

Decision of AO made without jurisdiction

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WMW/HJD

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SUPPLEMENTARY BENEFITS ACT 1976

* 113/92

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: James JAMIESON

Social Security Appeal Tribunal: Glasgow Central

Case No: 552 22503

1. Although in form it succeeds this claimant's appeal in practical terms fails. I hold the decision of the Social Security Appeal Tribunal dated 3 July 1992 to be erroneous in point of law. For that reason I set it aside. In exercise of the power conferred by what is now section 23(7)(a)(i) I give the decision which the tribunal should have given.

2. That decision is that the determination of the adjudication officer issued on 13 November 1991 was made without jurisdiction. The claim which gave rise to this case is regulated for all purposes by the Commissioner's decision dated 17 June 1992.

3. In November 1990 the claimant sought a community care grant for clothes and a television. Subsequently it was contended that the claim be considered under the Supplementary Benefit (Urgent Cases) Regulations 1981. It is only that aspect of the claim with which I am concerned. On 7 February 1991 an adjudication officer refused the Urgent Cases claim upon the basis that those regulations had been repealed and so there was no power to make any such award. The claimant appealed. On 5 July 1991 a tribunal found in his favour and their unanimous decision was -

"We remit the claim back to the Department for consideration under Regulation 24 of the Urgent Cases Regulations 1981."

The adjudication officer carried that decision to the Commissioner. On 17 June 1992 the Commissioner decided that it had been erroneous in point of law and set it aside. He gave in its place, under the then in force section 101(5) of the Social Security Act 1975, the decision which the tribunal should have given. That decision was to refuse the appeal against the earlier decision of the adjudication officer. That then, therefore, became the ruling decision upon the claim for clothes and a television.

4. In the meantime, however, an adjudication officer had picked up the remit from the tribunal and on 13 November 1991 held the claimant not entitled to an urgent needs payment under said regulation 24 because its conditions were not satisfied. It is that decision that initiated the present appeal to the tribunal. The tribunal, sitting only some three weeks after the Commissioner's decision, appear to have proceeded in ignorance of it. They held, effectively endorsing the original adjudication officer's decision, that the claimant was not entitled to an urgent needs payment under the Urgent Cases Regulations because they had been repealed. Because neither party drew

this tribunal's attention to the adjudication officer's appeal against the earlier tribunal decision which had led to the decision of an adjudication officer being put before this tribunal what follows in no way reflects upon it. But, clearly, it was the duty, primarily of the adjudication officer since it had been his appeal, to indicate at the least that the decision which had led to the decision before this tribunal was the subject of an appeal. At the least, again, this tribunal should then have considered delaying until the appeal had been determined.

5. The claimant now again appeals, however, upon the short ground that regulation 37(4) of the Social Security (Claims and Payments) Regulations 1987 has not been taken into account by the tribunal and that was an error of law. It is submitted that the effect of that regulation was that the earlier tribunal decision having been carried to the Commissioner outwith what is called "the period allowed", that earlier decision must be implemented and that the later Commissioner's decision is of no effect. It is submitted that there should be an oral hearing of the appeal. I refuse that request because I am satisfied that the case can be decided without such a hearing. I am of the clear view that this appeal is entirely misconceived.

6. The effect of the Commissioner's decision in June 1992, like any appeal decision, was to supersede and replace the earlier decision. That meant that there was thereafter no extant remit back. It inevitably follows that anything done in respect of the remit back fell at the same time. Hence the requirement that matters should have been properly disclosed to the tribunal so that they could have seen that problem for themselves.

7. There appears to be no automatic suspension of proceedings where an appeal is taken. No doubt that will normally enure to a claimant's benefit. Thus, had the adjudication officer in November 1991 been entitled to find the relevant conditions satisfied he would no doubt have made an award, however unwisely, which would then have been irrecoverable in light of my decision. The Social Security (Claims and Payments) Regulations 1987, by regulation 37, alone provide for any such questions of suspension. The provisions thereunder allow the Secretary of State to direct suspension of payment of benefit if that is a payment of benefit -

".. under a decision of a social security appeal tribunal .."

And that, initially at least, only -

".. during any period when consideration is being given whether an appeal should be made to a Commissioner." [Regulation 37(3).]

These provisions clearly are directed only to a situation where a tribunal has found in favour of the claimant but the Department may wish to appeal. There could hardly be any need for a suspension where the finding had gone against the claimant. Regulation 37(4) provides that any suspension -

".. under paragraph (3) shall cease at the expiry of the period of one month from the date on which notice of the tribunal's decision was given to the adjudication officer unless within that period the claimant is given notice in writing that an application for leave to appeal to a Commissioner has been made .."

It concludes that if notice of an application for leave has been given the suspension may continue until it and any consequent appeal have been decided. These are the provisions now founded upon for the claimant.

8. The claimant's position appears to me to be misconceived because there has been no tribunal decision authorising payment. The July 1991 decision contains no such element. It merely remitted the claim back for consideration under regulation 24. At best in favour of the claimant therein, and only by implication, was a kind of declaration that the Urgent Cases Regulations had been saved despite the contention about repeal. Indeed that is reflected in one of their findings of fact - which I observe was not a finding of fact but at best should have been a finding of law - namely that the Urgent Cases Regulations had been saved by virtue of regulation 49 of the Social Security (Claims and Payments) Regulations 1987. Even had that been made part of the decision, rather than the reasons where it belonged, there would not have been in any normal sense of the word a decision under which any payment fell to be made to the claimant.

9. But in any event there is nothing in the wording to prevent an adjudication officer appealing without any notice in writing to the claimant. The only consequence of regulation 37 then is no suspension. The claimant's representative's submission that the effect of the regulation is to nullify any appeal made without such notice to the Commissioner, or, as it may be, to the Court, is, having regard to the terms of the regulation, in my judgment quite misconceived.

10. This appeal succeeds but without practical benefit to the claimant.

(signed) W M Walker
Commissioner
Date: 15 December 1992