

IEJ/EFM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

*Ag 1. Appeal Dept
 UC treated as a member of the family
 for date of appeal has not been selected
 for a separate appeal*

Decision C.S.B. 7/82

Reported R(SB) 17/82

1. This appeal by a supplementary benefit officer succeeds:
 - (1) I set aside as erroneous in law the decision dated 12 May 1981 of a supplementary benefit appeal tribunal from which the present appeal has been brought by my leave.
 - (2) In exercise of my now amplified jurisdiction pursuant to rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as amended by rule 6 of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 and being satisfied that it is expedient in the circumstances I now give as my decision the decision the tribunal should have given namely that (for the reasons later below set out and in accordance with the facts as found below) the claimant's appeal from the decision dated 2 April 1981 of a supplementary benefit officer be dismissed.
2. The material facts are not in dispute and are as follows:
 - (1) The claimant, who had been registered unemployed since a date in January 1981, received on Saturday 21 March 1981 a payment of £65.94 unemployment benefit which represented payment of such benefit in arrear for the week ending 20 March 1981 and in advance - and as the final week of his entitlement - for the week ending 27 March 1981.
 - (2) He then claimed supplementary allowance for the (next following) week ending 3 April 1981, but by decision dated 2 April 1981 of a supplementary benefit officer it was held that he was not entitled to supplementary benefit for that week, but only as from 4 April.

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- (3) From that decision the claimant appealed to a supplementary benefit appeal tribunal, whose decision dated 12 May 1981 was given in his favour and (by my leave) the supplementary benefit officer has now appealed to the Commissioner contending that the tribunal's decision was erroneous in law.

3. The law in point is of some complexity, but it is convenient to indicate at the outset that:

- (1) The substantive issue on the appeal turns upon the proper construction and proper application to the facts of the case of the Supplementary Benefit (Resources) Regulations 1980 ("the Resources Regulations") and can be shortly stated as turning upon whether or not in so ascertaining the claimant's income resources for the week ending 3 April 1981 that one half of the £65.94 which was, as above indicated, paid to the claimant on 21 March 1981 in respect of the week ending 27 March 1981 falls to be counted, for the purposes of supplementary benefit, as an income resource of his referable to the week ending 3 April 1981.
- (2) So expressed, the contention that it should be so counted appears quite contrary to commonsense - in that the effect of so counting it will in the claimant's case be to leave a week in which the need for social security benefit to finance routine expenditure will have continued unabated but unrequited by award of benefit.

But my duty in the matter is to ascertain and apply the law in point, whatever its impact.

4. (1) With prescribed but here immaterial exceptions regulation 9(1) of the Resources Regulations requires (and by necessary implication requires in reference to the computation of a claimant's resources as in a particular and to be postulated week) that the amount of a claimant's income resources to be taken into account shall include, in addition to earnings

".....

(b) the whole of any other income of the assessment unit, calculated in accordance with regulation 11 calculated on a weekly basis".

- (2) Under the combined effect of regulations 10 and 11 of the Resources Regulations it is clear beyond contrary argument that unemployment benefit falls to be treated as income and taken into account in full in the calculation of income resources.

5. (1) Thus in construing regulation 9 of the Resources Regulations it is appropriate, for my purposes, to insert the words "unemployment benefit" wherever the word "income" is found; and - so proceeding - regulation 9 is to be regarded as providing materially, as follows:
- (A) By virtue of regulation 9(1) the amount of a claimant's income resources to be taken into account is to include the whole of any unemployment benefit "calculated on a weekly basis".
- (B) By virtue of regulation 9(2) as in force at the material time a payment of unemployment benefit is to be:
- "taken into account for -
- (a) a period equal to the length of the period in respect of which it is payable;
- (b) where it is not paid in respect of a period, for the period to which it is fairly attributable, at a weekly rate beginning -
- (c) with the first day of the benefit week in which it is payable or the earliest succeeding benefit week in which, having regard to the method by which supplementary benefit is payable in a particular case it would be practicable to take it into account;
- (d) in the case of an income resource which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable;
- and in this paragraph 'benefit week' has the meaning assigned to it in regulations made pursuant to section 121(2)(f)" [of the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980] "(days on which entitlement to supplementary pension or allowance is to begin or end or the amount thereof is to change)."
- (2) The last above reference to regulations is to the Supplementary Benefit (Determination of Questions) Regulations 1980, regulation 7(2)(b) of which defines "benefit week", in reference to a person in the claimant's circumstances as the period of seven days beginning with the day - in his case Saturday - on which if he had been entitled unemployment benefit would have been payable.

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6. In summary, therefore, the effect of regulation 9 in the claimant's case is that:

- (1) In principle unemployment benefit constitutes an income resource to be taken fully into account "calculated on a weekly basis" in computing his resources.
- (2) Unemployment benefit is always payable "in respect of a period" - be that period a day, a week, or, as in the claimant's case, a fortnight. Thus regulation 9(2)(a) appears to bear (and regulation 9(2)(b) not to bear).
- (3) The (here fortnightly) payment has thus to be taken into account "at a weekly rate" - here £32.97.
- (4) Consideration, in conjunction with each other, of sub paragraphs (c) and (d) of regulation 9(2) makes it in my judgment clear that if the circumstances of the case fall aptly within the compass of (d), then (c) does not apply.
- (5) In the light of what I have indicated in paragraph 4(2) above, regulation 9(2) falls to be applied on the footing that the claimant's benefit week is a period of seven days commencing with a Saturday.

(I do not here overlook that the claimant received unemployment benefit only every other Saturday, but consider that it is appropriate to ignore that in order to give efficacy to the obvious intendment).

7. So proceeding, I am driven to conclude that under regulation 9(2) the payment of £65.94 falls to be taken into account on a weekly basis for a period equal to the period in respect of which it was payable - two weeks - at a weekly rate (£32.97) which, - since it was paid on Saturday 21 March and the first benefit week pursuant to the (supplementary allowance) claim was the benefit week (as above construed) commencing 28 March - is to begin with the date on which it was payable, namely Saturday 21 March; and thus to be taken into account as to £32.97 in the supplementary allowance resources computation both for that week and for the then ensuing week commenced 28 March - so defeating the claimant's claim for the latter week.

8. My decision is as indicated in paragraph 1 above.

(Signed) I Edwards-Jones
Commissioner

Date: 3 March 1982

Commissioner's File: C.S.B. 414/1981
CSBO File: S.B.O. 534/81