

JGM1/IM

SUPPLEMENTARY BENEFITS ACT 1976

FAMILY INCOME SUPPLEMENTS ACT 1970

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION
OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

[ORAL HEARING]

Decision No. C.S.S.B.1/81

1. My decision is (1) that the application for leave to appeal to the Commissioner on a point of law from the decision of the Supplementary Benefit Appeal Tribunal dated 5 February 1981 is granted; and (2) that the said decision of the Supplementary Benefit Appeal Tribunal is not erroneous in point of law.
2. This is an application by the claimant for leave to appeal on a point of law from a decision of the Supplementary Benefit Appeal Tribunal in Glasgow dated 5 February 1981 whereby the Appeal Tribunal upheld a decision of the Supplementary Benefits Commission dated 20 June 1980 awarding supplementary pension to the claimant for a period up to 24 November 1980. An oral hearing was held before me at which the claimant who attended in person was represented by Mr. Q. Oliver, Welfare Rights Adviser, Strathclyde Social Work Department, and the Supplementary Benefit Officer was represented by Mr. Birch. I am indebted to these gentlemen for their submissions and their assistance.
3. The claimant, who is a widow and a householder, was aged 62 at the date of her claim to supplementary benefit. She was in receipt of a retirement pension and claimed supplementary pension on 12 June 1980. Included in the make-up of the assessment of her supplementary pension award was an additional sum of 95p per week as a central heating addition and a sum of 55p per week as the amount allowable in the assessment by way of an exceptional circumstances addition in respect of the extra cost of a diet followed by the claimant by reason of her medical condition of hiatus hernia. The claimant appealed to the Supplementary Benefit Appeal Tribunal against the determination of the Supplementary Benefits Commission and at the hearing of her appeal her representative submitted (1) that as well as a central heating addition she required additional heating for medical reasons; (2) that she required a higher dietary addition because she had difficulty in swallowing following a throat operation; (3) that she required a laundry addition; and (4) that all of these items should be "back dated". The tribunal unanimously refused the claimant's appeal and upheld the decision of the Commission.

4. The claimant has now made application through her representative for leave to appeal to the Commissioner on a point of law under the provisions of section 15A of the Supplementary Benefits Act 1976 added by section 6 of the Social Security Act 1979 as amended by paragraph 14 of Schedule 2 to the Social Security Act 1980, and the regulations made thereunder, namely the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, Rules 8 to 11. Under these provisions, appeal to the Commissioner is available, with leave, upon the ground that a decision of a Supplementary Benefit Appeal Tribunal is erroneous in point of law. The representatives of the claimant and the Supplementary Benefit Officer are agreed that as the determination upon the claimant's claim to supplementary pension relates to a period prior to 24 November 1980 the substantive benefit law to be applied is the law prior to amendment with effect from that date brought about by the Social Security Act 1980 and relative regulations. Nine grounds of application for leave to appeal have been tabled on behalf of the claimant but they can in my view be considered under the following heads namely

- (1) alleged breach of the rules of natural justice by the tribunal;
- (2) alleged error in law on the part of the tribunal in not entertaining the claimant's evidence on the points referred to in paragraph 3 above or alternatively in rejecting that evidence, and
- (3) alleged failure of the tribunal to state adequate findings and reasons for its decision in breach of the requirements of Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980.

5. I propose to deal first with the allegation that the tribunal and in particular the chairman transgressed the rules of natural justice by displaying bias and discrimination against the claimant and her case. This most serious allegation was based upon very flimsy grounds, such as for instance that the chairman raised her eyebrows and sighed during the proceedings. The allegations were not made any more convincing at the oral hearing and it is clear from the record of the tribunal's decision and the chairman's notes of evidence that the points put forward on behalf of the claimant were properly recorded and considered. On behalf of the Supplementary Benefits Officer I was referred to numbered Decision C.S.B. 1/81 and also to De Smith on Judicial Review of Administrative Action, 4th edition, pages 18 to 22 and the authorities there considered. I am satisfied that there is no possibility of the allegations made in the present case supporting a finding that the tribunal's proceedings were in breach of the rules of natural justice. Leave to appeal upon that ground is therefore refused.

6. The main argument which was developed at the oral hearing related to the jurisdiction of the Supplementary Benefit Appeal Tribunal to entertain, in the course of an appeal, matters not taken into account in the original determination of the Supplementary Benefits Commission. This and the remaining grounds of application for leave to appeal raise points of law upon which leave can properly be granted. I therefore grant leave to appeal upon these grounds and as the necessary consents have been obtained I can proceed to deal with these grounds in the application treated as the appeal.

7. Section 15(1)(a) of the Supplementary Benefits Act 1976 provides, in short,:

"a person claiming ... supplementary benefit may appeal to the Appeal Tribunal against any determination of the Commission ... with respect to any of the following matters -

- (a) the right to, or amount of, any supplementary benefit."

Section 15(3) provides, in short,:

"on an appeal under this section the Appeal Tribunal may -

- (a) confirm the determination appealed against; or

...

- (c) substitute for any determination appealed against any determination which the Commission could have made."

Section 2(1) of the Act provides that, subject to appeals, the question whether a person is entitled to supplementary benefit and the amount of any such benefit is to be determined by the Supplementary Benefits Commission. Section 2(2) provides that entitlement to and the amount of any supplementary benefit is to be determined in accordance with the provisions of Part I of the Act and Schedule 1 to the Act and any regulations made under this subsection. In section 1(1) of the Act the benefits available under the Act are listed as a supplementary pension (for those of pensionable age) or a supplementary allowance (for those not of pensionable age) and such benefit by way of a single payment to meet an exceptional need as may be determined under section 3 of the Act. Paragraph 1(1) of Schedule 1 to the Act provides that the amount of any supplementary benefit to which a person is entitled shall be the amount by which his resources fall short of his requirements. Paragraph 4(1)(a), under the heading "Adjustment for exceptional circumstances", provides:-

"Where there are exceptional circumstances -

- (a) Supplementary benefit may be awarded at an amount exceeding that, if any, calculated in accordance with paragraphs 1 to 3 of the Schedule;"

In terms of regulation 3 of the Supplementary Benefits (Claims and Payments) Regulations 1977 in force at the relevant time, claims to supplementary benefit are to be made in writing to the Secretary of State on a form approved by the Secretary of State for the purpose of the benefit for which the claim is being made or in such other manner in writing as the Secretary of State may accept as sufficient in the circumstances of any particular case or class of cases. The Secretary

of State may also in any particular case or class of cases accept an oral claim for benefit under section 3 (benefit by way of a single payment to meet exceptional needs). Regulation 4 of those regulations provides:-

"Every person who makes a claim for benefit shall furnish such certificates, documents, information and evidence for the purpose of determining the claim as may be required by the Commission ..."

No special form for claiming supplementary benefit has been approved by the Secretary of State under regulation 3 and a claimant for, for example, supplementary pension does not when claiming benefit require to specify a breakdown of the possible elements of his or her entitlement. The establishment of the requirements and resources of a claimant upon the basis of which the assessment of entitlement to supplementary benefit is made depends upon an interview and discussion with the claimant and the production of such vouchers etc. as may be called for. It is accepted on behalf of the Supplementary Benefit Officer that when someone makes a claim to supplementary benefit the Commission has an obligation to enquire into his or her circumstances in order to establish the assessment of the respective requirements and resources including any special needs. It is against that background that the Commission made its determination in the present case.

8. For the purposes of this appeal the representatives of the claimant and the Supplementary Benefit Officer were agreed that the jurisdiction of the tribunal in an appeal under section 15 of the Supplementary Benefit Act 1976 is limited to the original claim and would not extend to entertaining, as part of an appeal, a new claim for a single payment under section 3 of the Act. I was not referred to any statutory provision in the Supplementary Benefits legislation analogous to section 102 of the Social Security Act 1975 and so far as I am aware there is no such analogous provision. Mr. Oliver on behalf of the claimant was also prepared to agree that it was not for the Supplementary Benefit Appeal Tribunal in hearing an appeal against the determination of the Commission based upon one set of circumstances to take account of a subsequent change of circumstances affecting a claimant's requirements or resources. That would be a matter for review not appeal. The claimant's representative however argued that the Appeal Tribunal can and should entertain evidence on matters which could result in an exceptional circumstances adjustment to the determination of benefit at appeal even if these matters were not considered by the Commission. In support of that submission he referred to the statutory provisions and the procedures summarised in paragraph 7. He also referred to the general statutory duty imposed upon the Commission by section 27(1) of the Supplementary Benefits Act to "exercise the functions conferred on them by this Act in such manner as shall best promote the welfare of persons affected by the exercise of those functions". That duty was reflected in the aims of the Commission as set out in the Foreword to the Supplementary Benefits Handbook (1979 Edition) and the interpretation of it contained in paragraph 16-2 of the 1980 Edition. The Appeal Tribunal were entitled to consider the merits of a claim afresh and to substitute their own decision. While that substituted decision must be one that the Commission could have made it need not be confined to the original evidence.

The representative of the Supplementary Benefit Officer argued on the other hand that the jurisdiction of the Appeal Tribunal was limited to the circumstances which had been placed before the Commission. He cited the unreported case of Bloomfield v The Supplementary Benefits Commission, 15 December 1978, decided by Sheen, J. whose decision was upheld by the Court of Appeal on 2 July 1979. In the present case the items sought to be raised on appeal were new and such matters were outwith the jurisdiction of the tribunal and could only be entertained as a matter of review by the Commission in the exercise of its powers under regulation 9 of the Supplementary Benefits (General) Regulations 1977 (revoked and replaced as from 24 November 1980 by regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980) made under section 14(2)(d) of the Supplementary Benefits Act 1976. Anticipating that argument, Mr. Oliver pointed out under reference to Pollard - Social Welfare Law, paragraphs E1361-3, that consideration was invariably given to review of a decision of the Commission once a claimant had appealed. In this case it must be assumed that that procedure had been gone through and it had been decided not to revise the decision.

9. Having regard to the general nature of a claim for supplementary benefit by way of pension or allowance (i.e. other than by way of a single payment under section 3), to the investigative role of the Commission, and to the powers of the Appeal Tribunal under section 15(3) of the Supplementary Benefits Act 1976, I am unable to accept the submission made on behalf of the Supplementary Benefit Officer as to the limited jurisdiction of the Appeal Tribunal. I do not consider that the case of Bloomfield supports the argument on behalf of the Supplementary Benefit Officer. That case concerned a claim to supplementary benefit which was affected by the provisions of section 7(1) of the Supplementary Benefits Act 1976 which save in exceptional circumstances precludes a person attending a school from entitlement to benefit. In the passage to which I was referred Sheen, J. pointed out that the question whether the claimant was "attending a school" fell to be considered as at the date of claim and not as at the date of the Appeal Tribunal hearing (by which time the claimant had been in hospital for 5 weeks). That is not, however, an authority for the proposition that an Appeal Tribunal cannot entertain new facts affecting the claimant's circumstances as at the date of claim. Equally I do not consider that Mr. Oliver's point regarding the initiation of review procedures on the taking of an appeal advances the argument in the present case because the points raised at the Appeal Tribunal had not been disclosed in the claimant's brief letter of appeal. In my opinion on an appeal under section 15 an Appeal Tribunal can competently entertain submissions and evidence upon matters within the purview of the original claim even if these have not previously been considered, and may in its discretion either deal with these matters as presented or adjourn to allow further investigation of them. In the present case I consider that the Appeal Tribunal was entitled, under section 15(3)(c) above referred to, if it thought fit, to substitute for the determination of the Commission a determination containing an altered assessment of the amount of the claimant's entitlement to supplementary pension based upon facts relevant to the determination of the claimant's requirements which were not, but could have been, before the Commission at the date of their original determination.

10. In light of that conclusion I come now to consider the claimant's second main submission that the Appeal Tribunal erred in law in not entertaining the claimant's evidence on special additions for heating, diet and laundry, or erred in law in rejecting that evidence. The proposition that the tribunal erred in not entertaining the evidence is based I think mainly upon a statement in the reasons for decision that the claimant was being paid her full entitlement to supplementary benefit "on the facts as they were known at the time the decision was made". The remainder of the reasons stated by the tribunal however make it clear that the tribunal also considered whether they had evidence to warrant any increases being made to the weekly benefit, and accordingly it is to be inferred that the conclusion as to the correctness of the original decision on the facts then known was merely recorded as a useful and indeed a necessary starting place in the tribunal's determination.

11. It is necessary next to consider whether the tribunal erred in law in rejecting the evidence on the claims for special additions. This contention is put in various ways in grounds 1, 2, 3 and 8 of the grounds of appeal. The acceptance or rejection of evidence tendered in support of an appeal is of course essentially a matter for the Appeal Tribunal and does not ordinarily give rise to a question of law. It is however suggested on behalf of the claimant that the tribunal erred in proceeding upon the basis of irrelevant evidence. The evidence in question is however recorded as part of the chairman's note of the submissions made and evidence given in the appeal, and the points criticised come from notes of the evidence given by the claimant relative to her need for a laundry addition and her general financial needs. There is no substance in the suggestion that the tribunal proceeded upon irrelevant evidence in this connection in coming to their determination. It is also suggested that the tribunal erred in requiring medical evidence to support the claimant's claim for special additions. Medical evidence would have been relevant to at least 2 out of the 3 special additions sought and it is recorded that no medical evidence was produced. In my opinion it is a matter within the discretion of an Appeal Tribunal whether or not to accept a statement about a medical condition which is not supported by medical evidence. No error in law can be said to have arisen in these respects.

12. If the tribunal was entitled to reject these special additions did it err in not "back dating" as requested? It is clear from the chairman's notes of evidence and also ground 5 of the grounds of appeal (which refers to the request "that the additions be back dated in terms of the 1977 General Regulations") that the request for "back dating" was ancillary to the claims for special additions. As such it might well be thought to fall along with rejection of these special additions. In any event however the request for "back dating" was in my opinion misconceived since the provision in the regulations referred to (regulation 9 of the Supplementary Benefits (General) Regulations 1977) relates to cases upon review and not upon appeal. I should add that no reference was made at the appeal to the provisions of regulation 5 of the Supplementary Benefits (Claims and Payments) Regulations 1977 and there was no suggestion of exceptional circumstances such as might have supported a claim that that regulation (now revoked) should have been applied by the Commission. I conclude that no error of law arises upon this aspect of the tribunal's decision.

13. It remains to consider whether the tribunal erred in law through failure to comply with the requirements of Rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980. That rule, binding upon tribunals since 24 November 1980, provides that the tribunal shall include in the record of their determination a statement of the reasons for their determination and of their findings on material questions of fact. So far as the requirement to record findings of facts is concerned the tribunal were of course in the position in the present case that they did not accept the facts underlying the claimant's claims to special additions as being established. Nevertheless they made specific reference to 2 of these heads of claim including a limited finding in fact upon 1 of them in their findings and referred to the other item in the chairman's notes of evidence. In the circumstances of this case it appears to me that the findings in fact are adequate. So far as the statement of reasons for the decision is concerned these reasons, as already mentioned, show that the tribunal accepted the correctness of the original determination in accordance with the facts then known and held that none of the increases were warranted. While there was no separate reference to "back dating" in the reasons as distinct from the chairman's notes I do not think that that is fatal to the decision, given the ancillary and erroneous basis of that request.

14. For the foregoing reasons I have therefore come to the conclusion that it is not established that the decision of the Appeal Tribunal is vitiated by error of law in any of the respects alleged.

15. The appeal of the claimant is refused.

(signed) J. G. Mitchell
Commissioner
Date: 20 July 1981

Commissioner's File: C.S.S.B.20/81
S.B.O.: 125/81
L.O.: East Kilbride
L.O. Ref. No.: 3091-61590