

## SUPPLEMENTARY BENEFITS ACT 1976

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

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

*Good cause for late claim*

Name: David Nichol

Social Security Appeal Tribunal: Plymouth

Case No: 14/15

## [ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 7 November 1984 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal, who will have regard to the matters referred to below.
2. This is the claimant's appeal against the decision of a social security appeal tribunal dated 7 November 1984, confirming the adjudication officer's decision issued on 4 September 1984. At the oral hearing held before me on 29 July 1985, the claimant was represented by Mrs R Cohen of the Child Poverty Action Group. The adjudication officer was represented by Mrs A M Stockton of the Solicitor's Office of the Department of Health and Social Security. I am grateful to them both for their very helpful submissions.
3. On 15 August 1984 the claimant, a single student then aged 20, claimed supplementary benefit. On claim form B1 he requested his claim to be backdated for the inclusive period from 31 June to 9 July 1984 when he was in Plymouth. In a letter dated 30 August 1984, the claimant asked that the date of his claim be backdated to cover the further inclusive period from 10 July 1984 to 14 August 1984. He stated that he had been led to believe by the Unemployment Benefit Officer at Reading that he would be entitled to unemployment benefit during that period with the result that he did not claim supplementary benefit. On 15 August 1984 he returned to his home in Ipswich and on 30 August 1984 he was informed that he was not entitled to unemployment benefit for that period, which accounted for the delay in claiming supplementary benefit.
4. The adjudication officer refused to backdate the claim in respect of the inclusive period from 10 July 1984 to 14 August 1984 because he did not accept that continuous good cause for the delay had been established.

5. The claimant appealed to the tribunal who upheld the adjudication officer's decision and made the following findings of fact:-

"(1) [The claimant] now lives at ... Mutley, though at the time of the appeal he lived at Ipswich.

(2) He signed on at Reading Unemployment Benefit Office on 10 July but was later [erroneously transcribed as 'then'] informed he was not entitled to unemployment benefit.

(3) On 30 August, he asked for his claim for Supplementary Benefit made on 15 August to be backdated.

(4) [The claimant] had applied for Supplementary Benefit successfully on two occasions in 1983".

The reasons for the decision were:-

"The tribunal is satisfied that [the claimant] was aware of the correct procedure for claiming Supplementary Benefit and that he did not do so until the 15 August. The tribunal had regard to Claims and Payments Regulations 3 and 5 and especially, to Commissioner's Decision R(SB) 6/83".

The claimant now appeals to the Commissioner on a point of law, leave having been granted by the regional chairman. Mrs Cohen and Mrs Stockton agreed that this appeal was limited to the inclusive period from 10 July 1984 to 14 August 1984.

6. Regulation 19(2) of the Social Security (Adjudication) Regulations 1984 provides that every tribunal shall record a statement of the grounds for their determination and of their findings on material questions of fact. In my view for the reasons stated below the tribunal failed to comply with the statutory requirements. Accordingly, their decision was erroneous in law and I have no alternative but to set it aside. I should put on record at this stage that Mrs Stockton supported the appeal on this ground.

7. Regulation 5(2)(a) of the Supplementary Benefits (Claims and Payments) Regulations 1981, as amended, provides:-

"(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 the period between the first day of that earlier period and the date on which the claim was made there was continuous good cause for failure to make the claim before the day on which it was made, on the first day of that earlier period".

8. The new tribunal should first ascertain the date of claim in respect of the period in issue. In his written observations on the claimant's appeal the adjudication officer stated that by virtue of regulation 3(2) and (3) of the Claims and Payments Regulations the Secretary of State had decided that the date of claim was 15 August 1984. This decision should be included in the documentary evidence, because it was not clear whether it was limited to the inclusive period from 31 June 1984 to 9 July 1984 which was included in the original claim made on 15 August 1984. Both Mrs Cohen and Mrs Stockton submitted that, subject to the Secretary of State's decision which is absolute, the claim for the period in issue was made on 30 August 1980 and I agree.

9. In Decision R(SB) 6/83 the Commissioner held that the expression "good cause" in regulation 5(2)(a) of the Claims and Payments Regulations had the same meaning as in the regulations relating to claims and payments for social security benefits, and the principle set out in existing case law applied equally to supplementary benefit claims. In paragraph 12(3) he confirmed the principle enunciated in Decisions R(S) 8/81 and R(P) 1/79 that there could be good cause for delay if the delay was due to a mistaken belief reasonably held.

10. In his grounds of appeal to the tribunal, which he reiterated at the hearing, the claimant contended that when he "signed on" at Reading Unemployment Benefit Office he was led to believe by the clerk that he would be entitled to unemployment benefit and as a result he did not claim supplementary benefit. On 15 August 1984 he claimed supplementary benefit in respect of the inclusive period from 31 June 1984 to 9 July 1984 because he was advised to do so by Ipswich Unemployment Benefit Office where he was correctly advised that he would not qualify for unemployment benefit. On 30 August 1984 he claimed in respect of the period in issue having been notified on that day that he was not entitled to unemployment benefit for that period. Mrs Cohen submitted that the claimant's delay was due to a mistaken belief reasonably held and that the tribunal's decision was erroneous in law as they had failed to record any findings of fact in respect of the claimant's assertions. The fact that he was acquainted with the procedure for claiming supplementary benefit merely reinforced the claimant's argument that he would have claimed had he not been misled into believing that he was entitled to unemployment benefit for that period.

11. The new tribunal should record findings of fact on the following:-

(a) The date of claim in respect of the period in issue.

(b) The date at which the claimant attended the Unemployment Benefit Office at Reading and details of the information he was given, if any, by the clerk. Obviously there must have been some query about his entitlement at the time so that the new tribunal should determine whether it was reasonable for the claimant to believe that he would be entitled and as a result not claim supplementary benefit.

(c) The date at which he attended Ipswich Unemployment Benefit Office and details of the information he was given so that he claimed supplementary benefit for the inclusive period from 31 June 1984 to 9 July 1984 and whether on this information it was still reasonable for him to believe that he was entitled to unemployment benefit in the period in issue. It is for the new tribunal to determine as a question of fact based on the evidence before them what was reasonable in the circumstances.

12. It should be noted that regulation 5(2)(a) of the Claims and Payments Regulations refers to continuous good cause. The burden of proof falls on the claimant. As a result he has to establish good cause throughout the inclusive period from 10 July 1984 to the date of claim. Although regulation 5(2)(a) was amended on 6 August 1984, this does not affect the point in issue.

13. I should add for completeness that both Mrs Cohen and Mrs Stockton agreed that regulation 5(2)(b) of the Claims and Payments Regulations did not assist the claimant because he had claimed supplementary benefit prior to receiving a decision on his unemployment benefit claim.

14. The claimant is confused because although he was not entitled to unemployment benefit for the period in issue he was nevertheless credited national insurance contributions. At the hearing before the new tribunal the adjudication officer will no doubt refer the claimant to the relevant regulation in the Social Security (Credits) Regulations 1975 as amended. This matter is not before me for determination and furthermore I have insufficient facts for me to ascertain the exact position.

15. The claimant's appeal is allowed.

(Signed) R F M Heggs  
Commissioner

Date: 21 August 1985