

LB/MB

For (Claimant has to be "on foot" before it can be treated as withdrawn - Reg 3(4) & SA C & P Regs.

COMMISSIONERS DECISION
PERSONAL RECORD
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Commissioner's File: CSB/287/1984
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Region: North Eastern

SUPPLEMENTARY BENEFITS ACT 1976

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

1. My decision is that no error of law was made by the supplementary benefit appeal tribunal in its decision on 1 December 1983 in this matter and I accordingly dismiss the claimant's appeal. I have been assisted by the arguments of Mr. D. James of the Solicitor's Office of the DHSS for the adjudication officer. The claimant was not present or represented at the oral hearing.

2. On 10 August 1983 the claimant ceased to work on a Youth Training Scheme. On 15 August 1983 she registered as unemployed at her local employment office and claimed, orally, a supplementary allowance. A claim form for that allowance was issued to her on that date but it was not in fact received back by the local office of the DHSS until 12 September 1983. The claimant claimed to be entitled to backdate the claim to 15 August 1983; the adjudication officer declined to allow backdating and his decision was upheld by the tribunal.

3. The relevant parts of the Supplementary Benefits (Claims and Payments) Regulations 1981 [SI 1981 No. 1525] as amended are as follows:-

"3.-(1) Subject to the following provisions of this regulation, every claim for benefit should be made in writing to the Secretary of State either -

(a) in the case of a claim for a pension or allowance on a form approved for the purpose by him and supplied without charge by such persons as he may appoint or authorise for the purpose;

(4) Where -

.....

(b) a claim for a pension or allowance is made other than in writing, but is subsequently made in writing,

the Secretary of State may treat the claim as if it had been duly made in the first instance."

4. Regulation 3(4)(b) confers a discretion on the Secretary of State and that is not a decision which is subject to appeal. As is

apparent, the discretion does not arise until the subsequent writing is received and in this case that was the claim form received on 12 September 1983. Although this is a matter of inference the Secretary of State did not exercise his discretion under regulation 3(4) but instead treated the claim as made afresh on 12 September 1983. The question then arose whether there was good cause to treat the claim as made from a date earlier than 12 September 1983 pursuant to regulation 5(1) and (2)(a) of the above regulations.

5. The relevant parts of regulation 5 are as follows:-

5.-(1) Subject to paragraph (2), a claim for a pension or allowance shall be made no later than the first day of the period in respect of which it is made.

(2) Where a claim for a pension or allowance is made in respect of a period earlier than the day on which it is made, it shall be treated as if it had been made -

(a) where in any case the claimant proves that throughout that period there was good cause for failure to make the claim before the day on which it was made, on the first day of that period . . ."

(Regulation 5(2)(a) has since been amended.)

6. The notes of evidence of the chairman of the tribunal contain the following:-

"The appellant stated that she did not post the form until 26 Aug. (11 days after claiming) because the family had been moving house and the affairs of the household had been somewhat disrupted.

The appellant's father stated that he remembered his daughter filling in the form and addressing the envelope (the pre-paid envelope having been lost), and he is sure it was about 26 Aug.

The Presenting Officer stated that in the period between 26 Aug. and 12 Sept. when the claim was received there was no disruption of postal services in the Hartlepool area. "(This was I infer where the claimant lived and the local office of the DHSS was.)"

7. The tribunal made the following findings of fact -

"The appellant claimed SB on 15 Aug. 1983.

The form was not received at the local office until 12 Sept."

In the reasons for the decision of the tribunal is the following:-

"The question is whether the claim should be backdated under Reg. 5(2) of Determination of Questions Regs. [sic]. The burden is on the appellant to show the tribunal that there was good cause for the failure to make a claim earlier. Given that there is no record of any disruption of postal deliveries in the area we feel that the appellant has not shown that on the balance of probabilities the form was posted before the 21 day period expired."

8. The reference to the Determination of Questions Regulations was an error upon which nothing turns. The tribunal has considered whether regulation 5A of the Claims and Payments Regulations applied but I accept Mr. James' argument that it had no application in the circumstances of the present case but equally this does not serve to vitiate the tribunal's conclusion on regulation 5(2). Regulation 5A is in the following terms:

"5A. Where, before the determination of any claim, the Secretary of State pursuant to regulation 4, requires the claimant -

(a) to furnish the information requested on a form given to him for that purpose; or

(b) to attend at an office or place in the manner directed,

and the claimant fails to furnish such information within 21 days of being so required or, as the case may be, fails to attend as directed, the Secretary of State may, unless he is satisfied that such failure was reasonable in all the circumstances, treat the claim as having been withdrawn."

In my judgment Mr. James is right that regulation 5A requires a claim to be on foot before the discretion under it of the Secretary of State arises, and in the present case there was no claim on foot because the Secretary of State never exercised his discretion under regulation 3(4)(b) to treat the oral claim made on 15 August 1983 as if duly made. For a claim to be treated as having been withdrawn under regulation 5A, necessarily a claim has to be on foot.

9. There is only jurisdiction in a Commissioner to entertain an appeal in a supplementary benefit matter if the tribunal has erred in law. It is the tribunal which considers the evidence and hears the witnesses. In my judgment there was evidence before the tribunal upon which it could properly determine (as in substance it did) that on the balance of probability the claimant had not shown that the claim form had been posted on 26 August 1983. In my judgment I am not entitled to interfere with that finding in the circumstances of this case and the tribunal was entitled to conclude that the claimant had not discharged the burden of proving good cause for failure to make the claim before 12 September 1982. Whether or not the 'moving house disruption explanation' was 'good cause' does not matter, since no good cause for the period 15-25 August 1983 would avail the claimant without good cause thereafter to and including 11 September 1983.

10. It appeared at the oral hearing before me that there may have been a conflict of evidence as to whether the claimant received the claim form on 15 August 1983 or on 26 August 1983. In fact however I am satisfied from a perusal of the hand written notes of evidence that no such conflict arose.

(Signed) Leonard Bromley
Chief Commissioner

Date: 8 May 1985