

*Treatment of income / backdating
[No matter of substance discussed in
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NPLAB JM

JBM/SH/36

Commissioner's File: CIS/19/1989

Region: London North

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. In my judgment the decision of the Lowestoft social security appeal tribunal dated 2 December 1988 is not erroneous in point of law.
2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 26 September 1988 and set out in box 1 of Form AT2. The claimant requested an oral hearing which request was granted. The claimant having had the request for an overnight stay supported by inadequate medical evidence rejected, did not see fit to attend and was not represented. The adjudication officer was represented by Mr D A Jobbling of the Chief Adjudication Officer's Office to whom I am indebted.
3. The facts of the case are dealt with on the face of the appeal tribunal's record in their findings of fact on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are regulations 29 and 40 of, and Schedules 3 and 9 to, the Income Support (General) Regulations 1987. Paragraph 29 of Schedule 9 is set out in paragraph 4 of the submission dated 3 April 1989 of the adjudication officer now concerned. No useful purpose would be served by my setting out those provisions afresh here.
5. In my judgment the decision of the appeal tribunal is not erroneous in point of law. In his helpful address to me Mr Jobbling dealt with the question of backdating raised by the claimant and resiled from the submission contained at the conclusion of paragraph 5 and in paragraph 6 of the submission dated 3 April 1989 of the adjudication officer concerned that the appeal tribunal had breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. In my judgment Mr Jobbling's submission was properly made and I accept it.

As to the claimant's observations dated 11 April 1989 to me that he had asked for his claim to be backdated to June 1988, this submission has no basis. The appeal tribunal had no evidence to indicate that backdating would give any benefit to the claimant. Backdating considerations were therefore irrelevant and the appeal tribunal did not err on that ground.

Further the appeal tribunal did not breach regulation 25(2)(b) in the light of the first sentence of their findings of fact which is as follows:-

"Appellant agrees that the calculations set down on the AT2A(1988) attached to the appeal papers are all correct."

These particulars are very detailed and contain the relevant matters necessary to be found by the appeal tribunal. No point would have been served by the appeal tribunal setting out those particulars afresh on the face of their record - the appeal tribunal adequately dealt with those particulars in the first sentence of their findings of fact set out above.

The law is accurately stated in paragraph 4 and the first sentence of paragraph 5 of the submission dated 3 April 1989 of the adjudication officer now concerned in these appeals. There is no merit in my saying in other words what has been adequately stated already. The appeal tribunal made adequate findings of fact to which they correctly applied the relevant law.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

7. Accordingly the claimant's appeal is dismissed.

(Signed)

J B Morcom
Commissioner

Date: 15 August 1989