

CDAC

MJG/SH/7

Commissioner's File: CIS/072/1990

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 9 November 1989 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given, namely that the claimant has shown good cause (continuous to 20 June 1989) for delay, in respect of her claim made on 20 June 1989 for Income Support for the inclusive period from 25 February 1989 to 5 May 1989. The claimant's entitlement to Income Support (if any) must be assessed accordingly: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a married woman aged 54 years at the relevant time, normally living with her husband, then also aged 54 years and their three dependent children aged 4, 13 and 18 years respectively.

3. The appeal is against the unanimous decision of a social security appeal tribunal dated 9 November 1989 which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 23 June 1989 in the following terms,

"The claimant is not entitled to income support for the period 25-2-89 to 5-5-89. This is because she had not shown that there was good cause throughout that period for her failure to claim before 25-2-89."

4. What in fact occurred was that the claimant's husband was the normal claimant for income support. It appears that his order book for income support continued to be cashed while he was absent from Great Britain, when he went to Pakistan on 1 March 1989 and returned on 26 April 1989. There is apparently a decision requiring recovery of £909.40 overpaid benefit for

the period 25 February 1989 to 5 May 1989, which is or has been, apparently, the subject of a separate appeal to a social security appeal tribunal.

5. On 20 June 1989, the claimant herself wrote a letter to the Department stating that she herself wished to claim income support for a period, amended to the period from 25 February 1989 to 5 May 1989. It appears from the correspondence and from evidence given to the tribunal that the claimant's husband went to Pakistan because of the death of a relative there. He went with some urgency. Apparently also the claimant is unable to speak English but her 18 year old son can speak English. It also appears that she borrowed money from the Asian community to live on.

6. In rejecting her appeal, the tribunal gave as their reasons for decision,

"The claimant borrowed money whilst her husband was in Pakistan. There appears no reason why she could not have made a claim particularly as she had an 18 year old son who understands English who could have been sent to the local office to make enquiries. This claim has only arisen as a result of an overpayment made to her husband and we are unanimous in our opinion that 'good cause' has not been proved."

The reference to "good cause" is to the requirement that there must be "good cause" shown for the delay if the normal time limit for claiming income support is to be extended under regulation 19 of the Social Security (Claims and Payments) Regulations 1987.

7. The adjudication officer now concerned, in a written submission dated 12 April 1990, supports the claimant's appeal on the following grounds (paragraphs 4 and 5),

"I agree with the claimant that the fact that her claim may have arisen as a result of an overpayment to her husband is not directly relevant to the question of whether she had good cause for making a late claim. Finally I submit that the tribunal's reasons for decision failed to show why the claimant's evidence that her lack of English, lack of knowledge of the social security system and the cultural and religious constraints upon her amount to good cause for a late claim was rejected. The tribunal appear to have simply assumed, without making any enquiries, that the presence of an English speaking son in her household precluded the claimant from showing good cause for a late claim. I submit that this is a breach of the provisions of Regulation 25(2)(b) of the [Social Security (Adjudication) Regulations 1986] and renders the tribunal decision erroneous in point of law."

8. I note that in grounds of appeal on her behalf to the local tribunal the claimant says,

"My cause for late claim are these reasons. I have virtually no command of English. My husband has always been the claimant for our family and so I have had no occasion (or indeed, need) to acquaint myself with DHSS procedure or the social security system. There may be some analogy in CSB/813/1987, concerning an Asian claimant and supplementary benefit. The necessity of my husband's urgent departure to Pakistan left no time for him to make arrangements re: income support. The result of this was that I had to borrow money from my community to subsist as I could not cash my husband's order book."

9. I have given careful consideration to all these facts. I note that the adjudication officer now concerned submits (paragraph 6 of written submission of 12 April 1990) that as the tribunal made insufficient findings of fact I should remit this appeal to another tribunal for redetermination. However, I have come to the conclusion, bearing in mind that whether there is "good cause" is a mixed question of law and fact and that I have detailed information before me, that this is a proper case for me to give a decision myself. I of course take the point about the possibility that the claimant's 18 year old son could have advised her but what has to be asked here is whether the claimant herself had "good cause" for delay. I have no doubt taking the guidance into account of the Tribunal of Commissioners in R(S) 2/63 (particularly at paragraphs 11-13) that this is a case where on a balance of probabilities "good cause" has been shown for the delay.

10. My decision therefore so declares. I have not dealt with the question of whether or not there is consequent entitlement to Income Support on the part of the claimant. That is a matter which will now have to be investigated by the local adjudication officer, who should do so as soon as possible. If any further problem or difficulty arises out of this aspect of the matter it can be referred back to me for Supplemental Decision.

(Signed) M.J. Goodman  
Commissioner

(Date) 13 February 1992