

WMW/GMc

*good cause to day after
cessation of previous award*

Commissioner's File: • CSSB/91/88
LO: Springburn
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C.P.M.

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY
APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: ~~XXXXXXXXXX~~

Social Security Appeal Tribunal: Glasgow North

Case No: 555-02225

1. I hold the decision of the Glasgow North Social Security Appeal Tribunal dated 8 July 1987 to be erroneous in law and so I set it aside. I give in its place the decision which I consider the tribunal should have given, and that in exercise of the power conferred upon me by section 101(5)(a) of the Social Security Act 1975. That decision is that the claimant having established that he had continuous good cause to make his claim dated 19 June 1984 prior to that date and that from, and throughout the period from, the date in April 1983 when he was held to cease to be entitled to supplementary allowance so that that claim is to be treated as if it had been made on the day following the cessation of his entitlement to supplementary allowance in April 1983. I remit the case to the adjudication officer with a direction to establish the precise date in April 1983 concerned and then further to give effect to this decision upon the claim. For the avoidance of doubt I also reserve leave to the adjudication officer to make any consequential corrections, including correcting any errors thus far made in respect of that claim. If any difficulty arises in giving effect to this decision and directions then it will be open to apply for further directions.

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2. This case has had what appears to be a somewhat unfortunate history. On 19 June 1984 the claimant sought payment of supplementary benefit on certain grounds. He had earlier been in receipt of supplementary allowance but that had been determined when housing benefit was introduced in April 1983. The effect of that had been to remove the rent addition from his requirements so that his resources, then being largely an award of invalidity benefit, exceeded his requirements. However that may be, the June 1984 claim was, as I understand it, partially refused by an adjudication officer's decision issued on 4 September 1984. The claimant then appealed and that appeal came before the appropriate tribunal on 24 January 1986. Thereat the claimant's representative raised a question about back dating any award. I assume that to include a back dating of the award so far as it may have been made by the adjudication officer. However there is insufficient in the

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details before me to allow me to be clear upon that matter. At all events the tribunal appear to have allowed, or at least substantially allowed, the appeal. The question of back dating not having been earlier raised was left for the adjudication officer to consider separately. On 3 April 1986 an adjudication officer issued a decision that supplementary benefit for the claimant should not be back dated beyond the original date of claim.

3. The claimant appealed that decision and it was that appeal that was heard by the tribunal on 8 July 1987. The adjudication officer then concerned submitted that the claim for back dating was invalid because that claim had not been made by or on behalf of the claimant before there was a determination upon the claim by an adjudication officer. That submission was founded upon a passage in paragraph 11 of decision R(SB)9/84 which pointed out that back dating could only follow a specific request to that effect, but that "it will suffice to meet that requirement if in connection with the investigation of a claim the issue of back dating is raised by or on behalf of the claimant before the supplementary benefit officer /now the adjudication officer/ makes his determination upon the claim". He further submitted to the tribunal that in any event back dating could not be for more than 52 weeks having regard to regulation 87 of the Social Security (Adjudication) Regulations 1984, which applied to the first tribunal hearing, and that upon the view that that hearing was a review of the adjudication officer's decision upon the original claim. The tribunal seemed to have accepted and upheld both of those decisions so finding themselves unable to back date any of the award since 52 weeks prior to the first tribunal hearing would not stretch so far back as the original date of claim to which the adjudication officer had already given an effective back dating. Against that decision the claimant has again appealed. Broadly speaking his submissions, and those of the adjudication officer now concerned, who supports the appeal, come to much the same thing.

4. I accept and uphold the submissions now made. Since they go to the root of the decision against which the claimant has most recently been successively appealing I think it proper only to deal with them, although I should observe that I detect a number of other, but lesser flaws in the decision of the tribunal with which I am concerned. However I should first note that as I understand the position there is no factual dispute between the parties so that, arising out of the evidence before the later tribunal it is accepted that the claimant had good cause for failure to claim supplementary benefit as he did in June 1984, and that continuously from the time of the cessation of his entitlement to supplementary allowance in April 1983. It is upon that basis that I have thought it right, primarily to avoid further delay which would be involved in having another tribunal hearing, to give in this case my own decision in place of the tribunal one that I have set aside. However the reservations contained therein are designed, amongst other things, to allow parties to come back to me if the understandings giving rise to that result should be erroneous.

5. The January 1986 tribunal decision was not a decision on review of the earlier decision by an adjudication officer; it was on an appeal from it. It is therefore a misapprehension to suppose that the limitations upon review and in particular the period over which a review

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be operable, as contained in regulation 87 of the 1984 Adjudication Regulations, or, for the matter of that as contained in regulation 69 of the current 1986 Regulations, applied.

at the starting point for the decision with which I am concerned, the adjudication officer and the tribunal, is the sentence quoted in paragraph 11 of decision R(SB)9/84, as quoted in paragraph 3 above. This sentence, however, was not limiting the time when a back dating request may be raised. It was simply setting out how in the normal case the procedure would work. That is the procedure contained in regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1981 as amended. Paragraph (1) thereof provides that a claim is to be made no later than the first day of the period in respect of which it is made. Paragraph (2) provides that a claim, if made in respect of a period later than the day on which it is made, is yet to be treated as if it were made - in this case by paragraph (a) - on the first day of such period during which there had been continuous good cause for failure to make it. The unusual element in this case was that that back dating request was only raised at the first tribunal hearing. It was then referred to the adjudication officer, but that did not affect the date on which the claim itself - that is the claim in respect of which the back dating request - was made. Indeed in paragraph 11 of decision R(SB)9/84 the Tribunal of Commissioners go on to consider that it cannot always be regarded as necessary for what was then called a benefit adjudication officer to investigate possible retrospective awards in all cases. But in paragraph 12 they indicate what should be done if the back dating request regarding a claim only arises for the first time at an appeal hearing. They there set out the desirable procedure, which is exactly what was done in this case, namely to remit the matter to the adjudication officer, as he now is, for consideration and determination. It is not again that does not affect the date of the claim. What the adjudication officer in this case decided following upon that remit was not to back date the claim at all. The claim had been made in June 1984 and that having regard to regulation 5(1) of the Claims and Payments Regulations any award would run from that date. What the tribunal should have considered under regulation 5(2) was, first, whether there was good cause, and second how far, if at all, it had existed continuously prior to June 1984. If, and only if, these questions were answered favourably to the claimant could, and should, they have determined that the claim was to be treated as if it had been made on the first date of that earlier period. But in the event, for reasons which rather escape me, those questions were not attended to and the whole procedure seems to have gone off the rails. I can only hope that it has now been more or less re-railed.

The appeal succeeds.

(signed) W M Walker
Commissioner
Date: 25 January 1989