

SUPPLEMENTARY BENEFIT**Review and backdating of claims.**

Four appeals were heard together by a Tribunal of Commissioners involving claims for supplementary benefit made on behalf of four mentally handicapped persons. The appeals raised questions relating to the backdating of claims for supplementary benefit, and to the review of awards, which were of application to claimants unable to act for themselves and in certain matters of application to claimants generally.

Held that:

1. even if a claim made on behalf of a person unable to act has been made by a person who has not been appointed by the Secretary of State, the determination issued on that claim can be treated as validly made under the Supplementary Benefits Act and regulations. Such a determination does not preclude the application of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 so as to treat a subsequent claim as if made before, on, or after the date of the previous determination (paragraph 8);
2. a person who through mental disablement is "unable to act" within the meaning of regulation 26(1) of the Claims and Payments Regulations will be able to show "good cause" in respect of his personal failure or delay in taking action which he is unable to take (paragraph 9);
3. by contrast with the position after an appointee has been appointed to act for the claimant, the responsibility for any delay or failure to act by an unappointed person should not be imputed to the claimant. R(SB) 17/83 approved (paragraph 9);

4. a person appointed to act for a claimant under the Social Security Acts and Regulations, unless and until specifically appointed under the Supplementary Benefits Act, is no different from any other unappointed person for supplementary benefit purposes and any delay or failure to act by such a person is not to be imputed to the claimant (paragraph 10);
5. it is not incumbent upon the supplementary benefit officer to investigate the possibility of a retrospective award in all cases, but only in cases where the claim specifically states that it is made in respect of an earlier period or the question of backdating is raised by or on behalf of the claimant before the supplementary benefit officer determines the claim (paragraph 11);
6. if the question of backdating is raised for the first time before an appeal tribunal, it should be remitted by the tribunal to the supplementary benefit officer for him to determine (paragraph 12);
7. the question of backdating a claim made after 24 November 1980 for a period before that date is to be determined in respect of that period in accordance with regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1977. The test of "exceptional circumstances" in the Claims and Payments Regulations 1977 is not the same as the test of "good cause" in the Claims and Payments Regulations 1981 (paragraphs 15 and 16);
8. a request made after 24 November 1980 for the review of a decision made before that date must by contrast be decided by reference to the regulations in force at the time the review is requested or made. R(SB) 48/83 followed (paragraph 15);
9. the limitation on review of past determinations imposed by regulation 4(2) of the Supplementary Benefit (Determination of Questions) Regulations does not apply where the determination under review was a determination refusing supplementary benefit (paragraph 19).

The appeals were allowed.

1. This appeal and three other appeals raising related supplementary benefit issues were dealt with together by a Tribunal of Commissioners at an oral hearing at which the claimant appellants in cases CSSB/10/83 and CSSB/13/83 were represented by Mr. Q. Oliver, a Welfare Rights Officer with Strathclyde Social Work Department and the claimant appellants in cases CSSB/4/83 and CSSB/110/83 were represented by Mr. W. Irvine, also a Welfare Rights Officer of Strathclyde Regional Council. The claimant's appointee in case CSSB/10/83 was also present in person. The supplementary benefit officer was represented in each case by Mrs. G. M. V. Leslie. The claimants' representatives prepared and lodged a written statement of their contentions in respect of all four appeals. This commendable practice substantially shortened the hearing before us.

2. All four appeals arise out of claims for supplementary benefit made on behalf of mentally handicapped persons unable to act for themselves and all involve questions of entitlement to benefit for a past period. In two cases a previous claim or claims for supplementary benefit made on behalf of the handicapped person were refused, no appointment to act on behalf of the claimant being then made. In all cases the appointment of a person to deal with the claimants' entitlement to supplementary benefit was only made after the successful claim for supplementary benefit giving rise to the present appeals. The cases raise issues of some general importance which may be summarised as follows:—

- (1) Where a claim for supplementary benefit is made in respect of a past period what is the effect of the existence of an earlier "unauthorised" claim which has been refused (a) upon the availability of back-dating of the new claim and (b) upon proof of "good cause", under the provisions of regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1980 and 1981?

- (2) Does the claim, as presented, require to be expressly made for a prior period?
- (3) What statutory provisions govern any question of the treatment of a claim made after 24 November 1980 as if made on a date prior to that date?
- (4) Are the previous decisions refusing benefit open to review under the provisions of regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980?
- (5) If so, does the 52 week limitation contained in regulation 4(2) apply?

It is proposed to deal generally with each of the foregoing issues in turn before applying the conclusions to the circumstances of each of the separate appeals.

3. (1) *Effect of earlier disallowed claims on applications under regulation 5(2)(a).*

Regulation 5(1) and (2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1980 provides as follows:—

“5.—(1) Subject to paragraph (2), a claim for a pension or allowance shall be made no later than the first day of the period in respect of which it is made.

(2) Where a claim for a pension or allowance is made in respect of a period earlier than the day on which it is made, it shall be treated as if it had been made—

(a) where in any case the claimant proves that throughout that period there was good cause for failure to make the claim before the day on which it was made, on the first day of that period;

(b) to (e) . . .”

The foregoing provisions are consolidated in identical terms in regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1981 which we shall hereafter refer to as “the current Claims and Payments Regulations”.

4. It was submitted on behalf of the claimants that in cases coming under the scope of the appointee provisions of regulation 26 of the current Claims and Payments Regulations a claim made on behalf of a person unable to act and any decision made thereon was invalid and could accordingly be disregarded unless an appointment had been made under that regulation authorising the person so to act. It was further argued under reference to decision R(SB) 17/83 that mental disablement can of itself be “good cause” for a late claim and that in such a case the claimant is not prejudiced by the delay of a person acting or delaying to act on the claimant’s behalf until such person has been appointed so to act. Mrs. Leslie on behalf of the supplementary benefit officer submitted that regulation 26 of the current Claims and Payments Regulations did not necessitate an appointment as a pre-condition of the validity of any determination made upon a claim lodged by someone on behalf of a claimant unable to act. She accepted that mental handicap can constitute “good cause” for the purposes of regulation 5(2)(a) of the current Claims and Payments Regulations. On the question of prejudice the supplementary benefit officer’s position appeared to be that although responsibility for delay by an unappointed person would not ordinarily be imputed to a claimant, this would not necessarily be the case where an earlier claim had been made by such person, and particularly if that claim was “ratified” by an application for review of the decision made upon it.

5. Regulation 26(1) of the current Claims and Payments Regulations provides as follows:—

“26.—(1) In the case of any person by whom or on whose behalf a claim has been made or to whom benefit is payable or who is alleged to be entitled to benefit, if he is for the time being unable to act and either—

- (a) no receiver has been appointed by the Court of Protection with power to claim or, as the case may be, to receive benefit on his behalf; or
- (b) in Scotland, his estate is not being administered by any curator, factor or other person acting or appointed in terms of law,

the Secretary of State may, upon written application made to him by a person over the age of 18, appoint that person to exercise on behalf of the person who is unable to act, any right to which that person may be entitled under the Act and to receive and deal on his behalf with any sums payable to him.

(2)

(3)”

6. It appears that in the case of a claim for supplementary benefit made on behalf of a person who is said to be unable to act for himself or herself an application for appointment is taken although an actual appointment is only made if benefit is awarded or, in the case of a refusal, if a question of appeal arises. A reluctance on the part of the Secretary of State to complete the appointment procedure is understandable in cases where the decision is adverse to the claimant and it is expected that there will be no benefit to be administered. It is however necessary to consider the effect of a decision refusing benefit made in such circumstances.

7. Section 1(1) of the Supplementary Benefits Act 1976 contains the following provisions:—

“1.—(1) Subject to the provisions of this Act, every person in Great Britain of or over the age of 16 whose resources are insufficient to meet his requirements shall be entitled to benefit. . . .”

Section 2(1) of the Act contains the following provisions:—

“2.—(1) Subject to sections 15 and 15A of this Act (appeals), the question whether any person is entitled to supplementary benefit and the amount of any such benefit and any other question relating to supplementary benefit which arises under this Act. . . shall be determined by a benefit officer except so far as this Act or regulations provide otherwise;”

Section 14 of the Act contains regulation-making powers for the carrying into effect of Part I of the Supplementary Benefits Act. Subsection (2) of section 14 contains the following provisions:—

“(2) Regulations may make provision—

- (a) for requiring claims for supplementary benefit to be made in such manner and within such time as may be specified in the regulations;
- (b) for enabling a person to be appointed to exercise, on behalf of a claimant who may be or become unable to act in relation to his claim, any power in relation to it which the claimant is entitled to exercise;”

Regulation 3(1) of the current Claims and Payments Regulations provides as follows:—

“3.—(1) 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) to (5)...”

8. We are unable to accept the proposition that a determination made by a benefit officer upon an “unauthorised” claim made on behalf of a person unable to act is invalid in the sense of being a nullity. A supplementary benefit officer has a statutory duty to adjudicate upon any question raised before him relating to a person’s entitlement to supplementary benefit. See section 2(1) of the Act and regulation 3(1) and (3) of the Supplementary Benefit (Determination of Questions) Regulations 1980. Where that question takes the form of a claim which is determined, the Secretary of State must in our view in the absence of any challenge at the time be deemed to have been satisfied that it was made in sufficient manner for a claim for supplementary benefit and similarly the supplementary benefit officer must be taken to have been satisfied that it constituted such a claim. The proposition that a claim on behalf of a person unable to act, even if made by an unappointed person, can be accepted as a claim for determination by the supplementary benefit officer receives some support from the provisions of regulation 26(1) of the current Claims and Payments Regulations the wording of which extends to the case of “any person by whom or on whose behalf a claim has been made.” (Our emphasis). We therefore conclude that any determination issued on such a claim can be treated as validly made under the Act and regulations. It does not however follow that such a determination need be given an effect which is prejudicial to the actual person on whose behalf the claim has been made. More specifically, we do not consider that the mere existence of such a determination precludes the operation of regulation 5(2) of the current Claims and Payments Regulations in an appropriate case so as to treat a subsequent claim as if made before, on, or after the date of the previous determination. These conclusions do not appear to us to be at variance in any material respect with the observations of the Commissioners in the cases cited to us on behalf of the claimants. In particular we refer to R(SB) 17/83 paragraph 3 and the unreported decision CG2/79 (paragraph 9) referred to therein.

9. We accept the proposition put to us in reliance upon R(SB) 17/83 that “mental disablement can of itself be good cause for late claim”. Mental disablement can of course take many forms and exist in differing degrees of severity and this is no doubt why the Commissioner in R(SB) 17/83 in paragraph 3 phrased the proposition as he did. In our opinion however a person who through mental disablement is “unable to act” within the meaning of regulation 26(1) of the Claims and Payments Regulations will be able to show good cause in respect of his personal failure or delay in taking action with *ex hypothesi* he is unable to take. What prejudice, if any, must such a claimant suffer through a delay or failure on the part of a person electing to act on his behalf? In our opinion it is clear that any such failure or delay by an appointee after appointment under the provisions of regulation 26 (or by a person appointed by the Court as envisaged in subparagraphs (a) and (b) of paragraph (1) of the regulation) will be imputed to the claimant and in this respect we agree with the Commissioner in decision R(SB) 17/83. Special difficulties regarding responsibility for delay on the part of unappointed persons have arisen in attendance allowance

cases under the Social Security Act 1975 in circumstances such as those dealt with in R(A) 2/81 and unreported decisions CSA/6/80 and CSA/1/81. Those difficulties, which are closely related to the special provisions for review in such cases, do not arise in the present appeals and although our attention was drawn to them we do not propose to comment further upon them. It would clearly follow from the views expressed by the Commissioner in R(SB) 17/83, with which we agree, that responsibility should not be imputed to a claimant for delay or failure to act by an unappointed person who lodges on a claimant's behalf a claim which is refused.

10. An element of artificiality in the foregoing proposition is however introduced where, as was the case in three of the appeals before us, the "unappointed" person actually holds an appointment to act on behalf of the claimant for the purposes of some other benefit. Statutory provision exists not only in supplementary benefit cases but also in cases under other Acts such as the Social Security Acts and the Child Benefit Act for the appointment of a person to act on behalf of another person unable to act by reason of mental or other incapacity. Although the application form (BF56) is common to applications under all of the statutes concerned there is no common appointment (or statutory provision for such) and separate appointment is made by the Secretary of State as and when a question of entitlement to any benefit under one or other of the relevant Acts is raised. A person appointed to act in connection with a benefit under the provisions of the Social Security Acts and Regulations is therefore not regarded by the Secretary of State as holding an appointment to exercise any rights on behalf of a claimant under the Supplementary Benefits Act. Such a person is for supplementary benefit purposes therefore no different from any other unappointed person until specifically appointed for the purpose and in our opinion the proposition that liability is not to be imputed to the claimant for delay by such a person remains applicable.

11. (2) *Does the claim as presented require to be expressly made for a prior period?*

It was pointed out by the Commissioner in case CSB/150/82, paragraph 12, (to be reported as R(SB) 56/83) that no specific provision is made in supplementary benefit claim forms for a claimant to state the starting date of his claim so as to make it clear if in any case a claim is intended to be retrospective as well as prospective. In paragraph 13 of that decision the Commissioner appears to suggest that it will suffice for a claimant merely to claim supplementary benefit and that the onus will then be upon the supplementary benefit officer in investigating the claim to consider whether a retrospective award may be appropriate. If that is the Commissioner's view we disagree with it. In our opinion it is necessary to give some content to the words in regulation 5(2) of the Claims and Payments Regulations: "Where a claim... is made in respect of a period earlier than the day on which it is made,". That requirement will obviously be satisfied if the claim as presented specifically states that it is made in respect of an earlier period. In our opinion however it will suffice to meet that requirement if in connection with the investigation of a claim the issue of back-dating is raised by or on behalf of the claimant before the supplementary benefit officer makes his determination upon the claim. In the assessment of entitlement to supplementary benefit upon a comparison of a claimant's requirements and resources the emphasis of the statutory provisions is in our opinion upon the present and the future rather than the past. For this reason, as well as the specific words of regulation 5(2) referred to above, we consider that the investigation of a possible retrospective award cannot be regarded as forming part of the enquiry incumbent in all cases upon a benefit officer

in dealing with a claim in the same way as does the consideration of a claimant's possible entitlement to various additional requirements which may be appropriate in the assessment of his weekly entitlement to benefit.

12. If a request that a claim be treated as made in respect of an earlier period is put forward by or on behalf of a claimant for the first time at or in connection with an appeal to a supplementary benefit appeal tribunal a difficulty affecting the jurisdiction of that tribunal is created. Such a question, if it first arises at that stage, has of necessity not been considered by the supplementary benefit officer. Moreover it does not form part of the general assessment of a claimant's weekly entitlement to benefit covered by the decision under appeal. In these circumstances, in the absence of a statutory provision analogous to section 102 of the Social Security Act 1975 which enables such questions first arising to be dealt with by the appellate authorities it is in our opinion necessary that where such a question first arises on appeal it should be remitted by the tribunal to the supplementary benefit officer for his determination. As we understand from the supplementary benefit officer's representative at the hearing before us that a presenting officer, if given notice of the matter, would probably have no objection to a tribunal dealing with it it seems unfortunate that a power similar to that contained in section 102 is not available in supplementary benefit appeals.

13. (3) *Relevance of pre-November 1980 regulations*

It was argued on behalf of the supplementary benefit officer that where in the case of a claim for supplementary benefit made after 24 November 1980 a question arises of treating that claim as if it had been made at a date prior to 24 November 1980 that question fell to be regulated, for any such period prior to 24 November 1980, by reference to the criterion of "exceptional circumstances" contained in regulation 5 of the Supplementary Benefits (Claims and Payments) Regulations 1977 (which we will refer to as "the 1977 Claims and Payments Regulations"). That regulation contained the following provisions:—

"5.—(1) Subject to paragraph (2), a claim to a pension or allowance shall be made not later than the beginning of the first period for which it is payable.

(2) Where they are satisfied that there are exceptional circumstances justifying it in any particular case or class of cases, the determining authority may treat a claim as having been made on such earlier date as they may determine."

It was submitted on behalf of the supplementary benefit officer that, as held by the Commissioner in the above-mentioned case CSB/150/82 in paragraph 18, the provisions of regulation 5 of the 1977 Claims and Payments Regulations fell to be applied in relation to any period prior to 24 November 1980, but that the implication of the Commissioner in that case that the criterion of "exceptional circumstances" was the same as "good cause" was incorrect.

14. The 1977 Claims and Payments Regulations were expressly repealed by the 1980 Claims and Payments Regulations. Furthermore the "good cause" provisions of regulation 5(2) of the latter regulations which came into force on 24 November 1980 plainly empower the treatment of a claim made at any time on or after that date as if it had been made at a prior date. These provisions would *prima facie* apply in any question of back-dating a claim not only back to 24 November 1980 but to any prior date. Such an application of the regulation would not in our opinion constitute giving retrospective effect to the regulation within the technical meaning of that term.

15. Regulation 3 of the Supplementary Benefit (Transitional) Regulations 1980 (the "Transitional Regulations") which is headed: "Determinations on or after 24th November 1980 in respect of periods before that day" contains the following provisions:—

"3.—(1) This regulation shall apply to any question relating to a claimant's entitlement to supplementary benefit in respect of a period before 24 November 1980, including any claim for benefit pending on that day, which falls to be determined on or after that day.

(2) Any such question which, if it had fallen to be determined before 24 November 1980, would have fallen to be determined by the Commission, shall be determined by a benefit officer as if it had fallen to be determined before that day."

If the question of whether a claim made after 24 November 1980 falls to be treated as if made on a day prior to that date is a "question relating to a claimant's entitlement to supplementary benefit" within the meaning of regulation 3(1) such question would accordingly fall to be determined under regulation 3(2) under the law applicable prior to that date. It is not immediately apparent however that it is such a question. Section 1 of the Supplementary Benefits Act 1976 confers an entitlement to supplementary benefit and there is no provision analogous to section 79(1) of the Social Security Act 1975 which excludes entitlement to benefit in the absence of a claim. Nevertheless any theoretical entitlement to supplementary benefit arising where a claimant's requirements exceed his resources will not result in the payability of any benefit without a claim having been made, and the claimant will not be entitled to the payment of benefit for a past period unless a claim can be treated as having been made on the first day of that period. In these circumstances we consider that the question of treating a claim made after 24 November 1980 as if made on a date prior thereto is to be regarded as a question "relating to a claimant's entitlement to supplementary benefit" within the meaning of regulation 3(1) of the Transitional Regulations so as to necessitate the application of the test contained in the 1977 Claims and Payments Regulations to the question of any back-dating earlier than 24 November 1980. This must be distinguished from the position arising in questions of review, arising after 24 November 1980, of decisions made before 24 November 1980. As pointed out in paragraphs 11 to 14 of decision CSSB/149/82 (to be reported as R(SB) 48/83) in a question of review arising after 24 November 1980 the regulations in force at the relevant review date provide the measure of the review power available to the supplementary benefit officer and the provisions of regulation 4 of the Transitional Regulations dealing with reviews do not in this instance direct resort to repealed review provisions previously operative.

16. We accept the submission made on behalf of the supplementary benefit officer that the test of "exceptional circumstances" contained in the 1977 Claims and Payments Regulations is not the same as the test of "good cause" contained in the current Claims and Payments Regulations. The Commissioner in case CSB/150/82 did not in fact express the view that the tests were the same and he recognised that there was a discretion involved in the former test. We were informed on behalf of the supplementary benefit officer that because of the wide element of discretion in the supplementary benefits scheme prior to 24 November 1980 and the existence of a wide power under section 3(1) of the Supplementary Benefits Act 1976 to make exceptional needs payments, it was only in truly exceptional circumstances that a claim was ever treated as if made on a date prior to the date upon which it was lodged. We see no reason to doubt that this was so and consider that it will be relevant to have regard to the fact that it was in this context that the discretionary power in exceptional circumstances to back-date a claim was given.

17. (4) *Availability of alternative remedy of review of prior refusal.*

It was contended on behalf of the claimants who were previously refused benefit that they had such an alternative available to them. That contention is of course inconsistent with their argument, rejected by us, that the prior decision, if made upon a claim lodged without authority, was a nullity. It was contended on behalf of the supplementary benefit officer that the choice of remedy and in particular the availability of review depended upon whether the claimant's appointee "ratified" the earlier claim and it was suggested in the written submissions that this was a matter upon which the appointee must make an election from the outset. In our opinion the position regarding the availability of the alternative remedy of review is as follows:—

- (i) Where a fresh claim is made after a previous continuing award, it can only be treated as an application for review of that award. See R(I) 11/62, paragraph 12.
- (ii) It is clear that regulation 5(2) of the current Claims and Payments Regulations and regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980 cannot be invoked together in the back-dating of benefit for the same past period. To that extent they are alternative remedies.
- (iii) In general, in the case of a fresh claim made after a previous refusal and raising a question of prior entitlement such a claim may be treated as including a request for back-dating of the claim or an application for review as may be appropriate, bearing in mind the conditions applicable to each and the period of underlying past entitlement which may be established.
- (iv) Where the prior decision of the supplementary benefit officer refusing benefit has been issued on a claim made by an unappointed person, as in some of the present cases, we deprecate the suggestion of the supplementary benefit officer that the claimant making a fresh claim raising a question of prior entitlement must immediately state whether he "ratifies" the previous claim or not. In our view he is entitled to explore the question of prior underlying entitlement to benefit in order properly to relate any such entitlement to the alternative remedies available.

18. (5) *Limitation upon review under regulation 4(2) of the Determination of Questions Regulations 1980*

It was contended on behalf of the claimants that in the event of it being held appropriate to treat the present appeals as cases involving requests for review under regulation 4 of the Supplementary Benefit (Determination of Questions) Regulations 1980 rather than under regulation 5(2) of the current Claims and Payments Regulations the provisions of regulation 4(2) properly construed did not impose a 12 month limitation upon the scope of review. Regulation 4(1) and (2) of the Supplementary Benefit (Determination of Questions) Regulations 1980 provides as follows:—

"4.—(1) Subject to the following paragraphs and to regulation 5(5) (review of decision on referred questions), a determination relating to supplementary benefit, if made by a benefit officer, may be reviewed by a benefit officer if he is satisfied that it was based on a mistake as to the law, and, if made by any determining authority, may be reviewed by a benefit officer if—

- (a) he is satisfied and, in the case of a decision of a Commissioner, satisfied by fresh evidence, that the determination was made in ignorance of, or was based on a mistake as to, some material fact; or

- (b) there has been any relevant change of circumstances since the determination was made.
- (2) A determination shall not be revised on review under paragraph (1) where the effect of the revision would be to increase the amount of the supplementary benefit payable in respect of any past period—
 - (a) which falls more than 52 weeks before the date on which the review was requested or was (or, but for this paragraph, would have been) made; or
 - (b) which is subsequent to the period mentioned in subparagraph (a)...
 - (i)
 - (ii)
- (3) to (7)”

19. In our opinion the limitation upon review imposed by paragraph (2) of regulation 4 in respect of the past periods referred to in sub-paragraphs (a) and (b) applies to a review the effect of which would be to increase the existing amount of supplementary benefit payable and does not apply where the determination under review was a determination refusing supplementary benefit. It was suggested on behalf of the supplementary benefit officer that the words “to increase the amount” would cover a case in which the determination under review had been that a “nil amount” was payable. That is in our opinion a strained and untenable interpretation of the words of paragraph (2). It is noteworthy that in regulation 31(1) of the Social Security (Determination of Claims and Questions) Regulations 1975 provision is made regulating review where a decision “is revised so as to make benefit payable, or to increase the rate of benefit”. Similar wording is to be found in regulation 32(1). It must be assumed that the distinction is deliberate and where it is intended to regulate the review of a decision where its effect is to make benefit payable for the first time, such a case is expressly dealt with. We cannot refrain from making one final observation. Having regard to the nature and purpose of supplementary benefit as a benefit of last resort we find it somewhat surprising and anomalous that under the regulations considered in this decision the back-dating of awards of supplementary benefit may be achieved for an unlimited period, whereas the right to past contributory benefits is in most cases lost after the lapse of one year.

20. It is our decision that all four appeals should be allowed and the cases remitted for a fresh hearing, and we append the decision appropriate to this particular appeal. It would in our view be advantageous to all concerned if arrangements could be made to have all four remitted appeals dealt with by one tribunal.

21. *Decision*

Our decision is that the decision of the supplementary benefit appeal tribunal dated 31 March 1982 is erroneous in law and is set aside.

22. In this case the claimant is aged 19 and is mentally handicapped to a degree rendering her unable to act. She lives with her mother who on 28 October 1981 claimed supplementary benefit on her behalf, with a request that the claim be back-dated to the date of the claimant’s first entitlement, which was claimed to be her sixteenth birthday on 11 March 1980. The claimant’s mother was thereafter appointed to act on her behalf under the provisions of regulation 26 of the current Claims and Payments

Regulations. The benefit officer's decision on the claim, as revised, was that the claimant was entitled to an award of supplementary benefit which he also back-dated, but only to 9 March 1981, being the pay day in the week when the claimant attained the age of 17. Earlier claims for supplementary benefit by the claimant's mother on the claimant's behalf, acting without any appointment in that regard, had been made on 7 February 1980, 2 May 1980, and 3 October 1980 but benefit was on each occasion refused by the Supplementary Benefits Commission upon the view that the claimant's resources exceeded her requirements.

23. The claimant's appointee appealed to a supplementary benefit appeal tribunal who awarded certain additional requirements but upheld the decision of the supplementary benefit officer that the award of benefit should be back-dated only to 9 March 1981. The tribunal gave as its reasons:—

“The tribunal considers that back-dating of the award of supplementary benefit prior to 9.3.81 is not appropriate because claims to supplementary benefit were made prior to 9.3.81 and these claims were dealt with in the normal way.”

24. It is quite clear that these reasons are insufficient to support the decision of the tribunal. They do not endorse the decision of the supplementary benefit officer that 9 March 1981 represented the date of the claimant's first entitlement to benefit. But if the tribunal considered that the claimant's requirements exceeded her resources prior to that date their reasons give no adequate explanations with reference either to regulation 5(2) of the current Claims and Payments Regulations or regulation 4 of the Determination of Questions Regulations why the award of benefit should not have been further back-dated. The tribunal's explanation would not justify its refusal to apply either regulation. The decision of the tribunal is erroneous in law and must be set aside. As there are insufficient findings of fact to enable us to give the decision which the tribunal should have given it is necessary to remit the claimant's appeal for determination afresh.

25. It will be for a different tribunal, in light of the altered assessment of the claimant's requirements established by the claimant's appeal, to determine if the claimant would have an underlying entitlement to supplementary benefit in that her requirements, properly assessed, exceeded her resources—

- (a) for the prior period from 24 November 1980 to 9 March 1981 in accordance with the relevant statutory provisions then regulating the assessment of requirements and resources, and
- (b) in the earlier period from 11 March 1980 up to 24 November 1980 in accordance with the quite different statutory provisions and discretions then applicable.

If there is any such entitlement and if, as appears likely, there exists a determination on one of the earlier claims refusing benefit from the date which is established as the date of first entitlement, the tribunal may give effect to the request for back-dating by exercising the power under regulation 4 of the Determination of Questions Regulations which the benefit officer could have exercised in the first instance. In that event the tribunal should of course state the grounds upon which the review power is exercised. Alternatively if the tribunal find that there is no prior determination refusing benefit from the date which the tribunal establish as the first date of entitlement it will be for the tribunal to apply the provisions of regulation 5(2) of the current Claims and Payments Regulations and, if appropriate, of the

1977 Claims and Payments Regulations, all in accordance with the principles set out in paragraphs 8 to 10 and 15 to 16 above.

26. The appeal of the claimant is upheld.

(Signed) I. O. Griffiths
Chief Commissioner

(Signed) Douglas Reith
Commissioner

(Signed) J. G. Mitchell
Commissioner
