

JGM/3/LS

Commissioner's File: CSSB/142/86

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Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: Glasgow West

Case No: 4/20/180/15

1. My decision is that the decision of the social security appeal tribunal dated 6 January 1986 was erroneous in point of law and it is set aside. The matter must be referred to another tribunal.
2. The claimant, who had till then been living in one household with his wife and family, thus being in supplementary benefit parlance a "partner", left his wife in February 1984 thereby ceasing to be a partner. He was unemployed and drawing supplementary benefit at this time and he was, in terms of section 5(1) of the Supplementary Benefits Act 1976 subject to the condition of being available for employment, and as a result he was not entitled to the long-term rate of benefit. He would however, under regulation 7 of the Supplementary Benefit (Requirements) Regulations 1983, be entitled to the long term rate after he had among other things been entitled to a supplementary allowance without being subject to the condition of availability for a continuous period of 52 weeks.
3. The claimant, as was found by the appeal tribunal in this case, had custody of his daughter (Victoria) from June to October 1984 for two days per week and I infer from the fact that the adjudication officer had in November 1984 issued a decision awarding the long term rate from 7 October 1985 that something had happened which in the view of the adjudication officer rendered the claimant not subject to the condition of availability 52 weeks before that date. This something was presumably the same matter of the claimant having custody of Victoria for two days per week. According to the form AT2 the claimant on 6 September 1985 asked for the award to be reviewed back further so as to award the long-term rate from an earlier date. But the adjudication officer refused to review it, and his decision was confirmed on appeal by the appeal tribunal. The tribunal disallowed the appeal notwithstanding that they found that the claimant's wife had custody of the children but that the claimant had custody for two days per week from June to October 1984. In their reasons they expressed the view that it was reasonable to expect him to have sought work on five days in the week. The claimant now appeals to the Commissioner.
4. One main question arises. From what date did the claimant cease continuously to be subject to the condition of availability so as to become entitled to the long-term rate 52 weeks later? This turns on regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 (the CE Regulations) which list in over twenty paragraphs the cases in which a person is excepted from the requirement of availability for employment. I need set out the relevant part of only two of these paragraphs. Paragraph (a) excepts a person if

"(a) he is not a partner and either -

- (i) he has a dependant living with him who is a child, or
- (ii)(not relevant)."

Paragraph (u) excepts a person if

"(u) 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 adjudication officer it would be unreasonable to require him to be available for employment."

5. I take paragraph (a) first. From the moment that the claimant ceased to reside with his wife he ceased to be a partner and the first requirement of paragraph (a) was satisfied. But in order to satisfy paragraph (a)(ii) he had to have a dependant living with him who was a child. "Child" is defined by section 34 of the Act as a person under the age of 16 and there is no doubt that Victoria was under that age. But to be a dependant of a person the child has under paragraph 3(2) of Schedule 1 to the Act (incorporated into the definition of dependant in regulation 2(1) of the CE Regulations) he or she must also be a member of the same household as that person. The adjudication officer now concerned has submitted that a person can be a member of a person's household for supplementary benefit purposes for a period of part of a week even though supplementary benefit is a weekly benefit; and this submission is supported by Decision R(SB) 28/84 and the recent decision on file CSB/944/1985 and I accept it. It follows that Victoria can if the facts warrant it be held to have been a member of the claimant's family and thus his dependant during the periods for which he had her living with him. Under regulation 6(a)(i) it is necessary only for this to happen at some time in any given week for the claimant to be excepted from the requirement of availability during that week. And if that has happened in each week continuously from June 1984 the claimant would be entitled to the long-term rate from 52 weeks later.

6. The appeal tribunal seem to have taken a different view on the ground that the claimant could have been expected to look for work when Victoria was not with him. I am not clear why they thought this was relevant. Had the case been one for the invocation of paragraph (u) about analogous circumstances they would certainly have had to consider whether it was reasonable or not to require the claimant to be available for employment. But there was nothing about this in paragraph (a). And the tribunal clearly erred in rejecting the claimant's appeal on the grounds which they gave.

7. The adjudication officer now concerned has submitted not only that the claimant could be entitled after a year from June 1984 if the facts are right, but also that he was so entitled, because the facts as found are right. I agree that some of the facts are right, but though possibly all are right, I do not think I can assume that, just because the claimant had custody of Victoria from June 1984, she was for part of every week since then living with the claimant as a member of his household. And I think that for this reason I must remit the matter to another tribunal.

8. The claimant's appeal succeeds.

(Signed) J G Monroe
Commissioner

Date: 10 April 1987