

JGMI/IK

CSSB 11/1/82

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

1. This is an application by the claimant for leave to appeal to the Commissioner upon a point of law against the decision of a supplementary benefit appeal tribunal dated 21 April 1982 whereby the tribunal refused to entertain the claimant's appeal to them as being outwith their jurisdiction. I have decided that no point of law is raised in respect of which the decision complained of might be shown to be erroneous in law. I have therefore decided that the claimant's application for leave to appeal should be refused. In the exceptional circumstances of this case I propose to give reasons for reaching this conclusion.

2. The claimant claimed supplementary benefit on 2 November 1981 after a prolonged period abroad during which he was apparently able to support himself. He disclosed that he had had capital in a bank account and stated that the capital was exhausted and the account closed. In pursuance of the Secretary of State's powers under regulation 4 of the Supplementary Benefit (Claims and Payments) Regulations 1981 the claimant was asked to authorise verification of the state of his bank account but refused to do so. The claimant was informed that his need for supplementary benefit could not be assessed until the information required was available. He was also informed that he had a right of appeal which he duly sought to exercise.

3. The appeal tribunal took the view that they could not entertain the appeal because the only decision made was a decision by the Secretary of State requiring information under regulation 4 and as such not subject to appeal under section 15 of the Supplementary Benefits Act 1976 as amended, which allows appeal only against determinations by a benefit officer with respect to a claim or benefit. In my opinion the tribunal were justified in coming to the conclusion that no such determination had yet been made by a supplementary benefit officer. Both the appeal tribunal and the claimant were placed in a position of some uncertainty by the terms in which it was intimated to the claimant that the claim could not be adjudicated upon until the information required by the Secretary of State was supplied, because the intimation was referred to as a 'decision' and was said to be subject to the right of appeal.

4. Under Section 1 of the Supplementary Benefits Act 1976 every person in Great Britain aged 16 or over whose resources are insufficient to meet his requirements is entitled to supplementary benefit. A person claiming supplementary benefit therefore necessarily invites investigation of his requirements and resources in terms of the relevant statutory provisions. The determination of his claim by a supplementary benefit officer is dependent upon the outcome of these investigations. A requirement to supply information under regulation 4 of the Claims and Payments Regulations is not subject to appeal to the statutory appellate authorities (the appeal tribunal and the Commissioner). Nor in my view is an intimation that a claim cannot be adjudicated upon until a requirement under regulation 4 is complied with. Such an intimation is not a decision but is in effect a warning about the consequence of failing to comply. It may be that in a case of continuing refusal to comply a supplementary benefit officer can issue an appealable decision refusing the claim upon the ground that a claimant has prevented the investigation of his entitlement to benefit, but 1) express statutory power to issue such a decision appears to be lacking - see regulation 2(3) of the Supplementary Benefit (Determination of Questions) Regulations 1980 - 2) any appeal from such a decision will be of extremely limited scope since the Secretary of State's requirement under regulation 4 for the information withheld cannot be challenged in such an appeal, and 3) upon the evidence before them I consider that the appeal tribunal rightly concluded that the supplementary benefit officer had not reached that stage in the present case. It follows that the tribunal were correct in refusing to entertain the claimant's attempted appeal.

5. Not unnaturally the claimant has been puzzled regarding the true nature of the "decision" in this case. That apart, his difficulties have been very largely of his own making through his refusal to comply with what appears prima facie to have been a reasonable requirement to allow verification of his closed bank account in the circumstances indicated in paragraph 2 above.

6. The application for leave to appeal is refused.

(signed)

J. G. Mitchell
Commissioner
Date: 27 October 1982

Commissioner's File: C.S.S.B.111/82
C.S.B.O. File: S.B.O.556/82
L.O: Edinburgh South
L.O. ref. No: 6191/239498