

CSSB 75/87

JCM/II

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL TO THE SOCIAL SECURITY  
FROM DECISION OF SUPPLEMENTARY BENEFITS APPEAL  
TRIBUNAL UPON A POINT OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Christina Spind (Mrs.)

Appointee for Garben Spind

Supplementary Benefit Appeal Tribunal: Glasgow

Case No: 09/840

*Delay in  
hearing*

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 The claim for supplementary allowance was originally made in July 1980 and the decision of the Supplementary Benefit Commission issued on 14 August 1980 awarded supplementary allowance from 20 July 1980 to 23 November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 13 November 1980 when in light of the contentions advanced on behalf of the claimant an adjournment was requested by the Commissioner'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 5 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

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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  
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