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SUPPLEMENTARY BENEFITS ACT 1976

Long Term rate

AR - Domestic Assist

APPEALS TO THE COMMISSIONER FROM DECISION OF
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A
POINT OF LAW

DECISIONS OF THE SOCIAL SECURITY COMMISSIONER

Name: Malcolm MacKenzie

Supplementary Benefit Appeal Tribunal: Glasgow

rec'd 28/10/81

Case Nos: 09/483 and 09/484

[ORAL HEARING]

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 15 January 1981 is erroneous in law and is set aside.

2. The above-mentioned decision of the supplementary benefit appeal tribunal is the subject of cross appeals by the claimant and the supplementary benefit officer respectively. In their decision the appeal tribunal upheld the claimant's appeal against the award of supplementary benefit made to him by the Commission to the extent of holding that the long-term scale rate of benefit should be payable from 26 November 1980 but rejected his appeal against an adverse decision on the payment of an addition for domestic assistance. The claimant's appeal relates to the latter point and the appeal of the supplementary benefit officer relates to the former. Leave to appeal was granted to the benefit officer and to the claimant on 10 and 13 April 1981 respectively. Thereafter an oral hearing was allowed on each appeal and these were duly heard together before me when the claimant who attended in person was represented by Mr. Oliver, Welfare Rights Adviser, Strathclyde Social Work Department and the benefit officer was represented by Mr. Milledge.

3. The claimant who is aged about 45 is a single parent living with a son aged 18 (in receipt of supplementary benefit) and another son aged 16 who is still undergoing full-time education. The claimant has been unemployed and registering at the unemployment benefit office since September 1976 and in receipt of supplementary benefit since March 1977. Before the claimant's 16 year old son, Campbell, attained that age in September 1980 the claimant was not required to register for employment as a condition of receiving supplementary benefit but he did so voluntarily. He became entitled to the long-term scale rate of supplementary benefit after completing the 2 year qualifying period. When Campbell became 16 the claimant was required to register for employment as a condition of receiving supplementary benefit. As a consequence under the statutory provisions in force prior to 24 November 1980 the basic scale rate of benefit became appropriate for the claimant. Up to September 1980 the claimant was in receipt of a addition of £3 weekly for a non-resident housekeeper. That addition was withdrawn when Campbell became 16 in that month but on appeal by the claimant an appeal tribunal decided that this addition should continue until Campbell left school. The decision under appeal arises from a determination of the claimant's entitlement to supplementary benefit as from the appropriate pay day in the

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week commencing 24 November 1980 which was made to take account of the changes resulting from the amendments to the statutory provisions which came into force on that date.

4. The statutory framework of the claimant's appeal for the restoration of payment of an addition for domestic assistance is to be found in regulations 11 and 13(1)(c) of, and paragraph 14 of Schedule 3 to, the Supplementary Benefit (Requirements) Regulations 1980. Under regulation 13(1)(c) the claimant is required to satisfy the conditions in column 1 of paragraph 14 of Schedule 3. Paragraph 14 is in the following terms:-

"14. Where -

(a) a charge is made for assistance with the ordinary domestic tasks (for example, cleaning and cooking but excluding window cleaning and errands) of the assessment unit;

(b) such assistance is essential because adult members of the assessment unit are unable to carry out all these tasks by reason of old age, ill health, disability or heavy family responsibilities; and

(c) the assistance is not provided by a local authority, nor by a close relative who incurs only minimal expenses."

It is not in dispute that the claimant is able to satisfy conditions (a) and (c) of paragraph 14. The rejection of the claimant's claim has been based on the condition in paragraph 14(b).

5. The claimant's contention is that the tribunal erred in their treatment of the evidence bearing upon condition 14(b) referred to above and took into account irrelevant evidence. At the tribunal hearing the claimant's representative had sought to satisfy that condition by reference to the claimant's disability and heavy family responsibilities. In relation to the first point there was evidence that the claimant had been registered as a disabled person since an accident in 1950. This was apparently a leg injury but there was no medical evidence as to its gravity or effects and no suggestion that it was obviously grossly incapacitating. The tribunal in their decision refer to the absence of medical evidence. This was challenged on behalf of the claimant but in my opinion the tribunal were perfectly entitled to comment on the absence of medical evidence on that point. The claimant's representative had sought to satisfy the alternative reason of "heavy family responsibilities" by referring to the presence of the claimant's 2 sons at home and in particular the claimant's concern over his younger son still at school. It is apparent from the chairman's notes of evidence and the reasons given for the tribunal's decision that the tribunal considered these contentions for the claimant with reference to paragraph 14(b) but were not satisfied on the evidence that either reason founded upon was established. In my opinion they were amply justified in reaching that conclusion upon the evidence before them. It was also contended that the tribunal had taken into account

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irrelevant evidence and reference was made to the following comment in paragraph 3 of the reasons for the tribunal's decision:-

"The appellant also clearly desires to be employed and therefore must consider himself as not incapable."

That comment was however made in the context of the tribunal's consideration of the claimant's possible inability to undertake ordinary domestic tasks and does not in my opinion indicate that the tribunal took into account irrelevant evidence. In these circumstances I have come to the conclusion that no error in law is demonstrated with regard to the tribunal's decision upon this matter and accordingly the claimant's appeal must fail. It should be mentioned that under regulation 10 of the Supplementary Benefit (Transitional) Regulations 1980 the amount of the addition for domestic assistance paid to the claimant prior to 24 November 1980 has in any event been required to be maintained since that date, subject to the conditions laid down in that regulation.

6. The statutory provisions relevant to the supplementary benefit officer's appeal against the award of benefit at the long-term scale rate are more complex. Under the provisions of paragraph 2(3) of the First Schedule to the Supplementary Benefits Act 1976 as amended that rate is payable in terms of paragraph 3(b) of the relative Table to a householder who has not attained pensionable age but who satisfies prescribed conditions. The prescribed conditions are laid down in regulation 7 of the Supplementary Benefit (Requirements) Regulations 1980. Regulation 7(1) provides:-

"7.-(1) The conditions for the purposes of paragraphs 1(b) and 3(b) of the table (conditions for long-term rate for couples and householders not of pensionable age) are that the person -

- (a) is eligible for an allowance not subject to registration; and
- (b) subject to paragraphs (2) to (4), has already been in receipt of an allowance not subject to registration for a continuous period of not less than 52 weeks."

Under sub-paragraph (6) of regulation 7 the expression "subject to registration" in relation to an allowance means subject to the condition of registration and availability for employment under section 5 (of the Supplementary Benefits Act 1976). Section 5 of the Supplementary Benefits Act 1976 provides:-

"Except in prescribed cases the right of any person to a supplementary allowance shall be subject to the condition that he is registered for employment in such manner as may be prescribed and is available for employment; ...".

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The exceptions from section 5 are prescribed in regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980. It is accepted that regulation 6(a) has no application in this appeal because the claimant's son Campbell, although a dependant is not a "child", in respect that under section 34(1) of the Supplementary Benefits Act 1976 "child" means a person under the age of 16. The provisions of regulation 6 which are for consideration in this appeal are provisions of regulation 6(e) and (r).

7. Regulation 6(e) provides as follows:-

"6. A claimant shall not be required to register and to be available for employment under section 5 in any week in which one or more of the following paragraphs applies:-

...

(e) by reason of physical or mental disablement he has no further prospect of employment and in the 12 months immediately preceding has -

(i) on average worked for less than 4 hours a week,

(ii) been registered and available for employment under section 5 for not less than 39 weeks,

(iii) made reasonable efforts to find employment and not refused any suitable employment,

and it is unlikely that there will be a vacancy for suitable employment for him in the locality in the near future; "

Regulation 6(r) provides:-

"6. (r) the preceding paragraphs do not apply to him, but the circumstances are analogous to any circumstances mentioned in one or more of those paragraphs and in the opinion of the benefit officer it would be unreasonable to require him to register for employment."

8. The supplementary benefit officer challenges the appeal tribunal's decision that the claimant is able to satisfy the provisions of regulation 7(1)(a) and (b) by fulfilling the conditions of regulation 6(e) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1980

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which would exempt him from the requirements of registration and availability for employment under section 5. It was submitted that the appeal tribunal failed to make findings of fact upon which they were entitled to find that the claimant satisfied the conditions of regulation 6(e) and in particular the condition in the opening words that "by reason of physical or mental disablement he has no further prospect of employment". In the second place it was submitted that the tribunal erred in concluding that the claimant could satisfy the condition of regulation 6(e)(ii) that the claimant has "been registered and available for employment under section 5 for not less than 39 weeks". It was said on behalf of the claimant that the tribunal considered the various conditions of regulation 6(e) in turn and that evidence of physical disablement and lack of employment prospects was presented. The tribunal undoubtedly considered regulation 6(e). They stated in their reasons for the decision that the claimant's circumstances were exceptional in terms of that regulation and stated "He has a physical disability and fulfills the requirements specified in this regulation". With considerable hesitation I have come to the conclusion that the tribunal made just sufficient findings to entitle them to hold that the claimant satisfied the opening condition of regulation 6(e). It was however argued that in any event the tribunal erred in holding that the claimant could satisfy the requirement of regulation 6(e)(ii) that the claimant had been registered and available for employment under section 5 for not less than 39 weeks. It is clear from the findings of the tribunal that they regarded the claimant as satisfying that condition by reason of his voluntary registration for employment in the period prior to September 1980 taken along with his subsequent compulsory registration for employment. The argument on behalf of the supplementary benefit officer is that a person can only be regarded as registered and available for employment under section 5 if he is required to be so registered and available for employment. It was argued on behalf of the claimant that this was not so, that the claimant was in fact registered and available for employment both before and after September 1980, and that the words "under section 5" in regulation 6(e)(ii) were merely used to link or identify the registration as registration with the Department of Employment. I am unable to accept this argument and prefer the contention on behalf of the supplementary benefit officer. It appears to me that the reference to a person being registered and available for employment under section 5 is a reference to a person who has come under a requirement to be so registered and available for employment under the provisions of section 5. Accordingly in my opinion the appeal tribunal erred in holding that the claimant was capable of satisfying condition 6(e)(ii) of the Conditions of Entitlement Regulations. It was argued in the alternative on behalf of the claimant that the claimant could satisfy the provisions of regulation 6(r) of those regulations and the chairman's notes of evidence show that that contention was advanced to the appeal tribunal. The reasons advanced by the tribunal in their decision however make it clear that the tribunal did not invoke the provisions of regulation 6(r) and that they found that the claimant satisfied regulation 6(e). In these circumstances in my opinion the appeal tribunal erred in law in holding that the claimant satisfied the provisions of regulation 6(e) and by that means established entitlement to the long-term scale rate of benefit from 26 November 1980 by qualifying for exemption from the requirement to register for employment so as to meet the conditions of regulation 7 of the Requirements Regulations.

9. My conclusion upon the two appeals accordingly is that the claimant has failed to establish that the tribunal erred in law in refusing the claim for

an addition for domestic assistance but that the supplementary benefit officer has established that the tribunal erred in law in holding that the long-term scale rate of benefit be payable to the claimant from 26 November 1980. In these circumstances I propose to follow the decision and reasoning of the Commissioner in decision C.S.B.8/81 and to set aside the whole decision of the appeal tribunal. I agree with the view expressed in the same case that a complete rehearing is not essential in every case and that the Commissioner may direct a fresh tribunal to rehear and determine only part of the case afresh and to determine the remainder in accordance with the relevant part of the decision of the original tribunal. While the whole of this case must be referred to a differently constituted tribunal therefore I direct that that tribunal find that the claimant is not entitled to an addition for domestic assistance. That tribunal will however reconsider the claimant's possible entitlement to the long-term scale rate of benefit from 26 November 1980 with particular reference to regulation 6 of the Conditions of Entitlement Regulations and (i) find in accordance with this decision that the claimant does not satisfy the conditions of regulation 6(a) or (e); and (ii) determine whether the claimant can satisfy the conditions of regulation 6(r). Their decision should make clear that they have considered whether the claimant's circumstances are analogous to any of the circumstances mentioned in one or more of the paragraphs preceding (r) and, in the event of their concluding that the circumstances are analogous, to specify the relevant paragraph or paragraphs, and in that event to record their opinion as to whether or not it would be unreasonable to require the claimant to register for employment.

10. The appeal of the claimant is refused and the appeal of the supplementary benefit officer is allowed.

(signed) J. G. Mitchell
Commissioner

Date: 23 October 1981

Commissioner's File: C.S.S.B.9/81 and C.S.S.B.6/81

CSBO. File: SEO 55/81 and 66/81

L. O.: Parkhead I.L.O.

L. O. Ref. No.: 1111 - 117011