

CP 104

MHJ/1/MD

Commissioner's File: CIS/178/1989

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the claimant's appeal against the unanimous decision of the Sheffield social security appeal tribunal given on 21 April 1989 has abated because of the claimant's death on 12 August 1990.

2. I granted the late claimant leave to appeal on 3 November 1989 and, following her death, this office wrote to her son on four occasions between January and October 1991 asking him if he wished to continue with the appeal. No answer has been received to those letters and, in these circumstances and in accordance with the principles set out in R(SB) 25/84, which I am satisfied apply to income support cases, I hold that this appeal has abated. A photocopy of R(SB) 25/84 is annexed to this decision.

(Signed) M.H. Johnson
Commissioner

(Date) 7 April 1992

we noted in Volume 5 to the Convention 1951; TS 39 (1954); that "a refugee may be granted supplementary benefit provided he is not a person mentioned in the same Volume at paragraphs relating to *Stateless Persons*". We are of the opinion that on contracting states the same protection should be given to persons who work, rationing etc. We accept that the present case is analogous to those mentioned in them as persuasive.

applied for renewal of some form of benefit under 1(1)(b) Urgent Cases in accordance as being fairly

SUPPLEMENTARY BENEFIT

Appeal pending—Death of claimant.

A claimant appealed to a Social Security Commissioner against the decision that he was not entitled to supplementary benefit but died before his appeal could be heard. His widow was unwilling to be appointed to act in respect of the outstanding appeal and it appeared no other person would be forthcoming.

Held that:

1. the procedure adopted in decision R(I)2/83 is equally valid in supplementary benefit cases. Where an appellant dies before his appeal can be heard and the deceased has no personal representative or appointee, it is better to declare the appeal abated rather than to dismiss it (paragraph 3);
2. where the appellant is the supplementary benefit officer and he is unwilling to withdraw his appeal some other procedure must be devised (paragraph 3).

The Commissioner decided the appeal had abated.

1. My decision is that the claimant's appeal against the decision of a supplementary benefit appeal tribunal dated 20 September 1983 confirming the decision of a supplementary benefit officer that the claimant was not entitled to a supplementary allowance from 25 May 1983 has abated because of the death of the claimant on 30 November 1983.

2. I granted leave to appeal in this case on 10 November 1983 and the claimant's observations on the appeal were received on 28 November 1983. He died on 30 November 1983. It is not known that any personal representatives have been constituted and the claimant's widow is unwilling to be appointed representative under regulation 28 of the Supplementary Benefit (Claims and Payments) Regulations 1981. She has been interviewed and there is apparently no other person who is likely to be agreeable to act as such representative.

3. In these circumstances, I have reached the conclusion that the reasons given by the Commissioner in Decision R(I) 2/83 for following the procedure adopted in that decision are equally valid in supplementary benefit cases. It is better not to dismiss a deceased claimant's appeal in a case where there is neither a personal representative nor an appointment under regulation 28. In circumstances such as the present it is preferable merely to declare that such an appeal is abated. The matter can then for practical purposes be regarded as closed. I have discussed with several other Commissioners the practice recommended in this decision and they have authorised me to say that they agree that it is appropriate for adoption in comparable cases. It is not appropriate where the appellant is the supplementary benefit officer and if that officer is in such a case unwilling to withdraw his appeal some other procedure must be devised.

(Signed) V. G. H. Hallett
Commissioner