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Commissioner's File: CSB/6547/1986

C A O File: AO 2618/86

Region: London South

SUPPLEMENTARY BENEFITS ACT 1976  
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION  
OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Margaret Frigg

Social Security Appeal Tribunal: Sutton

Case No: 1986/98

1. My decision is that the decision of the social security appeal tribunal dated 7 February 1986 is erroneous in point of law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant was in receipt of a supplementary allowance until 12 June 1985. She had commenced full-time employment on 3 June 1985. On 13 June 1985 a claim for a single payment for fares to and from work from 3 June 1985 (when she started) to 13 June 1985 (when she received her first wages) was received at the local office of the Department of Health and Social Security. An adjudication officer disallowed the claim because in his view the claimant did not as at the date of her claim satisfy the requirement of regulation 3(2)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 that there was a need for the item in question. Following the claimant's appeal against that decision the adjudication officer in his written submission to the tribunal amplified his reasons for the disallowance by asserting that in addition the claimant was ruled out by regulation 4 of the Single Payments Regulations which has the effect of restricting entitlement to single payments to those already entitled to supplementary benefit or who would be entitled if they claimed it. The tribunal dismissed the appeal. This present appeal is brought with leave granted by me.

3. The findings of fact made by the tribunal were -

1. "The claimant had already incurred the expenditure in paying fares.

2. "Further claimant was not on S benefit on 13.6.85."

The reasons for their decision were -

"Regulation 3(2) of the Single Payments Regulations applies in that there was no need for the item claimed at date of claim."

It seems from their findings and reasons that the tribunal took the view that because the claimant had incurred the expenditure before she made her claim she was ruled out by regulation 3(2)(a) of the Single Payments Regulations and that in any event she was ruled out because of regulation 4 of those Regulations. This indicates firstly that the tribunal failed to consider and apply regulation 5B of the Supplementary Benefit (Claims and Payments) Regulations 1981 which, subject to the conditions of that provision, has the effect that if a claim is made not more than 5 working days after the date on which the need first arose the

claim may be treated as made on the date the need first arose. Secondly, the tribunal does not seem to have appreciated that the definition of a claimant in regulation 4 of the Single Payments Regulations includes not only a person who is entitled to benefit but one who would be entitled if he claimed. So the tribunal should have considered if this claimant would have been entitled to benefit as at the date when she made her claim or the date which may be treated as that date under regulation 5B of the Claims and Payments Regulations. And if it were in the tribunal's mind that she was ruled out as at either of those dates because she was then in remunerative full-time work (see section 6(1) of the Supplementary Benefits Act 1976) they would have had to have taken account of regulation 9(2)(a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 by virtue of which a claimant is, subject to the exceptions contained in that provision, not to be treated as engaged in remunerative full-time work for the first 15 days (subject of course to receipt of wages to which regulation 9(2) of the Supplementary Benefit (Resources) Regulations 1981 applies). Finally, the tribunal, after having considered regulation 5B of the Claims and Payments Regulations, should have considered regulation 28 of the Single Payments Regulations with a view to determining whether any entitlement arose under that provision; R(SB) 12/85.

4. There is in the submissions in this case reference to various dates as the date of making the claim. There is even a reference to good cause for delay. In my view the position is plain. Under regulation 3(3)(b) of the Claims and Payments Regulations the date on which the claim is made is the date on which it is received at an office of the Department of Health and Social Security. Regulation 3(3)(a) does not apply because that provision is relevant only to a claim for a supplementary allowance. Regulation 5(2)(a) (good cause for delay) does not apply because that is relevant only to claims for a supplementary pension or a supplementary allowance. The only alleviating provision in the case of claims for single payments, so far as the time for claiming is concerned, is regulation 5B to which I have referred above.

5. For the reasons indicated the tribunal's decision was erroneous in law. The new tribunal must have regard to the matters mentioned above and find facts and give reasons for their decision which are relevant to those matters.

(Signed) R A Sanders  
Commissioner

Date: 21 November 1986