Good cause to late claim for SB. If previous claim refused & now only entitled because of change in law, would have good cause if there was nothing to alert claimant as to the change.
Tribunal failed to make proper findings as to whether cl. received leaflet re change or whether contents of leaflet should have alerted him.

JGM/BC

Commissioner's File: CSSB/146/86

C A O File: AO 2357/SB/86

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: [redacted]

Social Security Appeal Tribunal: Glasgow [East]

Case No: 37/11

1. My decision is that the decision of the social security appeal tribunal dated 19 November 1985 is erroneous in point of law in that the findings of fact are not sufficiently stated so as to satisfy the requirements of regulation 19 of the Social Security (Adjudication) Regulations 1984. The matter is remitted to another tribunal.

2. The claimant made a claim for a supplementary allowance, or else a claim for a single payment, in early 1983. Either a supplementary allowance was refused; or a single payment was refused on the ground that he was not entitled to a supplementary allowance. The reason why he was not entitled to an allowance was that his resources exceeded his requirements. With effect from 21 November 1983 the regulations were amended in such manner that the claimant would have been entitled to a supplementary allowance had he claimed it. It appears that he did not immediately appreciate this and it was not until 5 August 1985 that he made a claim for an allowance. He has asked for it to be backdated for 52 weeks (or even it might be argued back to November 1983). But the adjudication officer refused to back-date the claim on the basis that there was not good cause for failure to claim earlier. And this decision was confirmed on appeal by the appeal tribunal and the claimant now appeals to the Commissioner.

3. It was an important element in the adjudication officer's case for disallowing back-dating that the claimant had been sent a leaflet in October 1983 telling him of the change and inviting him to claim. I do not find a copy of it in the papers, and, if at the resumed hearing the adjudication officer seeks to rely on it he should furnish the tribunal with a copy. The claimant says that he never received it. And it does not of course necessarily follow that if it was sent it was received. The tribunal did not find it necessary to decide whether it was more probable than not that it was received. They decided that there was not good cause whether or not it was received. They recorded a finding that the claimant had a good knowledge of all the relevant regulations and that he was sufficiently aware of his rights to have made enquiry at the local office of the Department of Health and Social Security. They did not record any facts as found indicating why he should have suspected that there was anything to enquire about, or where he derived his knowledge of the relevant regulations, nor do I find in the case papers anything to suggest that at the relevant time he had such knowledge. Indeed it appears from a letter of the claimant's in the papers the claimant is

even now under the impression, derived from what he was told by the citizens' advice bureau, that he can claim back only for 52 weeks. This was a confusion between the position where a claimant claims benefit when not in receipt of an allowance and where he seeks to have an existing award reviewed for a back period. There is an anomalous difference between the two cases. On review there is in general a right to have an increased award paid back for 52 weeks irrespective of good cause but not beyond 52 weeks even with good cause (see regulation 87 of the Social Security (Adjudication) Regulations 1984). By contrast on an initial claim there is no back-dating without good cause. But with good cause there is no limit on back-dating (see Supplementary Benefit (Claims and Payments) Regulations 1981, regulation 5). These are relevant regulations of which the claimant plainly did not have a good knowledge. And I find it impossible to say to what regulations the tribunal were referring.

4. It has to be remembered that, as was pointed out in Decision R(S) 2/63 at paragraph 12 the question whether a given set of facts amounts to good cause for late claim is a question of law. And I do not find that the tribunal found sufficient facts to enable me to say whether they answered the question of law correctly. If I understand the facts rightly it was the change made in November 1983 to the rules about requirements being assessed at the long-term rate that first gave the claimant title to a supplementary allowance. Until then it was, broadly, necessary for a person to have been in receipt of an allowance at the short-term rate for 12 months before becoming entitled to the long-term rate. And if resources were sufficient to cover requirements at the short-term rate but not at the long-term rate one could not get started on the long-term rate at all. This was in relation to the claimant (who according to the AT 3 was in receipt of invalidity benefit), put right by the amendment to the relevant regulations made by regulation 2(4)(c) of the Supplementary Benefit (Requirements, Resources and Single Payments) Amendment Regulations 1983 with effect from 21 November 1983. Of all this I suppose the tribunal concluded that the claimant had a sufficient knowledge to have made it reasonable to expect him to make further enquiries. I do not find recorded any evidence on which they could have based such a conclusion. The state of his knowledge as at the date of the hearing (which the tribunal may have noted) was not very relevant to the question what he knew at the time of the change of law and shortly thereafter.

5. Commissioners' decisions cited to the tribunal (in particular R(S) 2/63 at paragraph 13) show that a person may have good cause for failing to enquire when there does not seem to be anything to enquire about. And an obvious case of this is where a previous claim has been rejected properly on certain grounds, and without any change in surrounding circumstances but as a result of the change in the law applicable, the grounds of rejection cease to exist. This is illustrated by decision R(S) 3/79. In that case a man had claimed an increase of sickness benefit for his wife, but his claim had been rejected on the ground that her earnings were too great. When he changed to invalidity benefit after 168 days, the earnings rule applicable to his wife was different and an increase became payable. But he failed to claim it for some time. It was considered that the question that had to be asked was whether there was anything for the claimant to enquire about. I can find no indication in the present case that the tribunal ever asked themselves that question.

6. Indeed the only evidence that seems to have been adduced that would suggest that the claimant ought to have known that there was something to enquire about was the evidence that the leaflet had been sent. On this no finding was made. If the new tribunal conclude that the leaflet was sent but that the claimant overlooked it, they could properly find that the claimant should have made enquiries; though before making such a finding they should consider the leaflet itself to satisfy themselves that there were indications in it were such as ought to have alerted the claimant. On this issue I would draw their attention to what was said in Decision R(S) 3/79 at paragraphs 6 and 7.

7. Accordingly I set the decision aside and remit the matter to another tribunal to consider in the light of the principles that I have endeavoured to outline above. The appeal succeeds.

(Signed) J G Monroe
Commissioner

Date: 8 April 1987

Copy

JGM/BC

Commissioner's File: CSSB/146/86

C A O File: AO 2357/SB/86

Region: Scotland

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Commissioner

Date: 8 April 1987