

CSB 102/1984

DGR/AM

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 27 September 1983 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision which the tribunal should have given, I further decide, albeit for different reasons from those adopted by the tribunal, that the claimant has been overpaid supplementary benefit to the extent of £922.62, and that this sum is recoverable by the Secretary of State pursuant to section 20 of the Supplementary Benefits Act 1976.
2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 27 September 1983.
3. On 3 October 1979 the claimant was interviewed in connection with his claim for supplementary benefit. He declared on Form A11 that the only income received by himself and his wife was their respective retirement pensions. However, in the course of a visit made to him on 25 November 1982 he declared on Form A11 that his wife had been in receipt of a superannuation payment since the date of her retirement. As a result, on 8 July 1983 the benefit officer decided that the claimant had failed to declare his wife's superannuation payment, and that in consequence there had been an overpayment of £922.62, which was recoverable from the claimant.
4. In due course, the claimant appealed to the tribunal who in the event upheld the benefit officer. They gave as the reasons for their decision the following:

"The tribunal was satisfied that the appellant failed to declare his wife's occupational pension when he claimed supplementary benefit on 3. 10. 79 and as a result of this failure an overpayment of supplementary benefit has arisen which is recoverable in accordance with section 20(1) of the Supplementary Benefits Act 1976."

5. It was the claimant's case before the tribunal that he had disclosed his wife's superannuation payments at the initial interview of 3 October 1979. Moreover, the only reason why this information had not been contained in Form All was that he had been told by an officer of the Department that such superannuation payments would not affect his supplementary benefit. In his written submissions the benefit officer now concerned has conceded that the tribunal were in breach of rule 7(2)(b) of the Appeals Rules, in that they failed to record any reason for rejecting the claimant's submission that he had made the necessary disclosure at the initial interview of 3 October 1979. I agree. It necessarily follows that I must set aside the tribunal's decision as being erroneous in point of law.

6. However, this does not dispose of the matter. In my judgment, the evidence points overwhelmingly to the fact that by omitting any reference in Form All to his wife's superannuation payments the claimant was guilty of a positive misrepresentation. Nor does it assist him that he was misled, if in fact that was the case, by an officer of the Department, and was induced by him to believe that as far as the computation of his pension was concerned the information relating to his wife's superannuation payments was immaterial. For, as regards recovery under section 20(1) it is immaterial whether the misrepresentation in question was fraudulent or innocent. If a claimant has made a misrepresentation, for whatever reason, and if as a result there has been an overpayment of benefit, recovery is open to the Secretary of State. In my judgment, in this case the evidence was such that no tribunal could reasonably have reached the conclusion that there was no misrepresentation or that such misrepresentation had not given rise to an overpayment. On this basis, no tribunal could have decided otherwise that the overpayment - and it is not in dispute that this amounted to £922.62 - was recoverable by the Secretary of State.

7. In view of the foregoing it is expedient that I give the decision which the tribunal should have given, and accordingly my decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 20 July 1984

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