terms of the enabling provisions. If an appointment is to operate for the purposes of the Supplementary Benefits Act (or its predecessor the Ministry of Social Security Act 1966) it has to be within the terms of the enabling provisions of the regulations in force at the time. In 1976 the relevant regulation was regulation 11 of the Supplementary Benefit (Claims and Payments) Regulations 1966 and the power was limited (then as now) to making appointments in the case of a person (1) to whom benefit is payable or (2) who is alleged to be entitled to benefit or (3) on whose behalf a claim for benefit has been made. It is clear that the 1982 appointment made after a claim had been made by the claimant's mother was within the corresponding provision now in force (regulation 26 of the Supplementary Benefit (Claims and Payments) Regulations 1981). But in 1976 the claimant was not a person on whose behalf a claim for supplementary benefit had been

made, nor was supplementary benefit payable to her as she had not claimed it. Nor was she at that time (though she is now) a person alleged to be entitled to benefit. Accordingly in my judgment the appointment of 1976 did not operate as an appointment for the purposes of supplementary benefit. It follows that if and so far as good cause for any delay has to be established the fact that the claimant's mother may have not had such good cause is irrelevant in relation to any period before the 1982 appointment.

7. The next problem for the new tribunal will be to decide whether the claim for the allowance made on 28 July 1982 included a claim for back-dating the award. Decision R(U) 9/84 at paragraph 11 shows that a claim can only be treated as made in respect of a back period if it appears from the claim itself that it is so made or if the matter is raised with the benefit officer (or now the adjudication officer) before he gives his ruling on the claim. If the claim was not a claim for any back period then the decision given on it that a supplementary allowance was payable from 30 July 1982 was not by implication a rejection of a claim for any back period and the claim made in May 1983 was a fresh claim. If it was a fresh claim the first matter for consideration will be whether, in terms of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 there was good cause throughout the period of delay for failure to make the claim before it was made. In the light of Decision R(SB) 9/84 the tribunal will presumably conclude that the claimant personally had good cause for all delay; but in relation to the period between the 1982 appointment and the 1983 claim the delay of the claimant's mother will be relevant and it will be necessary to consider whether she also during that period had good cause for delay.

8. The foregoing will apply only in relation to the period from 24 November 1980. In relation to any earlier period the question will be whether in terms of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1977 or the corresponding provisions of the 1966 regulations there were exceptional circumstances justifying the back-dating of the claim. There is no requirement that the exceptional circumstances should continue down to the date of the claim, but the fact that they do not (if they are thought not to do so) is no doubt relevant to the question whether they justify the back-dating. On the meaning of exceptional circumstances I can do no more than refer the tribunal to what was said on this point in paragraphs 15 and 16 of Decision R(SB) 9/84.

9. The position will be entirely different if it is found that the 1982 claim was a claim both for the past and the future and that the decision awarding the allowance from 30 July 1982 was in effect a decision refusing the allowance from any back-date. If that is the case the application of May 1983 will be treated as an application for review to which the very different provisions of regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980 in force at the date of the application will apply. Under these provisions the review may, irrespective of good cause for delay,

be dated back infinitely far subject only to the restrictions contained in paragraph (2) of regulation 4. In this connection I point out that it was held in paragraph 19 of Decision R(SB) 9/84 that those restrictions on going back more than 52 weeks from the date of the application applied only in cases where the revision would involve increasing the amount of benefit payable and do not apply to a case where the revision would make benefit payable where none was previously payable. This has been altered in the regulations now in force but this will not affect the present case (see Social Security (Adjudication) Regulations 1984, regulations 87(1) and 92(7)).

10. The claimant's appeal succeeds.

Signed: J G Monroe
Commissioner

Date: 5 November 1984

Commissioner's File: C.S.B. 278/1984
C SBO File: 320/84
Region: North Eastern