

C S S B 27/81

JCSM/TH

SUPPLEMENTARY BENEFITS ACT 1976

① No. of representatives which

FAMILY INCOME SUPPLEMENTS ACT 1970

are reasonable

② No. of legal points

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

Name:

Supplementary Benefit Appeal Tribunal: Leamington

Case Nos: 12/236 12/237 12/238 and 12/239

1. The claimant has made an application for leave to appeal to the Commissioner from the decision of the Supplementary Benefit Commission at Hamilton dated 24 February 1981. In connection with the application an oral hearing was requested. Appeal is however only available upon a point of law, and the claimant's grounds of application for leave to appeal have been fully and clearly set out on behalf of the claimant. I am satisfied that the application can properly be dealt with without an oral hearing and I have therefore refused the request.

2. Appeal was taken by the claimant to the Supplementary Benefit Appeal Tribunal from decisions of the Supplementary Benefits Commission dated 20 October, 3 November and 14 November 1980 respectively. The appeal was however restricted at the hearing to appeal against the decisions dated 20 October 1980 whereby the Commission refused a single payment for clothing and refused to review supplementary allowance of £56.75 determined and paid from the prescribed pay day in week commencing 25 August 1980. The points upon which review was sought at the appeal were the back dating and increase of a wear and tear addition in respect of the clothing of one of the claimant's children, Derek, and a request for a laundry allowance. The tribunal unanimously refused the claim for a single payment for clothing, agreed to back date, but refused to increase, the wear and tear allowance, and remitted the claim for a laundry allowance for investigation.

3. Paragraphs 1 and 2 of the grounds for application for leave to appeal relate to the form of the decision of the tribunal, paragraphs 3 to 6 relate to alleged errors in law relative to the tribunal's treatment of the points presented at the appeal, and paragraph 7 relates to an alleged breach of the rules of natural justice and error in interpretation of rule 6(6) of the Supplementary Benefit and Family Income Supplement (Appeals) Rules 1980. It will be convenient to take these grounds in reverse order.

4. Ground 7 relates to an alleged refusal of the tribunal to admit the requested four representatives of the claimant. The claimant's case was handled by Mr. Q. Oliver, a Welfare Rights Adviser of Strathclyde Social Work Department. He and a Welfare Rights Officer were admitted to the tribunal hearing by the Clerk but apparently two others were not. This ground of application is in my opinion misconceived. Paragraph 9(1) of Schedule 4 to the Supplementary Benefits Act 1976, as amended, empowers the Secretary of State for Social Services to make rules as to the procedure of tribunals. Paragraph 9(2) provides that the power to make such rules includes power to make provision "as to the representation of one person in any proceedings by another person". Rule 6(4) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 provides that subject to the following provisions of the rule no member of the public is to be permitted to be present at any sitting of the tribunal. Rule 6(5) provides that an interested person and a person who under paragraph (6) represents an interested person shall be entitled to be present during an oral hearing. Paragraph (6) provides "An interested person shall be entitled to be accompanied and to be represented (whether by a person having professional qualifications or not) at an oral hearing". A claimant is, of course, an interested person. Paragraph (7) of the same rule provides that the chairman of the tribunal may allow a person other than an interested person or a person accompanying or representing him to be present at an oral hearing subject to certain safeguards. The claimant in the present case was undoubtedly more than amply represented by a Welfare Rights Adviser and a Welfare Rights Officer and I can see no merit whatsoever in the suggestion that two further representatives were required or that their exclusion in any way represented a breach of the rules quoted above or the rules of natural justice. If the presence of further persons was required as witnesses or as observers or as trainee advisers that could have been dealt with under the various provisions of rule 6. There is no substance in this ground of application.

5. Paragraph 3 of the grounds of appeal criticises the tribunal's determination upon the claim for back dating and an increase of the wear and tear addition for the claimant's child Derek. The tribunal however gave effect to the claim so far as relating to back dating and their decision to refuse an increase in the amount of the addition is supported by evidence which the tribunal was entitled to accept. Paragraphs 4 and 5 arise from the decision of the tribunal to adjourn the claim for a laundry addition. The assessment of the adequacy of the evidence of need for this item was entirely a matter for the tribunal and does not involve any point of law. The claimant disputes that this was a new item of claim but however that may be the tribunal were entitled to ask for investigation of it. Paragraph 6 relates entirely to the tribunal's evaluation of submissions and evidence and does not raise any point of law. These paragraphs therefore do not disclose any point of law upon which leave to appeal could be granted.

6. Paragraph 1 of the grounds of application criticises the form of the tribunal decision. The points made however are not of any substance and do not amount to error in law. Paragraph 2 criticises the findings

of the tribunal. In terms of rule 7 of the Appeals Rules above referred to the tribunal is obliged to include in the record of their determination "a statement of the reasons for their determination and of their findings on material questions of fact". It is true that in the present case the necessary findings in fact are not all recorded in the portion of the decision sheet set apart for such findings. Some of these findings are to be found in the portion set aside for reasons for the decision. Nevertheless in my view the necessary findings of fact have been made in the decision and the reasons for the decision are adequately stated. These grounds of application therefore do not disclose points of law upon which the decision could be shown to be erroneous in law.

7. As the application for leave to appeal does not disclose any point of law upon which leave to appeal can properly be granted I refuse this application.

(signed) J. G. Mitchell  
Commissioner  
Date: 8 July 1981

Commissioner's File: C.S.S.B.27/81  
S.B.O.: 223/81  
L.O.: Hamilton  
L.O. Ref. No.: 2111-75121

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