

~~Supplementary Benefit - Over payment - failure of SSAT to apply to diminishing capital principle.~~

DGR/SH/20/MD

**Commissioner's File:** CSB/202/1987

**C A O File:** AO 2309/SB/87

**Region:** Wales & South Western

**SUPPLEMENTARY BENEFITS ACT 1976**

**APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A  
QUESTION OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** David Charles Black

**Social Security Appeal Tribunal:** Taunton

**Case No:** 33/11

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 12 December 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is a very late appeal by the claimant, brought with the leave of a Commissioner, against the decision of the supplementary benefit appeal tribunal of 12 December 1983.

3. On 10 August 1983 the benefit officer (now the adjudication officer) decided that supplementary benefit amounting to £1,885.25 had been overpaid in respect of the inclusive period from 7 October 1981 to 5 July 1983, and was, pursuant to section 20 of the Supplementary Benefits Act 1976, recoverable from the claimant by reason of his misrepresentation of the extent of his earnings.

4. On 6 September 1983 the claimant appealed to the tribunal who in the event revised the benefit officer's decision to the extent of reducing the sum recoverable to £1,497.05, but in all other respects upheld the benefit officer.

5. It is not in dispute that there has been an overpayment, due to a misrepresentation of a material fact, and that any sum overpaid is recoverable by the Secretary of State in accordance with section 20 of the Supplementary Benefits Act 1976. The ground of appeal is that the tribunal failed to apply "the diminishing capital principle" as expounded in paragraph 14(5) of decision R(SB)15/85. I accept that submission. The tribunal did err in point of law in failing to apply that principle. Their failure is understandable in view of the fact that at the time of their decision they did not have the benefit of R(SB)15/85 or, for that matter, the earlier decisions R(SB)5/85 and R(SB)6/85. The effect of this error on the part of the tribunal is that I must set aside their decision and direct that the appeal be reheard by a differently constituted tribunal. There is no question of my determining the matter, as insufficient facts have been found.

6. For completeness, I should say that the claimant's representative, in his application for leave to appeal, has raised the further matter of the period between 5 July 1983 and 22 November 1983. In a decision given on 29 June 1983 the benefit officer decided that the

claimant was not entitled to supplementary benefit for that period, and this decision has not been the subject matter of appeal. If the claimant thinks that that decision also was erroneous, then he must comply with the proper appellate procedure. It is not a matter that is before me.

7. I allow this appeal.

(Signed) D.G. Rice

**Commissioner**

Date: 13 November 1987