

* 15/92

Claim for Urgent Cases payment after 11/4/88 (when
Supplementary Benefit Provisions repealed).

JGMI/JOB

Commissioner's File: CSSB/53/91
*15/92

SOCIAL SECURITY ACT 1986 AND
SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL TO THE COMMISSIONER
FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: CHRISTINE SLOAN (Mrs)

Social Security Appeal Tribunal: Glasgow East

Case No: 5-54-16240

1. My decision is (1) I grant the claimant leave to appeal on a question of law against the decision of the social security appeal tribunal dated 4 July 1991; and (2) that the decision of the social security appeal tribunal dated 4 July 1991 is not erroneous in law.

2. The claimant applied for leave to appeal on a question of law against the above-mentioned tribunal decision. I held an oral hearing on the application which was dealt with along with the adjudication officer's appeal against the decision of another social security appeal tribunal in the case on Commissioner's file CSSB/54/91. The claimant was represented by Mr Anthony Cannon, Welfare Rights Officer with Strathclyde Social Work Department and the adjudication officer was represented by Mr David Cassidy of the Office of the Solicitor in Scotland to the Department of Social Security. It was apparent at an early stage that there was a question of law to be dealt with and I granted leave to appeal. Thereafter, of consent, the appeal proceeded immediately before me.

3. The claimant has been in receipt of income support since 11 April 1988. On 18 February 1991 a request was received from the claimant by the Department of Social Security for a single payment under regulation 24 of the Supplementary Benefit (Urgent Cases) Regulations 1981 (S.I. 1981 No.1529) for the cost of certain clothing said to be required by her as an urgent need. That claim was refused. The question raised by the case is whether, consequent upon the repeal with effect from 11 April 1988 of the material provisions of the Supplementary Benefits Act 1976 by the Social Security Act 1986, subject to a saving in regulation 49 of the Social Security (Claims and Payments) Regulations 1987 (S.I. 1987 No. 1968), there were any provisions extant enabling an urgent cases payment to be made in satisfaction of the claimant's application.

4. The claimant's case on appeal before the tribunal was that the effect of regulation 49(1) of the Claims and Payments Regulations, upon the ordinary meaning of the words used therein, was to preserve the availability of the Supplementary Benefits Act 1976 and relative regulations in relation to any claim for supplementary benefit whether made before or after the repeal of the Act. Regulation 49, which was introduced into the Social Security (Claims and Payments) Regulations 1987 by regulation 12 of the Social Security (Claims and Payments) Amendment Regulations 1988 (S.I. 1988 No. 522) and which came into

operation with the remainder of the Claims and Payments Regulations on the same date as the repeal, i.e. 11 April 1988, contains the following material provisions:-

"49.-(1) Notwithstanding the repeal of the Family Income Supplements Act 1970 and of provisions of the Supplementary Benefits Act 1976, those Acts and the Regulations made thereunder shall continue to apply to any claim for family income supplement or supplementary benefit whether made before or after the coming into force of these Regulations.

(2) In this regulation -

...;

"supplementary benefit" means benefit under Part I of the Supplementary Benefits Act 1976."

Urgent cases payments were made under sections 4 and 14 of Part I of the Supplementary Benefits Act 1976 and the Urgent Cases Regulations. Part I of the Act was among the provisions repealed with effect from 11 April 1988.

5. The social security appeal tribunal dealt as a preliminary issue with the question whether there were provisions extant enabling an urgent cases payment to be made to the claimant. They came to the conclusion that her claim was not within the scope of the saving provisions of regulation 49(1) quoted above and must be refused. Accordingly the tribunal refused the appeal and upheld the decision of the adjudication officer. In a carefully worded and detailed decision the tribunal explained that they proceeded on the basis that the claimant's argument was inconsistent with the explicit repeal of the relevant provisions of the Supplementary Benefits Act 1976 (sections 4 and 14) by the Social Security Act 1986. They took the view that the interpretation argued for on behalf of the claimant involved a clear repugnancy between regulation 49 and the repeal effected by the Act. They considered that there was a plain alternative interpretation to be preferred which avoided such repugnancy, namely that the regulation enabled supplementary benefit claims pending on 11 April 1988 and claims after that date relative to rights which had accrued before it, to be dealt with. They explained that this gave effect to section 16(1)(c) of the Interpretation Act 1978 which provides that unless the contrary intention appears the repeal of an enactment does not affect any right or privilege acquired or accrued under that enactment. The material provisions of section 16(1) of the Interpretation Act 1978 are reproduced in the appendix to this decision.

6. Before me Mr Cannon argued on behalf of the claimant that there was no ambiguity in the terms of regulation 49 such as would admit of any construction other than the plain meaning of the words used, which covered the present claim. He accepted that upon that view it followed that the whole supplementary benefit scheme of weekly pensions and allowances, single payments and urgent cases payments had been retained in its entirety by this provision despite the repeal.

7. Mr Cassidy for the adjudication officer maintained that the opening words of regulation 49(1) raised a question of ambiguity. He laid stress upon regulation 49 being subordinate legislation. As the repeal of the 1976 Act by the 1986 Act was not retrospective, rights which had accrued in relation

to the period before 11 April 1988 needed a mechanism such as regulation 49 to give access to them. However the wording of regulation 49 created an ambiguity which justified consideration of the context of those words in the legislation. He referred for authority for that proposition to the case of the Magistrates of Buckie v Dowager Countess of Seafield's Trustees 1928 S.C. 525, per Lord President Clyde at pp.528/9. Mr Cassidy reviewed the provisions of the Social Security Act 1986 and the relevant Commencement Order, under which the repeal of the Supplementary Benefits Act 1976 was effected and administrative and adjudication provisions of the 1986 Act were applied to supplementary benefit cases. The relevant provisions referred to by Mr Cassidy are listed in the appendix to this decision. In their context the words "any claim for .. supplementary benefit whether made before or after the coming into force of these Regulations" in regulation 49(1) did not, he maintained, extend to claims in respect of a period after 11 April 1988 when the repeal of the 1976 Act took effect, and the saving clause in the regulation did not abrogate the repeal of the supplementary benefit provisions for all purposes but only in relation to rights accruing prior to 11 April 1988.

8. In my opinion if the expression in regulation 49(1) just quoted is to be read as applying to all claims for supplementary benefit made after the relevant date, including those relative to a date, or a period, or an event or circumstances arising after 11 April 1988 there is created an immediate inconsistency amounting to repugnancy with the repeal of the Supplementary Benefits Act 1976 effected by the Social Security Act 1986. Indeed the repugnancy is apparent within the terms of regulation 49(1) itself because of the opening words "Notwithstanding the repeal .. of provisions of the Supplementary Benefits Act 1976 .." The rule of construction in such circumstances is that the grammatical and ordinary sense of the words used will be adhered to unless it would lead to absurdity, repugnance or inconsistency, in which case the words may be construed to avoid that result. See, e.g. Caledonian Railway v North British Railway (1881) 6App. Cas.114 per Lord Blackburn at p.131. As the tribunal observed in the present case the repealing provisions of the 1986 Act required to be brought into effect by Commencement Order, a measure which would just have been withheld had it been intended to preserve the Supplementary Benefits Scheme after 11 April 1988.

9. The argument for the claimant in the present case would not merely lead to an anomaly of the kind which was regarded as insufficient to justify limiting the meaning of the plain language of the legislation in Stock v Frank Jones (Tipton) Ltd 1978 1 W.L.R.231. As the claimant's representative freely accepted, the consequence of his argument is the perpetuation of the whole supplementary benefits scheme which the Social Security Act 1986 repealed and was designed to replace with the income support and social fund schemes. In my judgment such grossly anomalous consequences can be and should be avoided by construing the reference in regulation 49(1) to the continuing availability of claims for supplementary benefit after 11 April 1988 as referring to and limited to claims after that date so far as relating to the period prior thereto when the supplementary benefit legislation was in force. As I accept that the Social Security Act 1986 was not retrospective I agree with the tribunal that this construction leads to a result consistent with the provisions of section 16(1)(c) of the Interpretation Act 1978 safeguarding accrued rights, and also of course with the provisions of section 16(1)(e) preserving remedies in respect of any such rights.

10. I therefore hold that the social security appeal tribunal reached the correct conclusion in this case and that their decision is not erroneous in law.

(signed) J G Mitchell
Commissioner
Date: 3 March 1992

APPENDIX/