

DGR/BR

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

CSB. 688/1982

1. For the reasons set out below the decision of the supplementary benefit appeal tribunal dated 22 April 1982 is erroneous in point of law, and accordingly I set it aside. Furthermore, being satisfied that it is expedient in the circumstances that I give the decision the tribunal should have given, I further decide in accordance with Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by Rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 that the claimant did not fail to disclose that he was in receipt of a mine-worker's pension, and accordingly the overpayment of supplementary benefit in the sum of £399.86 is not recoverable pursuant to section 20(1) of the Supplementary Benefits Act 1976, as amended.

2. On 8 December 1980 the claimant completed form A11 by virtue of which he claimed supplementary benefit. On that form he signed a declaration to the effect that the information he had given was true and complete. In the event it was not, in that it omitted any reference to his mine-worker's pension. The effect of this omission was that the claimant received a payment by way of supplementary benefit, to which he was not entitled, amounting in all to £399.86. The benefit officer decided that this amount was recoverable under section 20(1) of the Supplementary Benefits Act 1976 as amended.

3. Section 20(1) provides as follows:-

"If, whether fraudulently or otherwise, any person misrepresents, or fails to disclose, any material fact, and in consequence of the misrepresentation or failure -

- (a) the Secretary of State incurs any expenditure under this Act; or
- (b) any sum recoverable under this Act by or on behalf of the Secretary of State is not recovered,

the Secretary of State shall be entitled to recover the amount thereof from that person".

4. The claimant appealed to the supplementary benefit appeal tribunal, and contended that at the time he made his claim he had orally told the officer at the counter that he was in receipt of a mine-worker's pension. That officer had simply omitted to record it on form A11, which the claimant was invited to sign. In the event, the majority of the tribunal found as a fact that there had been disclosure but only "verbal". In their view, this was not enough to overcome the omission from the written statement, a statement which the claimant had signed and which was instrumental in producing the undoubted overpayment of £399.86. The claimant now appeals against that decision to the Commissioner, the necessary leave having been given by me on 4 August 1982.

5. The supplementary benefit officer in his submissions dated 14 October 1982 does not concede the appeal. In fact, he submits that "it is not sufficient for the claimant to rely on the assertion that he orally disclosed the fact [of his being in receipt of a mine-worker's pension] and the interviewing officer failed to understand him. He was subsequently asked to sign the statement". However, if the benefit officer is to rely on section 20(1), he has to show that the claimant either made a misrepresentation, or failed to make a disclosure, as to a material matter. In the present case, I am merely concerned with an alleged failure to disclose. There is nothing in the section to suggest that the disclosure has to be in writing. It is just as effectively made if it is made orally, albeit it may be considerably more difficult for the claimant to establish that he did in fact make an oral disclosure. However, in the present case the tribunal accepted as a fact that such a disclosure had been made orally, and accordingly I am not troubled with this additional complication. Now, since the tribunal had decided that the claimant had, albeit orally, disclosed the receipt of his mine-worker's pension, I do not see how they could go on to decide that the overpayment was recoverable under section 20(1). The effect of there having been a disclosure is fatal to recovery under that section. Manifestly, the tribunal's decision was erroneous in point of law, and I must set it aside.

6. Rather than remit the matter to the tribunal for a re-hearing, I think this is a case where it is appropriate that I give the decision that the tribunal should themselves have given, and accordingly I go on to decide the appeal in the terms set out in paragraph 1.

7. There is one complication in this case to which I should advert. After the decision of the benefit officer and prior to the hearing before the appeal tribunal, the claimant made repayment of the sum overpaid. The effect of my decision is that such repayment could not have been enforced by the Secretary of State under section 20(1). Accordingly, had the claimant withheld repayment until the appeal procedure had been exhausted, he would, in the event, have found that he could resist any recovery proceedings pursuant to that section. However, he did not adopt that course, but instead, without awaiting the outcome of his appeal, he voluntarily made repayment of the benefit overpaid. In my judgment, there can be no question of the Secretary of State's being required, as the result of my decision, to reimburse the claimant. The fact is that the latter received an overpayment, and he voluntarily - and this is very much to his moral credit - made repayment. That

disposes of the matter. All that I have decided in this appeal is that, had the claimant not voluntarily made repayment, it would not have been open to the Secretary of State to have effected recovery pursuant to section 20(1).

8. In substance I allow this appeal.

Signed D G Rice
Commissioner

Date: 12 January 1983

Commissioner's File: C.S.B. 688/1982
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