

CSB 523/1984

MJG/BR

SUPPLEMENTARY BENEFITS ACT 1976

*Long-term benefit
date payable*

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Feyyaz Soker

Supplementary Benefit Appeal Tribunal: Wimbledon

Case No: 19/21

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the supplementary benefit appeal tribunal dated 31 October 1983 (relating to the assessment of the claimant's weekly supplementary benefit from 30 May 1983 onwards) and I set that decision aside as being erroneous in law. I remit the case to a differently constituted social security appeal tribunal for re-hearing and re-determination in accordance with the directions in this decision; Supplementary Benefits Act 1976, section 2(1) (as substituted by paragraph 14 of Schedule 8 to the Health and Social Services and Social Security Adjudications Act 1983) and the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No 451], regulation 27.

2. This is one of four appeals to the Commissioner (on Commissioners' files Nos CS /523/1984, CSB/524/1984, CSB/525/1984, and CSB/526/1984), all of which were on my direction heard together at an oral hearing before me on 9 November 1984 at which the claimant was present in person and accompanied by Mr L C Held and the adjudication officer was represented by Mr C D'Eca. I am grateful to the claimant and to Mr D'Eca for their assistance to me at the hearing.

3. The claimant is a man aged 63, married but currently separated from his wife. His domestic and home circumstances are more in issue in the other three appeals and I will deal with them in detail there as they do not affect the subject matter of this present appeal, which is quite distinct from the other three. The present appeal concerns the amount of the claimant's weekly supplementary benefit as from 30 May 1983. On that date amendments to entitlement to the long-term rate of benefit came into force as a result of regulation 4 of S.I. 1983 No 463, potentially bringing the claimant within regulation 7 of the Supplementary Benefit (Requirements) Regulations 1980 [S.I. 1980 No 1299, as amended]. A further point arises as to the actual computation and dates of payment of the claimant's supplementary benefit for the period May/June 1983 when (by S.I. 1983 No 463) the claimant was exempted from signing the unemployment register, thus ceasing to be paid supplementary benefit through the local unemployment benefit office. (see below).

4. Although arising out of the same facts the two issues are entirely distinct. So far as concerns the entitlement to the long-term rate of benefit it was agreed at the hearing before me that I would postpone my decision on this particular point, pending a review by a benefit officer of the weekly amount of the claimant's supplementary benefit for the relevant period. That would appear to be the best course of action since otherwise the only power that I would have in the circumstances would be to direct a social security appeal tribunal to enquire whether a review had taken place and, if it had not, for them to adjourn pending a review. In order to avoid that circuitry, I have simply postponed that part of my decision. Hopefully the review of the claimant's entitlement will produce the result which he wishes. If any difficulty arises there is of course liberty to the parties to refer the matter to me.

5. So far as concerns the question of the overall monetary entitlement of the claimant to supplementary benefit during the period May/June 1983, the problem arises from the fact that owing to the above-mentioned change in regulations taking effect as from 30 May 1983 the claimant became exempted from signing the unemployment register. As a result, his supplementary benefit, which had hitherto been paid to him through the local unemployment benefit office, became payable to him directly by the Department of Health and Social Security. The claimant asserts that on that changeover an error has been made in computation of the dates and amounts of payment, with the result that he contends that he has been underpaid by a comparatively substantial sum. The tribunal who originally decided this case had before it a statement of facts from the supplementary benefit officer dealing in detail with this matter and the new tribunal that re-hears this case should be supplied with a similar statement of fact.

6. One reason why I consider the original tribunal erred in law is because I accept the submission of the adjudication officer now concerned that that tribunal did not fully comply with rule 7 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605 as amended by S.I. 1982 No 40], which required the tribunal to make findings of fact on all material questions and give reasons for its decision. I appreciate the difficulties that the original tribunal had in these cases but its findings of fact and reasons for decision do not on the present point make it clear why they arrived at their decision to confirm the assessment by the benefit officer.

7. In addition, I accept as correct paragraph 9 of the written submission dated 30 August 1984 of the adjudication officer now concerned in which she submits,

"Further, the tribunal erred in point of law by not considering regulation 7 of the Determination Questions Regulations. Regulation 7(1)(c) provides that where there is a change in the amount of pension or allowance on review, it shall take effect on the first day of the benefit week practicable and otherwise from the first day of the next following benefit week. I submit that a finding on this matter was crucial to enable the tribunal

to determine the correct date from which the claimant's supplementary allowance was to be increased. I further submit that the tribunal erred in law by failing to determine correctly whether the period covered by the payment of supplementary allowance made on 25 June 1983 was from 25 June 1983 to 8 July 1983 inclusive as alleged by benefit officer ... or only up to 30 June 1983 as alleged by the claimant ..., in support of which proposition he led in evidence a copy of a letter from the UBO".

8. The new tribunal that re-hears this case will no doubt go fully into these matters in order to arrive at a satisfactory resolution of this particular problem. So far as the law of the matter is concerned, I understand that the adjudication officer may wish to make a further submission to the new tribunal. I should point out that the claimant was throughout the period in question in receipt of supplementary benefit and never received unemployment benefit as such. Therefore no question arises of taking into account unemployment benefit as a resource under the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527 as amended]. In particular regulation 9 thereof is not applicable as had been originally submitted to the original tribunal that heard this case.

9. In view of the difficulties which have arisen in connection with this case and the other three appeals on which I have also directed re-hearings by a differently constituted social security appeal tribunal, I would suggest that all four appeals be heard together by the new tribunal. I would also suggest that consideration be given to that tribunal being chaired by a full-time chairman in view of the complexities of these four cases and the problems that have arisen. However, I must of course leave that entirely to the tribunal authorities. I understand from the claimant that he considers that an important point of law is involved, as a result of the changeover that took place in May/June 1983 affecting many other men of his age. No doubt the new tribunal wish to take that into consideration also. The matter must be dealt with by a new tribunal as facts need to be found (see above) and I have no power to do that.

Signed M J Goodman
Commissioner

Date: 18 December 1984

Commissioner's File: CSB 523/1984
C SBO File: 297/84
Region: London South

MJG/BR

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Commissioner

Date: 18 December 1984

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