

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 Cardiff social security appeal tribunal given on 21 August 1989 is erroneous in point of law and is accordingly set aside;
- (b) the claimant is entitled to income support for the inclusive period from 28 April to 11 May 1989.

2. The claimant, Mr Stanley Barnett, appeals with leave of the chairman against the decision of the tribunal confirming the decision of the adjudication officer, issued on 30 May 1989, that, while he was entitled to income support from 12 May 1989, he was not entitled for the period from 28 April to 11 May 1989 because he had not shown that there was good cause throughout the period for his failure to claim before 12 May 1989.

3. The facts are not in dispute. At the material time Mr Barnett was a plumber aged 41, living with his wife and two dependant children in their own house. On 27 April 1989 Mr Barnett sustained an accident at work in which he fractured his foot. He was admitted to hospital and discharged on 2 May 1989. On 12 May 1989 he telephoned the Department to say that he was unable to manage on his statutory sick pay and his wife's part-time earnings and that he wished to claim income support. In due course he completed the necessary form and was awarded benefit with effect from 12 May 1989, but the adjudication officer decided that income support could not be backdated because Mr Barnett had not shown that he had continuous good cause for not claiming before 12 May. Whether or not he had good cause is the sole issue in this case.

4. The tribunal, after what was clearly a very full hearing at which Mr Barnett gave evidence, rejected his appeal against the adjudication officer's decision. They gave as their reasons for the decision -

"When Mr Barnett received the payment of Statutory Sick Pay

in the sum of £31.26 he should have realised, if he had not realised before, that it was necessary for him to apply for income support. Consequently, we are not able to say that there was good cause for his failure to claim before 12 5 89 - the period from 28 April 1989 to that date. (Section 165A(1) of the Social Security Act 1975 and Regulations 4(1), 6(1) and (3), 19(1) and (2) of and Schedule 4 to the Social Security (Claims and Payments) Regulations 1987 applied."

5. The relevant law, section 165A of the Social Security Act 1975, and regulations 4, 6 and 19 of and Schedule 4 to the Social Security (Claims and Payments) Regulations 1987, is adequately dealt with in the adjudication officer's submission on form AT2 and in the submission dated 18 April 1990 by the adjudication officer now concerned with the case. No issue arises on the law, only upon the proper interpretation of the phrase "good cause" for a late claim. That, as has been correctly submitted, was held by a Tribunal of Commissioners in R(S) 2/63 to mean -

"... some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age to act (or fail to act) as the claimant did."

6. In the instant case it is common ground that Mr Barnett suffered a severe injury. There is no medical report, but he was an in-patient for 5 days and, as he wrote on form AT6 on 17 July 1989, some two months later, requesting an adjournment, he was "still on crutches" as a result of his accident. In evidence to the tribunal he said that he had fallen off a ladder on to a concrete floor and it may well be that he sustained a fractured os calcis - a fairly common injury in the construction industry and a notoriously painful and incapacitating one. However that may be, his evidence was that on 4 May 1989 he received his first instalment of statutory sick pay amounting to £31.26 for a part week, at that time he did not know what the full weekly amount would be and he was "optimistic" that he would also receive money from his employer, indeed that he "would get a good proportion" of his usual basic wage. At the time he was "in bed with my foot up" and "not thinking too clearly about these things".

7. In my view the tribunal's finding, set out in their reasons, that when Mr Barnett received, on 4 May 1989, statutory sick pay of £31.26 "he should have realised, if he had not realised before, that it was necessary for him to apply for income support" is manifestly contrary to the evidence before them. I can see no reason why he should have realised or, indeed, even contemplated it before; further, he was unaware of his full weekly entitlement to statutory sick pay - presumably, he received his next payment on or about 11 May, the day before he telephoned the Department. Yet further, the tribunal's decision

does not pretend to consider "all the circumstances" of the case, including his health. In my judgment the tribunal's reasons for their decision are clearly inadequate to comply with the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986; accordingly I hold their decision to be erroneous in point of law and set it aside.

8. The principles relating to "good cause" must be applied by the adjudicating authorities with common sense and regard to the realities of the case in question. In the instant case, while it has to be accepted that Mr Barnett or his wife could have ascertained earlier precisely how much statutory sick pay he would receive, in a crisis - as this plainly was - people tend, in my view very reasonably, to be primarily concerned with resolving their immediate problems; the pain of and following an injury, treatment, possibly by surgery, for the injury, and the inevitable, albeit temporary, disruption of family life - hospital visits, nursing after discharge, avoiding disturbance to the children's school routine. Taking all such factors into account and applying what I understand to be the spirit of the principles of R(S) 2/63, it seems to me entirely reasonable and eminently understandable that Mr Barnett should have delayed claiming income support until he was in a proper position to make a proper assessment of his financial situation; he needed to know what his statutory sick pay would be and whether his employers were in fact going to help him financially; he needed to consider what cash he had in hand and whether his wife's part-time job would be affected and, in general, take stock of the family's needs. It seems to me contrary to the principles of R(S) 2/63 to say that a man who takes a reasonable time to arrive at a considered assessment of his requirements should be disallowed benefit on the ground that he has not shown good cause for his late claim, whereas a man who makes a precipitate and possibly ill-considered application would not be so penalised.

9. I am left in no doubt whatsoever that Mr Barnett has shown that he had continuous good cause for not claiming income support before 12 May 1989 and, in those circumstances, I have no hesitation in exercising my powers under section 101(5) of the Social Security Act 1975 to substitute my own decision for that of the tribunal. My decision is as set out in paragraph 1(b) above; payment of the appropriate amount in respect of the inclusive period from 28 April to 11 May 1989 will accordingly be made to Mr Barnett. In the event of any dispute arising the matter is to be referred to me for determination.

10. The claimant's appeal is allowed.

(Signed) M H Johnson  
Commissioner

Date: 27 January 1992