

SUPPLEMENTARY BENEFIT

Claims and Payments—date of claim.

On 12.8.86 the local DHSS office received from the claimant a written claim for a single payment for floor covering, garden tools and various items of furniture. The adjudication officer considered regulation 10A of the Supplementary Benefit (Single Payment) Regulations 1981 (which had been inserted by regulation 5 of

the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 from 11 8.86) and decided that the claim failed. On appeal the claimant asserted that an oral claim for the items in question had been made at the local DHSS office on her behalf by her mother on 8.8.86 and argued that her claim should have been determined by reference to regulations 9 and 10 of the Single Payment Regulations before substitution by the 1986 Regulations. In the written submission to the appeal tribunal the adjudication officer submitted that the date of claim was a question for determination by the Secretary of State and did not come within the appeal tribunal's jurisdiction. The appeal tribunal accepted that submission and confirmed the adjudication officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

- (1) the question whether a claim has been made and, if so, when it was made and when it was received at a local DHSS office are all questions for determination by the statutory adjudicating authorities (paragraph 10);
- (2) the only matter that is for determination by the Secretary of State is whether or not the manner of claim (which for a single payment may be oral) is sufficient to constitute a claim for the benefit in question (paragraph 10).

The appeal was allowed.

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 19 November 1986 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This is an appeal to the Commissioner by the claimant a woman aged 21 years at the material time. She is the sole parent looking after her baby, born on 7 August 1986. The appeal is against the unanimous decision of the social security appeal tribunal dated 19 November 1986 which dismissed the claimant's appeal from a decision of the local adjudication officer, issued on 17 September 1986, as follows,

"The claimant is not entitled to a single payment for a wardrobe, cabinet, curtains, floorcovering and garden tools. This is because the claimant was the tenant of unfurnished accommodation at her previous home."

3. The reference to the claimant being the tenant of unfurnished accommodation at her previous home is a reference to regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] which was inserted by the Supplementary Benefit (Miscellaneous Amendments) Regulations 1986 [S.I. 1986 No. 1259], regulation 5, from 11 August 1986. (See regulation 10A(d)(ii)).

4. The date of 11 August 1986 is critical in this case because the claimant asserts that an oral claim for the items in question was made on her behalf at the local office of the Department of Health and Social Security on her behalf by her mother on Friday 8 August 1986, i.e. before the coming into operation on Monday 11 August 1986 of the new regulations 9, 10 and 10A, inserted by the Amendment Regulations of 1986. If this were so (see below) the success or failure of the claim would depend on the terms of the former regulations 9 and 10 of the Single Payments Regulations before substitution by the 1986 Regulations. Should this arise, the application of the old regulations to the claim is a matter which I leave to the new tribunal that rehears this case.

5. However, in his written submission to the social security appeal tribunal, the local adjudication officer stated as follows,

"In the letter of appeal and in the letter from the social worker, it was stated that the claim was made on 8.8.86 (the day following the birth of

the child), by hand. In fact, the claim was stamped in as being received by hand on 12.8.86. There is no indication in the claim file of a claim being received earlier than 12.8.86. The conditions relating to the manner in which claims are to be made are laid down in regulation 3 of the Supplementary Benefit (Claims and Payments) Regulations and are a matter of consideration by the Secretary of State. In this case the Secretary of State has decided that [the claimant's] claim was made on 12.8.86. It is respectfully submitted that this decision does not fall within the jurisdiction of the tribunal."

6. Not surprisingly, in view of this submission, the social security appeal tribunal dismissed the claimant's appeal on the footing that her only claim was made on 12 August 1986. However the chairman's note of evidence records,

"Applicant said that her mother had claimed on her behalf on 8.8.86. The claim had been refused and the applicant's mother had been turned away."

The tribunal made as a finding of fact,

"Secretary of State had decided that the claim was made on 12.8.86." and in their reasons for decision the tribunal said,

"Applicant agreed that if the claim was made on 12th then her claim must fail. However the Tribunal were very far from satisfied that the claim was made on the 12th and it was respectfully suggested that further investigation should be made as to the date the claim was made as there appeared good evidence that the claim was made on 8 August."

7. Clearly the tribunal erred in law in leaving the matter open, though it could hardly be blamed for so doing in view of the submission to it of the local adjudication officer which in my view was erroneous, for the reasons set out below. Both the claimant's representative and the adjudication officer now concerned concur in submitting to me that the tribunal erred in not itself dealing in its decision with the question of whether a claim were made on 8 August 1986 or whether there was no claim until 12 August 1986. I accept those submissions. Consequently, the tribunal's decision must be set aside and as facts need to be found e.g. as to the true date of claim I must remit the matter for rehearing and redetermination by a differently constituted tribunal.

8. My direct to the new tribunal is that they have complete jurisdiction to determine what was the effective date of claim, but I should elaborate this matter in view of the importance of the subject. The regulation in force at the time was regulation 3 of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No. 1525]. Those 1981 Regulations have now been revoked by the Social Security (Claims and Payments) Regulations 1987 [S.I. 1987 No. 1968] but provisions similar to those in regulation 3 of the revoked Regulations are to be found in regulations 4, 5 and 6 of the 1987 Regulations. What I say in this decision is equally applicable in my view to 1987 Regulations.

9. Regulation 3 of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No. 1525] provides, so far as is material, as follows,

"Manner in which claims are to be made

3. (1) Subject to the following provisions of this regulation, every claim for benefit shall be made in writing to the Secretary of State either—

- (a) in the case of a claim for a pension or allowance, on a form approved for the purpose by him and supplied without charge by such persons as he may appoint or authorise for the purpose; or
 - (b) in the case of any claim, in such manner as he may accept as sufficient in the circumstances of any particular case or class of cases.
- (2) A claim for benefit—
- (a) [relates to claimant required to be available for employment—not relevant to this case]
 - (b) in any other case, shall be delivered or sent to an office of the Department.
- (3) The date on which a claim for benefit is made shall be—
- (a) in a case to which paragraph (2)(a) applies, [not relevant]
 - (b) in any other case the date on which it is received at an office of the Department.
- (iv)
- (v) The Secretary of State may in any particular case or class of cases accept—
- (a) a claim for benefit under section 3 (single payment to meet an exceptional need) other than in writing;
 - (b) [relates to Urgent Cases—not relevant to this case].”

10. It is therefore clear from that regulation that an oral claim for a single payment (as is alleged in this case was made on her behalf by the claimant’s mother) may be acceptable by the Secretary of State. The question whether such an oral claim was made, if so when it was made and when it was received at an office of the Department are all questions for determination by the statutory adjudicating authorities i.e. the adjudication officer the social security appeal tribunal, and the Social Security Commissioner. They are *not* within the exclusive province of the Secretary of State as was suggested by the local adjudication officer in his submission to the tribunal in this case. The only matter that is for determination by the Secretary of State is whether or not the *manner* of claim, be it written or oral, is sufficient to constitute a claim for the benefit in question. The heading to the regulation, “Manner in which claims are to be made”, does not alter this but properly relates only to regulation 3(1). In any event the heading is not part of the regulation itself, the usual rule of legislative interpretation.

11. In my view the proper procedure in this case is for the new tribunal to make findings of fact as to whether or not an oral claim for the single payment was made on 8 August 1986 or on any other date and presumably the presenting officer will be in a position then to say whether the Secretary of State is prepared to accept the oral claim as having been made in sufficient manner. If he is not able to do this then there will presumably have to be an adjournment for the Secretary of State to consider the matter. This distinction between the substantive questions which are all for determination by the statutory adjudicating authorities and the question of the manner of the claim, i.e. its form is one that is long standing and was laid down in reported Commissioner’s Decision R(U) 9/60. It is important that the distinction between the two functions, the one of the statutory adjudicating authorities, the other of the Secretary of State, should not be blurred. It is also important that a social security appeal tribunal should not be told, as it

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was in this case in the local adjudication officer's submission, that it has no jurisdiction in the matter.

12. When the new tribunal has decided what was the appropriate date of claim (oral or written) it will then be in a position to apply the appropriate Single Payments Regulations. If he should conclude that in truth the new regulations 9, 10 and 10A are applicable because there was no effective claim before 11 August 1986 then it may well find helpful the decision of a Tribunal of Commissioners on these new Regulations in a decision on Commissioner's file CSB 241/1987 (reported as R(SB) 10/88).

Commissioner's File No: CSB 455/87

(Signed) M. J. Goodman
Commissioner
