

C.P.A.S.

MJG/SH/8

Commissioner's File: CIS/012/1989

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 15 September 1988 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to an entirely differently constituted social security appeal tribunal: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a widow aged 40 at the relevant time. The appeal is from the unanimous decision of a social security appeal tribunal dated 15 September 1988, which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 13 July 1988 in the following terms,

"The claimant is not entitled to a Social Fund Funeral Payment, because she is unable to satisfy the conditions of Regulation 7 of the Social Fund Maternity and Funeral Expenses Regulations 1987."

That decision was given in relation to a claim for a funeral payment, dated 12 July 1988. There were however earlier claims, as to which see below.

3. On my direction the appeal was the subject of an oral hearing before me on 15 April 1992 at which the claimant was not present. The adjudication officer was represented by Mr. Heath of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to Mr. Heath for his assistance to me at the hearing. The local adjudication officer's statement of facts to the original tribunal reads as follows,

"[The claimant] is aged 40. She is living with her partner Mr E W aged 53. They live in local authority accommodation and have no savings. Their income consists of an occupational pension of £15.01 per week and income support of £37.48 per week. Mr W suffers from arthritis. [The claimant's] husband .. died on 13.2.87. The date of the funeral was 24.2.87. [The claimant] was not entitled to supplementary benefit at this time because her widow's allowance exceeded her entitlement to benefit. She became entitled to supplementary benefit from 26.6.87. [The claimant] first claimed help with the funeral account [of £482.50] on 16.2.87. Her claim was disallowed because she was not in receipt of supplementary benefit or housing benefit supplement. [Regulation 4 of the Social Security (Single Payments) Regulations 1981 as amended]. [The claimant] claimed help with the account next on 19.5.87. This was also disallowed because she was not in receipt of a qualifying benefit. The third claim was received on 24.8.87. [The claimant] was by this time in receipt of supplementary benefit. However the claim was again disallowed because the claim was made more than 3 months after the funeral took place and the Adjudication Officer did not consider the fact that [the claimant] was now in receipt of a qualifying benefit was good cause to back-date the claim. [The claimant] made a further claim on 28.10.87 and this was disallowed for the reason stated above. The decision against which [the claimant] has appealed was in respect of her claim dated 12 July 1988. [and was disallowed as being more than 12 months after the date of the funeral - see below]."

4. The claimant did not attend the hearing before the social security appeal tribunal on 15 September 1988. That placed that tribunal in a difficulty. The claimant should make every effort to attend the new tribunal whose hearing I have directed by this decision. Having due regard, though, for the difficulties under which the original tribunal was labouring, I must accept the adjudication officer's written submission dated 16 March 1990 that the tribunal erred in law, in that it did not comply with regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986, by which the tribunal's record of decision (on Form AT3) must contain findings of fact and give reasons for decision. In the present case, the only findings of fact were, "Facts as stated on AT2 [adjudication officer's submission to tribunal]". The only reasons for decision given were "Tribunal accepted the reasons given by the adjudication officer." I regret to have to say that those findings of fact and reasons for decision are inadequate. Even in a case which appears to the tribunal to be 'open-and-shut' and a claimant does not attend, the tribunal must give its own reasoning and must not give the appearance of having 'rubber-stamped' the submission to it of the adjudication officer. For that reason, I accede to the submission of the adjudication officer now concerned and set the tribunal's decision aside.

5. There is no doubt that the claimant cannot succeed on the

claim for the funeral payment dated 12 July 1988 because that claim is outside the absolute 12 months limit prescribed for such claims by the combination of regulation 7(1)(d) of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987 and regulation 19 of and Schedule 4 to the Social Security (Claims and Payments) Regulations 1987.

6. However, regulation 7(2) of the Social Fund Maternity and Funeral Expenses (Claims and Payments) Regulations 1986, which covers the period of the earlier claims made by the claimant, provided as follows (there are similar provisions in the current regulations),

"Time for making a claim

7. (1) ...
- (2) a claim for a social fund payment for funeral expenses may be made no earlier than the date of death of the deceased and, subject to paragraph (3), no later than 3 months after the date of the funeral.
- (3) Where the claimant makes a claim on a date between 3 and 12 months from the ... funeral and proves that there was good cause, throughout the period from the expiry of the 3 months, for the failure to make the claim before it was made, the time prescribed by paragraph ... (2) shall be extended to the date on which the claim is made."

7. When the claimant made her third claim for this funeral payment on 24 August 1987, by which time she was in receipt of supplementary benefit, that was a claim made on a date between 3 and 12 months from the date of the funeral. It therefore needed to be considered whether or not she had shown "good cause" for delay, throughout the period from the expiry of the three months from the funeral i.e. throughout the period from 24 May 1987. The claimant has not been treated as appealing from the adjudication officer's decision on the claim of 24 August 1987, that the claimant had not shown "good cause" for delay in making that claim. However it would seem to me that the claimant, who clearly is not a highly educated woman and is confused by what has happened, may have demonstrated "good cause" for the delay, by waiting until she actually was awarded supplementary benefit. It would seem she did not get that benefit immediately after her husband's death and had to wait until 26 June 1987 for it because of the initially higher rate of widow's benefit.

8. However, that question cannot be determined unless appeal is made by the claimant to the social security appeal tribunal against the adjudication officer's decision rejecting the claim of 24 August 1987 and that the tribunal chairman is prepared to allow such an appeal out of time. That is entirely a matter for the tribunal chairman and it is not a matter with which I must

interfere. I merely point out the possibility of this procedure and the new tribunal may wish to consider whether it can be done at the new hearing that I have directed.

9. Lastly the new tribunal may wish to look into the question whether, in relation to the first claim for reimbursement of the funeral account made on 16 February 1987, when the Supplementary Benefit (Single Payments) Regulations were still in force, in fact the claimant has any possible claim under the Supplementary Benefit (Urgent Cases) Regulations 1981, e.g. regulation 24. I merely indicate the existence of this possibility. Mr. Heath indeed mentioned it. My having done so does not indicate one way or the other whether I consider such a claim should now be entertained or whether it would succeed. Again that is entirely a matter for the new tribunal.

(Signed) M.J. Goodman
Commissioner

(Date) 16 April 1992