

C786

MHJ/1/LM

Commissioner's File: CIS/073/90

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that -

- (a) the unanimous decision of the Liverpool social security appeal tribunal given on 22 November 1989 is erroneous in point of law and is accordingly set aside;
- (b) with effect from 11 April 1988 the claimant was entitled to a transitional addition in respect of income support, and arrears thereof are payable from the benefit week appropriate to 11 May 1988.

2. The claimant, Mr John Range, who sadly died on 4 May 1991, appealed with leave of the Commissioner against the decision of the tribunal upholding the decision of the adjudication officer, issued on 15 June 1989, that he was "not entitled to 52 weeks arrears of transitional addition". Mr Range was throughout represented by Messrs Benjamin & Co, Solicitors, of Bootle, and this appeal now proceeds by his appointee, his daughter, Mrs Joanne Hand.

3. Mr Range had plainly suffered from ill health for a considerable time and was diagnosed as having emphysema in 1983. He had not worked since 1971 (when he was 39) and had been in receipt of supplementary benefit and, latterly, income support, for himself, his wife and dependant children. The only issue in this case is whether Mr Range was entitled to the long-term scale rate of supplementary benefit and consequently entitled to a transitional addition based upon that rate upon the change to income support in April 1988. The adjudication officer decided that although Mr Range satisfied the supplementary benefit conditions for waiving the requirement to register as unemployed, as the supplementary benefit rules had been replaced by the income support regulations more than 52 weeks before the request for review on 11 May 1989, regulation 69 of the Social Security (Adjudication) Regulations 1986 precluded the award of any arrears and, further, that in these circumstances regulation 72 of the Adjudication Regulations could not assist Mr Range.

4. Mr Range appealed and on 22 November 1989 the tribunal specifically found among the facts material to their decision that he had satisfied regulation 6(e) and (a) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 "since 1983 and possibly earlier". However, the tribunal went on to find that because regulation 69 operated to restrict arrears of benefit to one year from the date of the application for review any calculation had to be based on amount actually in payment rather than what would have been payable if the long-term rate had been awarded.

5. I have been assisted in this matter by a thorough submission dated 10 April 1990 by the adjudication officer now concerned with the case. I do not see that any useful purpose would be served by my repeating or paraphrasing what is clearly and accurately set out in that submission; it suffices to say that I agree that the tribunal erred in law in their construction of the word "entitlement" and that their decision is consequently erroneous in point of law. I adopt the reasoning of the submission of 10 April 1990.

6. I set the tribunal's decision aside and, as this is plainly a case in which I should exercise my discretion under section 101(5) of the Social Security Act 1975, I propose as far as I can to give the decision which the tribunal should have given. I accept that Mr Range would have been entitled to the long-term supplementary benefit rate in the week which determined his entitlement to income support - in fact the final week of supplementary benefit although somewhat confusingly called the "first week" for income support purposes while the first week in which income support was payable is called the "second week". Be that as it may, I accept and adopt the calculations set out in paragraphs 5 and 6 of the submission of 10 April 1990 and accordingly my decision is as set out in paragraph 1(b) above. Arrears of the transitional addition will be payable for the benefit of Mr Range's estate from the benefit week appropriate to 11 May 1988 and will therefore be subject to the erosion in accordance with the relevant regulations. I direct the adjudication officer to make the necessary assessments and, in the event of any disagreement, the matter is to be referred to me for determination.

7. The claimant's appeal is allowed.

(Signed) M H Johnson
Commissioner

Date: 18 February 1992