

SUPPLEMENTARY BENEFIT

Resources—date on which benefit income is payable.

During a lengthy period of incapacity the claimant had received invalidity benefit which was payable weekly on a Wednesday. He received a weekly payment on Wednesday 10 December 1980. On Thursday 11 December 1980 he submitted a doctor's statement advising that he need not refrain from work after Saturday 13 December. A final payment of invalidity benefit for the 3 days 11 – 13 December was made on 11 December. He registered for employment on 15 December and claimed supplementary benefit the following day. The supplementary benefit officer decided that the claimant was entitled to a supplementary allowance from Sunday 21 December. On appeal, the Tribunal confirmed the decision on the grounds that the claimant's requirements up to and including 20 December had

been met by invalidity benefit. The claimant appealed to a Social Security Commissioner

Held that

1. In the circumstances of this case, the date from which the claimant's entitlement to supplementary benefit *could* first have arisen under regulation 7(2) of the Determination of Questions Regulations 1980 was the day on which unemployment benefit would have been payable if he had been entitled to it, i.e. Saturday 20 December (paragraph 4),

2. The payment of invalidity benefit for one week made on 10 December, and the payment for a period of 3 days made on 11 December, fell to be taken into account under Supplementary Benefit (Resources) Regulations 1980 from the dates on which they were payable, 10 and 11 December respectively. Neither payment could therefore be taken into account as a resource in calculating the claimant's entitlement to supplementary benefit from 20 December (paragraph 7 and 8);

3. The claimant's entitlement to supplementary benefit for the period from the date of claim, until 19 December fell to be considered under the Supplementary Benefit (Urgent Cases) Regulations 1980 (paragraph 8)

The appeal was allowed

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 27 March 1981 is erroneous in law and is set aside.

2. This is an appeal by the claimant against the decision of a Supplementary Benefit Appeal Tribunal at Greenock dated 27 March 1981 upholding a revised decision of the supplementary benefit officer that the claimant was entitled to supplementary benefit of £18.86 from 21 December to 26 December 1980. The claimant has maintained that he is in addition entitled to a payment of supplementary benefit for the period from 15 to 20 December 1980. I granted leave to appeal on 19 June 1981.

3. The circumstances are that the claimant registered for employment on 15 December 1980 following a lengthy period of incapacity for work during which he had received invalidity benefit which was normally payable on a Wednesday. Payment of a weekly amount of such invalidity benefit was made to the claimant on Wednesday 10 December 1980. On 11 December 1980 the claimant submitted a "closed" medical statement advising that he need not refrain from work after 13 December 1980. A final payment of invalidity benefit in respect of 11 to 13 December was made to the claimant on 11 December 1980. Having registered for employment on 15 December 1980 the claimant on 16 December 1980 claimed supplementary benefit because he was not entitled to unemployment benefit. The claimant's complaint is in effect that he was found entitled to supplementary benefit only from 21 December 1980 onwards but not for the days from 15 to 20 December 1980.

4. It is first necessary to decide from what date the claimant's entitlement to supplementary benefit *can* first arise in respect of the claim made by him on 16 December 1980. Regulation 7 of the Supplementary Benefit (Determination of Questions) Regulations 1980 contains the following provisions:—

"7.—(1) Where apart from the provisions of this Regulation—

- (a) the day of the week on which entitlement to a pension or allowance would begin is not the first day of a benefit week, entitlement shall not begin until the first day of the next benefit week...

.....

(2) For the purpose of paragraph (1), 'benefit week' in relation to a person's entitlement to a pension or allowance means the period of 7 days beginning—

- (a) ...
- (b) where he is not receiving unemployment benefit (and whether or not he is receiving any other social security benefit) but is a person to whom section 5 applies (right to allowance subject to condition of registration and availability for employment), with the day of the week on which if he had been entitled unemployment benefit would have been payable;”.

The effect of the foregoing provisions in relation to the claimant is that the claimant's entitlement to supplementary benefit could not begin until the day upon which unemployment benefit would have been *payable* had he been entitled to it. The first day on which unemployment benefit would have been *payable* to the claimant in the present case would have been Saturday 20 December 1980. Accordingly at best for the claimant, and subject to the assessment of his resources, he would be entitled to supplementary benefit from 20 December 1980 and not 21 December 1980.

5. The decision of the Supplementary Benefit Appeal Tribunal affirming that the claimant was not entitled to supplementary benefit until 21 December 1980 was however reached upon a consideration of the provisions of the Supplementary Benefit (Resources) Regulations 1980 and in particular regulation 9. That regulation contains the following provisions:—

“9.—(1) ... the amount of a claimant's income resources to be taken into account shall be—

- (a) ...
 - (b) the whole of any other income of the assessment unit, calculated in accordance with regulation 11, calculated on a weekly basis.
- (2) A payment of any income shall be taken into account for—
- (a) a period equal to the length of the period in respect of which it is payable;
 - (b) ...
- at a weekly rate beginning—
- (c) ...
 - (d) in the case of an income resource which falls to be taken into account but which is payable before the first benefit week pursuant to the claim, the date on which it is payable;”.

The expression “benefit week” has the meaning already considered in paragraph 4 above. The effect of the foregoing provisions is that in considering his eligibility for supplementary benefit the claimant's last payment of invalidity benefit falls to be taken into account as a resource of the claimant for a period of 3 days beginning with the date upon which that payment is “payable”.

6. If payment of invalidity benefit had been continuing, the normal date upon which such benefit would have been “payable” would have been Wednesday 17 December 1980, that is 1 week after the preceding payment. Being a “terminal” payment however the payment in respect of 11 to 13 December 1980 was in fact made on 11 December 1980 when the claimant's medical statement in the “closed” form was received. It is submitted on behalf of the supplementary benefit officer that the date on which the last

payment of invalidity benefit to the claimant should be regarded as “payable” is the normal date of payment, that is Wednesday 17 December 1980. Payments of invalidity benefit are made pursuant to regulation 15(2) of the Social Security (Claims and Payments) Regulations 1979. That regulation directs payment to be made “as soon as is reasonably practicable after the award”. I see the force of the argument in favour of accepting Wednesday 17 December as the date on which the last payment was “payable”. Regulation 9(2)(d) refers to the date on which the resource is “payable”, not “paid” and the adoption of Wednesday 17 December as the date on which it was “payable” avoids the overlapping, as resources for supplementary benefit purposes, of the payments of invalidity benefit made on 10 and 11 December 1980 which would otherwise result as noted in the next paragraph of this decision. Nevertheless there is in the case of this income resource at least a logical difficulty to that approach also, namely the difficulty of accepting a date later than the date of actual payment as the date on which the benefit was “payable” when such a benefit is, under regulation 15(2) of the Social Security (Claims and Payments) Regulations 1979 to be paid “as soon as is reasonably practicable after the award has been made”.

7. The application of regulation 9 of the Supplementary Benefit (Resources) Regulations 1980 to the invalidity benefit payments received by the claimant produces the following results. The payment of invalidity benefit for the period of 1 week made on Wednesday 10 December 1980 would require to be taken into account for the period of a week beginning on the date on which it was payable i.e. Wednesday 10 December 1980. That period expires on 16 December 1980 and as that period is before the date of commencement of the claimant’s entitlement to supplementary benefit on 20 December 1980 it cannot enter into the calculation of the claimant’s entitlement as from the latter date. So far as the terminal payment for 3 days made on Thursday 11 December 1980 is concerned, if that is treated as an income resource which was “payable” on 11 December 1980 it would fall to be taken into account for the 3 days from 11 to 13 December 1980. Alternatively if that payment is treated as “payable” on Wednesday 17 December 1980, as contended by the supplementary benefit officer, it would fall to be taken into account for the 3 days 17 to 19 December 1980. In neither case would the invalidity benefit fall to be taken into account as a resource in assessing the claimant’s entitlement to supplementary benefit as from 20 December 1980. As the decision of the Supplementary Benefit Appeal Tribunal included a determination that the claimant was only entitled to supplementary benefit from 21 December 1980 because his requirements up to and *including* 20 December 1980 had been met by invalidity benefit, their decision is to that extent erroneous in law and must be set aside.

8. The claimant’s case will fall to be reconsidered by a differently constituted tribunal. As well as dealing with the claimant’s entitlement to supplementary benefit for 20 December 1980 the new tribunal will require to bear in mind the provisions of the Supplementary Benefit (Urgent Cases) Regulations 1980. Regulations 12(1) of those regulations as in force at the relevant time provided:—

“12.—(1) Where—

- (a) a benefit officer has determined that the claimant is entitled to a pension or allowance pursuant to the Act or these regulations; but
- (b) pursuant to regulations made under section 14(2)(f) (days on which entitlement to pension or allowance is to begin) his

entitlement to that pension or allowance is not to begin until a day later than that on which the claim for that pension or allowance was made,

there shall be payable to the claimant in respect of the day on which a determination was made under this regulation and any day falling before the day on which entitlement begins an amount of pension or allowance determined in accordance with regulation 5.”

Regulation 5 of the regulations above referred to provides that, subject to the various modifications therein contained, the amount of any pension or allowance to which a claimant is entitled under the Urgent Cases Regulations is to be the amount by which his resources fall short of his requirements. It follows that the appeal tribunal will require to consider the period from 16 to 19 December 1980 under the provisions of the Urgent Cases Regulations referred to above. In that connection the tribunal will require to consider the relevance or otherwise of the invalidity benefit payments as a resource to be taken into account. I have already held that the payment of invalidity benefit made on 10 December 1980 falls to be taken into account as a resource in the period up to and including 16 December 1980. It is however necessary also to consider and decide upon the effect of the terminal payment for 3 days made on 11 December 1980. Weighing as best I can the considerations referred to in paragraph 6 above I have come to the conclusion that that payment must be regarded as one which was “payable” on 11 December 1980, the date of payment. It is accordingly not a resource which the tribunal ought to take into account in relation to the period 16 to 19 December 1980.

9. The appeal of the claimant is allowed to the extent indicated in this decision.

(Signed) J. G. Mitchell
Commissioner
