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Commissioner's File: CIS/256/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This appeal succeeds. For the reasons which follow, the decision of the social security appeal tribunal ("the appeal tribunal") dated 13 March 1989 is erroneous in law and falls to be set aside.

2. This is a claimant's appeal brought, with the leave of a Commissioner, from the appeal tribunal's decision, affirming the decision of an adjudication officer, that the claimant was not entitled to income support.

3. The claimant is a married man in his early forty's with three dependent children. Before the introduction of income support in April 1988 he had been receiving supplementary benefit for some years. Payment of benefit ceased on 16 June 1988 when he went abroad on a pilgrimage. On his return he reclaimed income support. For the purpose of this claim he was asked to provide bank statements so as to verify his savings. The bank statements he produced showed a balance in May 1988 of over £1,400 and several deposits thereafter, including one in June for £1,750. The Secretary of State then directed that the claimant provide further evidence in connection with his claim. He was asked to complete either a form A42 giving permission for the Department to approach his bank for details of transactions or, alternatively, to provide a bank statement in respect of the previous 12 months. The claimant chose the latter course and provided bank statements for the period September 1987 to October 1988. This also reflected numerous transactions, including a number for large amounts. In the light of that bank statement, the Secretary of State then directed that a form A42 should be completed so that the bank could be asked to give the source or sources of the lodgments in question. When the claimant refused to sign this form, the Secretary of State

referred the matter to an adjudication officer who determined that the claimant had no entitlement to income support because he had failed to show that his income was insufficient to meet his needs. The claimant appealed. In the course of affirming the decision of the adjudication officer, the appeal tribunal stated as follows:-

"There is no appeal against a decision of the Secretary of State to require further evidence from a claimant for benefit pursuant to regulation 7 of the Claims and Payments Regulations; that is to say, it is not a matter for this tribunal to decide whether or not the Secretary of State's requirement for further evidence is reasonable or not; that is clear from paragraph 12 of Commissioner's decision R(SB) 29/83. The only remedy the claimant felt aggrieved by such decision would presumably be by way of an application to the Courts for judicial of the Secretary of State's decision.

So far as this tribunal is concerned, however an appeal only lies to it from the decision of an adjudication officer and of course in the present case the decision of the adjudication officer to refuse benefit was based on the admitted failure of the appellant to provide further evidence required from him by the Secretary of State pursuant to regulation 7 of the Claims and Payments Regulations, namely his signature to a form A42 which would have entitled the Department to approach his bank direct to obtain further detail to the transactions set out in his bank statements.

The question for this tribunal to determine therefore is whether the decision of the adjudication officer to refuse benefit to the appellant, when that decision was based upon a requirement to the Secretary of State which had not been complied with, was wrong and whether it should therefore be overruled."

4. I think it can fairly be said that the thrust of the grounds of appeal filed on behalf of the claimant is that the evidence which was before the appeal tribunal was in fact sufficient to establish his case in respect of this benefit.

5. Consideration of that ground of appeal shows that the appeal tribunal wrongly approached this matter and that this appeal has merit. As the appeal tribunal twice stated in their reasons, the question they posed for themselves was whether the adjudication officer was correct to base his decision that the claimant was not entitled to income support upon a requirement of the Secretary of State which was not complied with. That was the wrong question. The question they should have asked themselves was whether on the basis of the evidence and information before them the claimant had made out his claim for income support on the balance of probabilities. In this regard, I agree entirely with Mesher's comments at pages 465-466 in the 1991 Edition of his "CPAG's Income Support, The Social Fund and Family Credit"

on the provisions of regulation 7 of the Social Security (Claims and Payments) Regulations 1987, under which the information required in the present case was sought by the Secretary of State. He says there -

"A failure to produce the information required may mean that a claim does not have to be submitted "forthwith" to the AO (Social Security Act 1975, section 98). There is no direct sanction for a failure to comply with the requirement. The old supplementary benefit rule allowing a claim to be deemed to have been withdrawn has not been translated into the present Claims and Payments Regulations. After a lapse of a reasonable time, the AO should make a decision on the evidence available (R(SB) 29/83.). If there is a significant gap in the evidence the claimant is likely not to have proved his entitlement on the balance of probabilities."

6. The fact that the appeal tribunal adopted the wrong approach meant that the tribunal failed to consider the proper issues in the case, failed to make the requisite findings of fact on the evidence before them and failed to give proper reasons for the decision. Their decision was thus wrong in law.

7. In the result this appeal is allowed, the decision of the appeal tribunal is set aside and the case is remitted to a differently constituted tribunal for rehearing.

(Signed) **A.W.E. Wheeler**
Commissioner

(Date) 2 March 1992