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SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL TO THE COMMISSIONER
FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL
TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Christina Baird (Mrs.)
Appointee for Graham Baird

~~Supplementary Benefit Appeal Tribunal~~: Glasgow

Case No: 09/840

1. This is an application by the claimant for leave to appeal to the Commissioner upon a point of law against a decision of the supplementary benefit appeal tribunal dated 26 May 1981. The application does not disclose any point of law arising from that decision in respect of which it would be appropriate to grant leave to appeal and accordingly it is refused. I propose to indicate my reasons for refusing the application.

2. The claim for supplementary allowance was originally made in July 1980 and the decision of the Supplementary Benefit Commission issued on 14 August 1980 awarded supplementary allowance from 28 July 1980 to 23 November 1980. The claimant appealed on the quantum of the award. The case was heard before a supplementary benefit appeal tribunal on 18 November 1980 when in light of the contentions advanced on behalf of the claimant an adjournment was requested by the Commission's representative. The tribunal agreed to adjourn the case. Thereafter the benefit officer reassessed the claimant's case and decided that in 1 respect an increase in the assessment was appropriate. Thereafter the case came before a different supplementary benefit appeal tribunal on 26 May 1981 when the tribunal varied the decision by awarding 2 further increases in the amount of the claimant's supplementary allowance. That decision was not notified to the interested parties until 15 June 1981.

3. The grounds of application for leave to appeal relate in part to the occurrence of delays between the original hearing of the supplementary benefit appeal tribunal and the adjourned hearing and between the date of the final decision and the date of communication to the interested parties of that decision. The first delay was greater than envisaged by the tribunal which agreed to the adjournment. The second delay amounted to some 20 days. In the known circumstances at the time, of a major amendment of the Supplementary Benefit legislation coinciding

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with a large number of claims and appeals, and in the absence of any evidence or suggestion of wilful default I am satisfied that no question arises of a breach of rule 5(1) or 7(3) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980. Accordingly even if (and I do not so decide) such a breach could render the decision of the appeal tribunal erroneous in law, there is no basis in this case for granting leave to appeal on the ground of these delays, regrettable though they are.

4. It is also alleged on behalf of the claimant that the tribunal failed to comply with the requirements of rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 which 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. There is no specification of the nature of the alleged shortcomings and in my estimation the tribunal have adequately complied with the requirements of that rule. This allegation is therefore rejected.

5. It is further alleged that the tribunal failed to interpret correctly regulation 5(2)(a) and (b) of the Supplementary Benefit (Claims and Payments) Regulations 1980. That criticism is misconceived. Those regulations came into force on 24 November 1980. The claimant's appeal was made in July 1980 and determined by the benefit officer in August 1980. Under the provisions of regulation 3 of the Supplementary Benefit (Transitional) Regulations 1980 the claimant's appeal against that determination fell to be considered and dealt with by the appeal tribunal under the statutory provisions governing supplementary benefit in force prior to 24 November 1980. Any question of back-dating the claimant's claim accordingly fell to be considered under the provisions of regulation 5 of the Supplementary Benefits (Claims and Payments) Regulations 1977. The tribunal were invited to consider the claimant's claim under the statutory provisions in force prior to 24 November 1980. Their reasons for the decision show that they considered the question of back-dating and there is nothing in the record of their decision to indicate that they fell into any error in so doing. The last ground of application put forward on behalf of the claimant relates to the weight attached by the tribunal to the evidence before them. The evaluation of the evidence was a matter for the tribunal. No point of law is raised in this respect.

6. One other feature of the procedure in this case calls for brief mention. The points raised by the claimant at the first hearing before the Supplementary Benefit Appeal Tribunal were reconsidered during the period of the adjournment by the

/ benefit

benefit officer, who gave a further decision upon them dated 24 April 1981. That can only have been a revised decision made in pursuance of his powers of review. It should in my view have been made explicitly as a review decision. This was however not a case in which the benefit officer was in a position so to revise a decision under appeal as to give the claimant all that he could attain by pursuing the appeal. It does not therefore accord with the practice referred to and commended in paragraph 12 of Unreported Decision C.S.B.12/81. It is, I think, questionable whether in such circumstances a revised decision achieves any more than would a simple statement by the benefit officer that he is prepared to support the appeal upon the point which he concedes.

7. The application for leave to appeal is refused.

(signed) J. G. Mitchell
Commissioner
Date: 13 November 1981

Commissioner's File: C.S.S.B.75/81
CSBO File: S.B.O.572/81
L.O: Glasgow (Springburn)
L.O. Ref. No: 1152-160416

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SUPPLEMENTARY BENEFITS ACT 1976

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

rec'd 28/10/81

Supplementary Benefit Appeal Tribunal: Glasgow

Case Nos: 09/483 and 09/484

[ORAL HEARING]

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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 aged16 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 £8 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 appellent 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
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> (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

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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 analagous 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 analagous, 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

JGM1/BB

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS FROM DECISIONS OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNALS ON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Hugh McCrossan

Supplementary Benefit Appeal Tribunal: Glasgow

Case No: 09/455

[ORAL HEARING]

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1. My decision is (1) that the applications by the claimant for leave to appeal to the Commissioner on a point of law from the decisions of the supplementary benefit appeal tribunals dated 16 April 1981 and 8 June 1981 are granted; (2) that the decision of the supplementary benefit tribunal dated 16 April 1981 is not erroneous in point of law; and (3) that the decision of the supplementary benefit appeal tribunal dated 8 June 1981 is erroneous in law and is set aside.

2. This case involves 2 applications by the claimant for leave to appeal upon a point of law, the first being made against a decision of an appeal tribunal on 16 April 1981 to adjourn the hearing of the claimant's appeal, and the second being made against the decision of another appeal tribunal who determined the claimant's adjourned appeal on 8 June 1981. An oral hearing on these applications was held before me at which the claimant who appeared in person was represented by Mr. Q. Oliver, a Welfare Rights Adviser of Strathclyde Social Work Department, and the supplementary benefit officer was represented by Mr. Milledge of the Solicitor's Office of the Department of Health and Social Security.

3. The claimant is a married man aged 68 living with his wife and son. He and his wife are in receipt of retirement pension and the claimant in addition receives a superannuation payment from his former employment. On 21 November 1980, immediately prior to the extensive amendment of the Supplementary Benefit Act 1976 and subordinate legislation which took effect on 24 November 1980, the claimant made a claim to supplementary benefit on a postcard form supplied by Strathclyde Social Work Department. Its wording covered supplementary benefit including various allowable additions, exceptional needs payments, and back-dating of the claim. On 2 December 1980 the supplementary benefit officer issued a decision that the claimant was not entitled to supplementary allowance. (As the claimant was over the age of 65 that decision should have been that the claimant was not entitled to supplementary pension.) The claimant appealed against that decision and a home visit was made to the claimant on 28 January 1981 at which the assessment of the claimant's requirements and resources in light of the amended statutory provisions coming into force on 24 November 1980 (the "amended statutory provisions") was gone over with the claimant. At that stage the claimant agreed to withdraw his appeal, but on the following day in light of advice from the Welfare Rights Office the claimant intimated that he wished to maintain the appeal. At the hearing of the claimant's appeal before

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an appeal tribunal on 16 April 1981 it was argued on the claimant's behalf that his claim should be entertained under the statutory provisions prior to amendment on 24 November 1980 (the "unamended statutory provisions"). The appeal papers did not contain any formal written assessment under the unamended statutory provisions but the claimant's representative and the presenting officer were apparently prepared to supply the deficiency by hand-written details. The tribunal however decided to adjourn the hearing to enable formal details of the assessment of the claimant's resources and requirements to be provided under the unamended statutory provisions.

4. The claimant applied for leave to appeal against the tribunal's decision to adjourn, contending that the adjournment represented a breach of the rules of natural justice or was otherwise erroneous in law. An oral hearing of that application was applied for and granted but in the meantime the adjourned hearing itself took place before a different tribunal. That tribunal heard submissions on whether the claim fell to be assessed under the unamended or the amended statutory provisions. The chairman of the tribunal then closed the proceedings and refused to allow the claimant's representative to submit arguments or evidence on the claimant's needs with particular reference to his possible entitlement to supplementary benefit by way of single payments to meet exceptional need under section 3 of the Supplementary Benefits Act 1976 as it had effect under the unamended statutory provisions. The tribunal thereafter refused the claimant's appeal. They did so upon the basis that the original decision of the benefit officer based on the application of the amended statutory provisions was correct and that in any event the assessment of the claimant showed that he was also over scale and not entitled to supplementary pension under the unamended statutory provisions.

5. A further application for leave to appeal was then made by the claimant in which it was contended that the second tribunal had erred in law in refusing to entertain further submissions and evidence on the claimant's possible entitlement to benefit and in particular to payments for exceptional need. The oral hearing granted on this application was conjoined with that allowed on the original application. Having heard submissions upon these applications I am satisfied that both applications raise points of law upon which leave to appeal can properly be granted. The necessary consents have now been provided and I can accordingly proceed to deal with the respective applications treated as appeals.

6. In attacking the decision of the first tribunal to adjourn the hearing the claimant's representative explained that the tribunal had at the outset heard argument as to whether the claimant's case should be considered under the unamended or the amended statutory provisions. The tribunal then apparently adjourned for a few minutes with a view to deciding under which provisions the claimant's case fell to be assessed. On resuming the hearing however the tribunal did not announce any decision upon that issue, and declined to hear further evidence on the claimant's case and declined to act upon the information relative to assessment of the claimant's claim under the unamended statutory provisions proffered by the claimant's representative and the benefit officer. The tribunal adjourned the hearing for production of formal details of that assessment. The claimant's representative did not argue that the appeal tribunal were bound to make an interlocutory decision as to the statutory provisions applicable to the claimant's case but he contended that the tribunal's

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decision to adjourn in face of the proffered evidence was so unreasonable as to represent a breach of the rules of natural justice and to amount to an error in law. On behalf of the benefit officer it was conceded that the decision to adjourn the hearing was a decision of the tribunal which was capable of being challenged by way of appeal under section 15 of the Supplementary Benefits Act 1976. Reference was made to the case of R. v The Medical Appeal Tribunal (Midland Region) ex parte Carrarini, decided in the Divisional Court of the Queen's Bench Division on 23 February 1966, reported as an Appendix to R(I) 13/65. In my opinion that concession was properly and correctly made. See also unreported decision C.S.U.14/64. A decision upon whether or not to adjourn a hearing is however essentially a discretionary matter which could in my opinion only involve an error in law in the rare case in which it was reached in bad faith or was so manifestly unreasonable as to amount to a denial of justice. In the present case the decision to adjourn, although possibly unduly cautious, was nevertheless in my opinion a decision which the tribunal were entitled to make.

7. A further point however arises. It appears that before giving their decision to adjourn the appeal the first tribunal heard representations from the parties that the tribunal should proceed on the evidence available. It cannot therefore be suggested that the tribunal denied the parties an opportunity to be heard on this question. However the tribunal proceeded to reach and issue their decision adjourning the hearing without first ordering the parties to withdraw from the sitting. It being accepted that the decision of the tribunal to adjourn is a "decision" appealable under section 15 of the Supplementary Benefits Act 1976, the question arises whether it was necessary for the tribunal before making their decision to order the parties to withdraw from the sitting of the tribunal under the provisions of rule 6(10) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980. Rule 6(10) states:-

> "6.-(10) For the purpose of arriving at their decision, the tribunal shall order all persons (not being members of the tribunal), other than any person mentioned in paragraph (9), to withdraw from the sitting of the tribunal except that the continued presence of the clerk and of any person mentioned in paragraph (7) shall be within the discretion of the chairman."

That rule, if applicable to a procedural decision such as a decision to adjourn, would require the withdrawal of the claimant, his representative, the benefit officer and any witnesses. I am disposed to construe the expression "for the purpose of arriving at their decision" in that rule as referring to the decision of the tribunal upon the appeal before them. I do not therefore regard it as necessitating the withdrawal of persons from the tribunal in the case of procedural decisions such as a decision to adjourn. It must often be immediately apparent at the outset of a tribunal sitting that, for instance by reason of the absence of a claimant or his representative in excusable circumstances, the appropriate course for a tribunal would be to accede to a request for an adjournment of the hearing. It would in my opinion be absurd if a tribunal were in all cases compelled by the provisions of rule 6(10) to order the withdrawal of the

parties from the sitting in order to reach a decision to adjourn the hearing. I am fortified in the view which I have taken with regard to this rule by the difference in wording between it and the corresponding provisions of the Social Security (Determination of Claims and Questions) Regulations 1975 regulation 3(2). That regulation states "For the purpose of arriving at their decision or discussing any question of procedure, a local tribunal, a medical board or a medical appeal tribunal, as the case may be" shall order such withdrawal from the sitting. I must conclude that it was considered preferable in the later Supplementary Benefit and Family Income Supplements (Appeals) Rules to omit the words "or discussing any question of procedure". I am bound to confess that I do not immediately see any necessity in the case of local tribunals for the additional direction which is included in the 1975 Regulations, although in the case of medical boards and medical appeal tribunals the discussion may sometimes involve a medical matter which it is not desirable to discuss in a claimant's presence. However that may be, I am satisfied that it was not necessary for the tribunal to order withdrawal in the present case and that no error of law arises in this regard upon their decision to adjourn the hearing. The claimant's appeal against the decision to adjourn therefore fails.

8. It should be mentioned that the claimant's grounds of application for leave to appeal against the decision of the first tribunal included allegations of discrimination and bias on the part of the tribunal against the claimant's representative. This allegation was abandoned at the outset of the oral hearing before me. I strongly deprecate the making of such allegations in circumstances in which those making them are not prepared at the end of the day to attempt to support them. I must regard them as unfounded allegations which should never have been made.

9. So far as the claimant's appeal against the decision of the second tribunal is concerned his representative's contention was that the refusal of that tribunal to entertain submissions or evidence on the claimant's needs with particular reference to his possible entitlement to exceptional needs payments occurred in circumstances amounting to an error in law. This contention received some support from a minute prepared by the benefit officer present at the hearing which was very properly produced to me by Mr. Milledge. This confirmed that the tribunal refused to hear the claimant's further submissions and evidence in this regard although they had not intimated any interlocutory decision upon which statutory provisions governed the claimant's claim. The tribunal were not of course bound to give any such interlocutory decision but if they had given such a decision to the effect that the claimant's claim fell to be adjudged solely by reference to the amended statutory provisions they would have been entitled to decline to hear further submissions from the claimant's representative with regard to possible entitlement of the claimant to exceptional needs payments under the unamended statutory provisions, a matter which was within the scope of the claimant's original claim. In the absence of any such interlocutory decision which could justify the tribunal in restricting the further submissions or evidence which the claimant's representative wished to put forward, it is in my opinion clear that the refusal of the tribunal to entertain such further submissions or evidence on behalf of the claimant amounted to the denial of a fair hearing and accordingly constituted an error in law. Upon that ground alone their decision must be set aside and the claimant's appeal be reheard before a

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differently constituted tribunal. Other points of law were, however, argued before me which require to be dealt with in so far as they may affect the rehearing of the claimant's case.

10. It was further contended on behalf of the claimant that the appeal tribunal erred in treating the claimant's claim only under the amended statutory provisions. While the decision of the tribunal upheld the decision of the supplementary benefit officer on this basis, it is clear from the reasons which they gave that the tribunal also considered the claimant's entitlement to supplementary pension under the unamended statutory provisions and found in light of the relative assessment of his requirements and resources that he was not so entitled. On behalf of the supplementary benefit officer it was argued that under the provisions of regulation 11 of the Supplementary Benefits (General) Regulations 1977 in force at the date of the claimant's claim on 21 November 1980 the claimant's entitlement to benefit could not arise until the first day of the benefit week following that date. Regulation 11(1) provides:-

> "11.-(1) Where apart from the provisions of this regulation -
>
> (a) the day of the week on which a person's entitlement to a pension or allowance would begin is not the first day of a benefit week, entitlement to that pension or allowance shall not begin until the first day of the next benefit week;"

Regulation 11(2) provides (so far as relevant for present purposes):-

> "11.-(2) In this regulation -
>
> (a) "benefit week" in relation to a person entitled to a pension or allowance means -
>
> (i) ...
>
> (ii) ...
>
> (iii) ...
>
> (iv) where none of heads (i) or (iii) above applies, the period of 7 days beginning on Monday or ... "

It was argued that under the foregoing provisions the claimant's entitlement could not arise until Monday 24 November 1980 by which date the amended statutory provisions were in force.

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11. Regulation 11 is however expressed to apply where apart from its provisions a person has entitlement to pension or allowance from an earlier date. Had it been considered that apart from the provisions of regulation 11 the claimant had an entitlement to supplementary pension from 21 November 1980 the provisions of regulation 11 would prevent that entitlement arising. In the present case the assessment of the claimant's requirements and resources under the unamended statutory provisions disclosed that the claimant was not so entitled to supplementary pension. Accordingly unless it were possible to demonstrate that that assessment was erroneous the provisions of regulation 11 would not "bite".

12. It was argued however by the claimant's representative that the tribunal ought to have considered the possible back-dating of the claimant's claim in accordance with the request for such back-dating on the original postcard claim. Reference was made to regulation 5(2) of the Supplementary Benefits (Claims and Payments) Regulations 1977 (revoked as at 24 November 1980) and it was argued that the change in the law of supplementary benefit as at 24 November 1980 could be treated as constituting "exceptional circumstances" for the purposes of regulation 5(2). I do not accept that a change in the law affecting all claimants could of itself amount to "exceptional circumstances" within the meaning of regulation 5(2) where the expression is qualified by reference to "any particular case or class of cases". In any event there does not appear to me to be substance in the argument that back-dating should have been considered since unless the claimant were able successfully to demonstrate an entitlement to supplementary pension under the unamended statutory provisions the back-dating of his claim would not avail him. So far as the possibility of the claimant establishing an entitlement to an exceptional needs payment under the unamended statutory provisions is concerned, the question of back-dating does not arise. Supplementary benefit by way of a single payment to meet exceptional need under section 3 of the Supplementary Benefits Act 1976 is not a pension or allowance within the meaning of regulation 11(1) quoted above. In these circumstances in the event of a claim for such a payment being held to be established under the unamended statutory provisions in respect of the claim made on 21 November 1980 no back-dating would be appropriate or required. I do not in any event read the terms of regulation 5(2) of the Claims and Payments Regulations above referred to as embracing claims for a single payment as distinct from claims to pension or allowance.

13. It was suggested on behalf of the Supplementary Benefit Officer that any question of back-dating the claimant's claim fell to be considered not under regulation 5 of the Claims and Payments Regulations 1977 but under regulation 5(2)(a) of the Claims and Payments Regulations 1980 which came into force on 24 November 1980. It was said that regulation 5(2) of the 1977 Regulations was not "saved" by regulation 3 of the Supplementary Benefit (Transitional) Regulations 1980. I do not agree. Regulation 3 of the Transitional Regulations provides as follows:-

> "3.-(1) This regulation shall apply to any question relating to a claimant's entitlement to supplementary benefit in respect of a period before 24th November 1980, including any claim for benefit pending on that day,

/which

which falls to be determined on or after that day.

3.-(2) Any such question which, if it had fallen to be determined before 24th November 1980, would have fallen to be determined by the Commission, shall be determined by a benefit officer as if it had fallen to be determined before that day."

In my opinion the effect of regulation 3 quoted above is that if in relation to a claim made before 24 November 1980 which falls to be determined after that date a question of back-dating the claim arises, the benefit officer or, on appeal, the appeal tribunal must consider and deal with that question under the provisions of regulation 5 of the Claims and Payments Regulations 1977.

14. In the present case the claimant made a claim on 21 November 1980 for supplementary pension as from that date. It is clear that if there is no case for treating that claim as made on any earlier date regulation 11 of the Supplementary Benefits (General) Regulations 1977 would preclude any entitlement to supplementary pension from arising before Monday 24 November 1980. The consequence is that while it was necessary to consider the claimant's claim under the unamended statutory provisions because of the requests for single payments and for back-dating, it was also necessary to consider the claimant's possible entitlement to supplementary pension from 24 November 1980 under the amended statutory provisions. In the circumstances it will be for a fresh tribunal in rehearing the claimant's appeal 1) to deal with the claimant's claims for single payments for exceptional need under the unamended statutory provisions; and 2) to deal with the claimant's claim to supplementary pension from 21 November 1980 under both the unamended and the amended statutory provisions in accordance with the directions upon the law contained in this decision.

15. Finally I must indicate that I regard as justified the complaint of the claimant's representative over the non-production in connection with his appeal of the claimant's original postcard claim. Whatever the difficulties created by such an omnibus form of claim (and there is at present no approved form of claim issued by the Secretary of State) the claimant is clearly entitled to have his original claim produced in any appeal to avoid doubt or dispute as to the scope of that claim. I further consider there was justification in the complaint regarding non-production of the claimant's original letter of appeal to the appeal tribunal. Both of these documents are in my opinion within the class of document which must clearly be produced when a claimant exercises his right of appeal.

16. In the result the appeal of the claimant is refused in case C.S.S.B.40/81 and allowed in C.S.S.B.64/81.

(Signed) J. G. Mitchell
Commissioner
Date: 28 October 1981

Commissioner's Files: C.S.S.B.40/81 and
C.S.S.B.64/81
CSDO. Files 284/81 and 544/81
L.O. Glasgow (Craigton) I.L.O.
L.O. Ref. No.: 1011-139012

SOCIAL SECURITY
OFFICE OF THE NATIONAL INSURANCE COMMISSIONERS
23 Melville Street, EDINBURGH, EH3 7PW
Telegrams: Disposal, Edinburgh
Telephone: 031-225 2201/2

Please address any reply to
THE SECRETARY
and quote: C.S.S.B.40/81
Your reference: C.S.S.B.64/81

29 October 1961

C S S B 40/81,
64/81

Mr. Q.Oliver,
Welfare Rights Adviser,
1st Floor,
McIver House,
51 Cadogan Street,
Glasgow, G2 7QB. received 2 November 1981

Claim dealt with under wrong regn.

Dear Sir,

Supplementary Benefits Act 1976

(Copy of decn sent to claimant's solicitors)

Enclosed is a copy of the Commissioner's decision. Any inquiry you wish to make about the decision should be made at the local office of the Department of Health and Social Security nearest to your home.

I should explain that there is provision for an appeal against the decision to the Court of Session on a question of law only provided firstly that the leave of a Commissioner is obtained or, if he refuses leave, that the leave of the Court is then obtained.

Any application for leave to appeal against the decision should be made in writing to this office within three months from the date of this letter or such further period as the Commissioner may for special reasons allow. It should include a statement of the question of law in respect of which it is alleged that the Commissioner's decision is wrong and on which it is desired to appeal.

Yours faithfully,

for Secretary

JGMi/BB

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATIONS FOR LEAVE TO APPEAL AND APPEALS FROM DECISIONS OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNALS ON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Hugh McCrossan

Supplementary Benefit Appeal Tribunal: Glasgow

Case No: 09/455

[ORAL HEARING]

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1. My decision is (1) that the applications by the claimant for leave to appeal to the Commissioner on a point of law from the decisions of the supplementary benefit appeal tribunals dated 16 April 1981 and 8 June 1981 are granted; (2) that the decision of the supplementary benefit tribunal dated 16 April 1981 is not erroneous in point of law; and (3) that the decision of the supplementary benefit appeal tribunal dated 8 June 1981 is erroneous in law and is set aside.

2. This case involves 2 applications by the claimant for leave to appeal upon a point of law, the first being made against a decision of an appeal tribunal on 16 April 1981 to adjourn the hearing of the claimant's appeal, and the second being made against the decision of another appeal tribunal who determined the claimant's adjourned appeal on 8 June 1981. An oral hearing on these applications was held before me at which the claimant who appeared in person was represented by Mr. Q. Oliver, a Welfare Rights Adviser of Strathclyde Social Work Department, and the supplementary benefit officer was represented by Mr. Milledge of the Solicitor's Office of the Department of Health and Social Security.

3. The claimant is a married man aged 68 living with his wife and son. He and his wife are in receipt of retirement pension and the claimant in addition receives a superannuation payment from his former employment. On 21 November 1980, immediately prior to the extensive amendment of the Supplementary Benefit Act 1976 and subordinate legislation which took effect on 24 November 1980, the claimant made a claim to supplementary benefit on a postcard form supplied by Strathclyde Social Work Department. Its wording covered supplementary benefit including various allowable additions, exceptional needs payments, and back-dating of the claim. On 2 December 1980 the supplementary benefit officer issued a decision that the claimant was not entitled to supplementary allowance. (As the claimant was over the age of 65 that decision should have been that the claimant was not entitled to supplementary pension.) The claimant appealed against that decision and a home visit was made to the claimant on 28 January 1981 at which the assessment of the claimant's requirements and resources in light of the amended statutory provisions coming into force on 24 November 1980 (the "amended statutory provisions") was gone over with the claimant. At that stage the claimant agreed to withdraw his appeal, but on the following day in light of advice from the Welfare Rights Office the claimant intimated that he wished to maintain the appeal. At the hearing of the claimant's appeal before

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Reed 21/11/81

an appeal tribunal on 16 April 1981 it was argued on the claimant's behalf that his claim should be entertained under the statutory provisions prior to amendment on 24 November 1980 (the "unamended statutory provisions"). The appeal papers did not contain any formal written assessment under the unamended statutory provisions but the claimant's representative and the presenting officer were apparently prepared to supply the deficiency by hand-written details. The tribunal however decided to adjourn the hearing to enable formal details of the assessment of the claimant's resources and requirements to be provided under the unamended statutory provisions.

4. The claimant applied for leave to appeal against the tribunal's decision to adjourn, contending that the adjournment represented a breach of the rules of natural justice or was otherwise erroneous in law. An oral hearing of that application was applied for and granted but in the meantime the adjourned hearing itself took place before a different tribunal. That tribunal heard submissions on whether the claim fell to be assessed under the unamended or the amended statutory provisions. The chairman of the tribunal then closed the proceedings and refused to allow the claimant's representative to submit arguments or evidence on the claimant's needs with particular reference to his possible entitlement to supplementary benefit by way of single payments to meet exceptional need under section 3 of the Supplementary Benefits Act 1976 as it had effect under the unamended statutory provisions. The tribunal thereafter refused the claimant's appeal. They did so upon the basis that the original decision of the benefit officer based on the application of the amended statutory provisions was correct and that in any event the assessment of the claimant showed that he was also over scale and not entitled to supplementary pension under the unamended statutory provisions.

5. A further application for leave to appeal was then made by the claimant in which it was contended that the second tribunal had erred in law in refusing to entertain further submissions and evidence on the claimant's possible entitlement to benefit and in particular to payments for exceptional need. The oral hearing granted on this application was conjoined with that allowed on the original application. Having heard submissions upon these applications I am satisfied that both applications raise points of law upon which leave to appeal can properly be granted. The necessary consents have now been provided and I can accordingly proceed to deal with the respective applications treated as appeals.

6. In attacking the decision of the first tribunal to adjourn the hearing the claimant's representative explained that the tribunal had at the outset heard argument as to whether the claimant's case should be considered under the unamended or the amended statutory provisions. The tribunal then apparently adjourned for a few minutes with a view to deciding under which provisions the claimant's case fell to be assessed. On resuming the hearing however the tribunal did not announce any decision upon that issue, and declined to hear further evidence on the claimant's case and declined to act upon the information relative to assessment of the claimant's claim under the unamended statutory provisions proffered by the claimant's representative and the benefit officer. The tribunal adjourned the hearing for production of formal details of that assessment. The claimant's representative did not argue that the appeal tribunal were bound to make an interlocutory decision as to the statutory provisions applicable to the claimant's case but he contended that the tribunal's

decision to adjourn in face of the proffered evidence was so unreasonable as to represent a breach of the rules of natural justice and to amount to an error in law. On behalf of the benefit officer it was conceded that the decision to adjourn the hearing was a decision of the tribunal which was capable of being challenged by way of appeal under section 15 of the Supplementary Benefits Act 1976. Reference was made to the case of R. v The Medical Appeal Tribunal (Midland Region) ex parte Carrarini, decided in the Divisional Court of the Queen's Bench Division on 25 February 1966, reported as an Appendix to R(I) 13/65. In my opinion that concession was properly and correctly made. See also unreported decision C.S.U.14/64. A decision upon whether or not to adjourn a hearing is however essentially a discretionary matter which could in my opinion only involve an error in law in the rare case in which it was reached in bad faith or was so manifestly unreasonable as to amount to a denial of justice. In the present case the decision to adjourn, although possibly unduly cautious, was nevertheless in my opinion a decision which the tribunal were entitled to make.

7. A further point however arises. It appears that before giving their decision to adjourn the appeal the first tribunal heard representations from the parties that the tribunal should proceed on the evidence available. It cannot therefore be suggested that the tribunal denied the parties an opportunity to be heard on this question. However the tribunal proceeded to reach and issue their decision adjourning the hearing without first ordering the parties to withdraw from the sitting. It being accepted that the decision of the tribunal to adjourn is a "decision" appealable under section 15 of the Supplementary Benefits Act 1976, the question arises whether it was necessary for the tribunal before making their decision to order the parties to withdraw from the sitting of the tribunal under the provisions of rule 6(10) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980. Rule 6(10) states:-

> "6.-(10) For the purpose of arriving at their decision, the tribunal shall order all persons (not being members of the tribunal), other than any person mentioned in paragraph (9), to withdraw from the sitting of the tribunal except that the continued presence of the clerk and of any person mentioned in paragraph (7) shall be within the discretion of the chairman."

That rule, if applicable to a procedural decision such as a decision to adjourn, would require the withdrawal of the claimant, his representative, the benefit officer and any witnesses. I am disposed to construe the expression "for the purpose of arriving at their decision" in that rule as referring to the decision of the tribunal upon the appeal before them. I do not therefore regard it as necessitating the withdrawal of persons from the tribunal in the case of procedural decisions such as a decision to adjourn. It must often be immediately apparent at the outset of a tribunal sitting that, for instance by reason of the absence of a claimant or his representative in excusable circumstances, the appropriate course for a tribunal would be to accede to a request for an adjournment of the hearing. It would in my opinion be absurd if a tribunal were in all cases compelled by the provisions of rule 6(10) to order the withdrawal of the

parties from the sitting in order to reach a decision to adjourn the hearing. I am fortified in the view which I have taken with regard to this rule by the difference in wording between it and the corresponding provisions of the Social Security (Determination of Claims and Questions) Regulations 1975 regulation 3(2). That regulation states "For the purpose of arriving at their decision or discussing any question of procedure, a local tribunal, a medical board or a medical appeal tribunal, as the case may be" shall order such withdrawal from the sitting. I must conclude that it was considered preferable in the later Supplementary Benefit and Family Income Supplements (Appeals) Rules to omit the words "or discussing any question of procedure". I am bound to confess that I do not immediately see any necessity in the case of local tribunals for the additional direction which is included in the 1975 Regulations, although in the case of medical boards and medical appeal tribunals the discussion may sometimes involve a medical matter which it is not desirable to discuss in a claimant's presence. However that may be, I am satisfied that it was not necessary for the tribunal to order withdrawal in the present case and that no error of law arises in this regard upon their decision to adjourn the hearing. The claimant's appeal against the decision to adjourn therefore fails.

8. It should be mentioned that the claimant's grounds of application for leave to appeal against the decision of the first tribunal included allegations of discrimination and bias on the part of the tribunal against the claimant's representative. This allegation was abandoned at the outset of the oral hearing before me. I strongly deprecate the making of such allegations in circumstances in which those making them are not prepared at the end of the day to attempt to support them. I must regard them as unfounded allegations which should never have been made.

9. So far as the claimant's appeal against the decision of the second tribunal is concerned his representative's contention was that the refusal of that tribunal to entertain submissions or evidence on the claimant's needs with particular reference to his possible entitlement to exceptional needs payments occurred in circumstances amounting to an error in law. This contention received some support from a minute prepared by the benefit officer present at the hearing which was very properly produced to me by Mr. Milledge. This confirmed that the tribunal refused to hear the claimant's further submissions and evidence in this regard although they had not intimated any interlocutory decision upon which statutory provisions governed the claimant's claim. The tribunal were not of course bound to give any such interlocutory decision but if they had given such a decision to the effect that the claimant's claim fell to be adjudged solely by reference to the amended statutory provisions they would have been entitled to decline to hear further submissions from the claimant's representative with regard to possible entitlement of the claimant to exceptional needs payments under the unamended statutory provisions, a matter which was within the scope of the claimant's original claim. In the absence of any such interlocutory decision which could justify the tribunal in restricting the further submissions or evidence which the claimant's representative wished to put forward, it is in my opinion clear that the refusal of the tribunal to entertain such further submissions or evidence on behalf of the claimant amounted to the denial of a fair hearing and accordingly constituted an error in law. Upon that ground alone their decision must be set aside and the claimant's appeal be reheard before a

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differently constituted tribunal. Other points of law were, however, argued before me which require to be dealt with in so far as they may affect the rehearing of the claimant's case.

10. It was further contended on behalf of the claimant that the appeal tribunal erred in treating the claimant's clain only under the amended statutory provisions. While the decision of the tribunal upheld the decision of the supplementary benefit officer on this basis, it is clear from the reasons which they gave that the tribunal also considered the claimant's entitlement to supplementary pension under the unamended statutory provisions and found in light of the relative assessment of his requirements and resources that he was not so entitled. On behalf of the supplementary benefit officer it was argued that under the provisions of regulation 11 of the Supplementary Benefits (General) Regulations 1977 in force at the date of the claimant's claim on 21 November 1980 the claimant's entitlement to benefit could not arise until the first day of the benefit week following that date. Regulation 11(1) provides:-

> "11.-(1) Where apart from the provisions of this regulation -
>
> (a) the day of the week on which a person's entitlement to a pension or allowance would begin is not the first day of a benefit week, entitlement to that pension or allowance shall not begin until the first day of the next benefit week;"

Regulation 11(2) provides (so far as relevant for present purposes):-

> "11.-(2) In this regulation -
>
> (a) "benefit week" in relation to a person entitled to a pension or allowance means -
>
> (i) ...
>
> (ii) ...
>
> (iii) ...
>
> (iv) where none of heads (i) or (iii) above applies, the period of 7 days beginning on Monday or ... "

It was argued that under the foregoing provisions the claimant's entitlement could not arise until Monday 24 November 1980 by which date the amended statutory provisions were in force.

/11.

11. Regulation 11 is however expressed to apply where apart from its provisions a person has entitlement to pension or allowance from an earlier date. Had it been considered that apart from the provisions of regulation 11 the claimant had an entitlement to supplementary pension from 21 November 1980 the provisions of regulation 11 would prevent that entitlement arising. In the present case the assessment of the claimant's requirements and resources under the unamended statutory provisions disclosed that the claimant was not so entitled to supplementary pension. Accordingly unless it were possible to demonstrate that that assessment was erroneous the provisions of regulation 11 would not "bite".

12. It was argued however by the claimant's representative that the tribunal ought to have considered the possible back-dating of the claimant's claim in accordance with the request for such back-dating on the original postcard claim. Reference was made to regulation 5(2) of the Supplementary Benefits (Claims and Payments) Regulations 1977 (revoked as at 24 November 1980) and it was argued that the change in the law of supplementary benefit as at 24 November 1980 could be treated as constituting "exceptional circumstances" for the purposes of regulation 5(2). I do not accept that a change in the law affecting all claimants could of itself amount to "exceptional circumstances" within the meaning of regulation 5(2) where the expression is qualified by reference to "any particular case or class of cases". In any event there does not appear to me to be substance in the argument that back-dating should have been considered since unless the claimant were able successfully to demonstrate an entitlement to supplementary pension under the unamended statutory provisions the back-dating of his claim would not avail him. So far as the possibility of the claimant establishing an entitlement to an exceptional needs payment under the unamended statutory provisions is concerned, the question of back-dating does not arise. Supplementary benefit by way of a single payment to meet exceptional need under section 3 of the Supplementary Benefits Act 1976 is not a pension or allowance within the meaning of regulation 11(1) quoted above. In these circumstances in the event of a claim for such a payment being held to be established under the unamended statutory provisions in respect of the claim made on 21 November 1980 no back-dating would be appropriate or required. I do not in any event read the terms of regulation 5(2) of the Claims and Payments Regulations above referred to as embracing claims for a single payment as distinct from claims to pension or allowance.

13. It was suggested on behalf of the Supplementary Benefit Officer that any question of back-dating the claimant's claim fell to be considered not under regulation 5 of the Claims and Payments Regulations 1977 but under regulation 5(2)(a) of the Claims and Payments Regulations 1980 which came into force on 24 November 1980. It was said that regulation 5(2) of the 1977 Regulations was not "saved" by regulation 3 of the Supplementary Benefit (Transitional) Regulations 1980. I do not agree. Regulation 3 of the Transitional Regulations provides as follows:-

> "3.-(1) This regulation shall apply to any question relating to a claimant's entitlement to supplementary benefit in respect of a period before 24th November 1980, including any claim for benefit pending on that day,

/which

which falls to be determined on or after that day.

3.-(2) Any such question which, if it had fallen to be determined before 24th November 1980, would have fallen to be determined by the Commission, shall be determined by a benefit officer as if it had fallen to be determined before that day."

In my opinion the effect of regulation 3 quoted above is that if in relation to a claim made before 24 November 1980 which falls to be determined after that date a question of back-dating the claim arises, the benefit officer or, on appeal, the appeal tribunal must consider and deal with that question under the provisions of regulation 5 of the Claims and Payments Regulations 1977.

14. In the present case the claimant made a claim on 21 November 1980 for supplementary pension as from that date. It is clear that if there is no case for treating that claim as made on any earlier date regulation 11 of the Supplementary Benefits (General) Regulations 1977 would preclude any entitlement to supplementary pension from arising before Monday 24 November 1980. The consequence is that while it was necessary to consider the claimant's claim under the unamended statutory provisions because of the requests for single payments and for back-dating, it was also necessary to consider the claimant's possible entitlement to supplementary pension from 24 November 1980 under the amended statutory provisions. In the circumstances it will be for a fresh tribunal in rehearing the claimant's appeal 1) to deal with the claimant's claims for single payments for exceptional need under the unamended statutory provisions; and 2) to deal with the claimant's claim to supplementary pension from 21 November 1980 under both the unamended and the amended statutory provisions in accordance with the directions upon the law contained in this decision.

15. Finally I must indicate that I regard as justified the complaint of the claimant's representative over the non-production in connection with his appeal of the claimant's original postcard claim. Whatever the difficulties created by such an omnibus form of claim (and there is at present no approved form of claim issued by the Secretary of State) the claimant is clearly entitled to have his original claim produced in any appeal to avoid doubt or dispute as to the scope of that claim. I further consider there was justification in the complaint regarding non-production of the claimant's original letter of appeal to the appeal tribunal. Both of these documents are in my opinion within the class of document which must clearly be produced when a claimant exercises his right of appeal.

16. In the result the appeal of the claimant is refused in case C.S.S.B.40/81 and allowed in C.S.S.B.64/81.

(Signed) J. G. Mitchell
Commissioner
Date: 28 October 1981

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