

10.
Claimant failed to disclose child gone into care - overpayment
of CB. R(SB)15187 - disclosure on cl. behalf ^{Ref} cl'd be adequate - in
this case it was overpayment not recoverable.
23.5.9

MHJ/1/LM

Commissioner's File: CF/11/1989

CHILD BENEFIT ACT 1975

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Mary Murphy

Appeal Tribunal: Brighton

Case No: 04

[ORAL HEARING]

1. My decision is that -

- (a) the unanimous decision of the Brighton social security appeal tribunal given on 18 November 1988 is erroneous in point of law and is accordingly set aside;
- (b) the claimant has been overpaid child benefit of £65.25 for the inclusive period from 28 September to 8 November 1987 but, for the reasons hereinafter set out, that sum is not recoverable from her.

2. The claimant appeals with leave of the Commissioner against the decision of the tribunal confirming the decision of the adjudication officer, issued on 18 May 1988, that child benefit amounting to £145.00 had been overpaid from 31 August to 8 November 1987 and was recoverable from the claimant.

3. I held an oral hearing of this appeal on 22 September 1990, when the claimant was represented by Mrs Veronica Kofman of the Brighton Rights Advice Centre. The adjudication officer was represented by Mr Frank D'Souza, of the Office of the Solicitor to the Departments of Health and Social Security. Having heard submissions by both Mrs Kofman and Mr D'Souza, to whom I am obliged for their assistance, I adjourned the hearing for a further submission by the adjudication officer now concerned with the case. This is dated 14 December 1990 and the claimant's representative's comments thereon are dated 7 January 1991. I have decided that it is not necessary for me to resume the oral hearing, and both parties have indicated that they are content that I should decide this matter upon the papers now before me.

4. There is a certain amount of confusion about the history of this matter but, taking the claimant's version as an accurate record of events, the claimant and her partner, Mr B, who is the father of her three children, Leo, Andrew and Donna, who are now aged respectively 9, 8 and 7, were living in the Brighton area when, on 22 May 1987, they separated. The claimant took the children to her mother's house and Mr B went, at some later date,

to Bradford. The children remained in the care and control of the claimant until, on about 30 May Leo went to stay with his father and, on 30 June, Andrew and Donna also went to Mr B, for what was supposed to be a two week holiday. However, Mr B kept all three children, against the wishes of the claimant and, as is now confirmed by the letter to the claimant dated 30 July 1987 from the Social Services Department of Bradford Metropolitan Council, on 29 July 1987 Mr B was arrested and, as there was no one apparently immediately able to look after them, the children were taken into care by the local authority. Eventually the claimant succeeded in obtaining the return of the children to her on 1 December 1987.

5. Unbeknown to the claimant Mr B had applied on 12 May 1987 - 10 days before the parties in fact separated - for child benefit on form CH81A ("Claim to Child Benefit following Separation or Divorce"), giving an address in Bradford. He followed that up with a claim in respect of Leo only on form CH2, dated 18 June 1987, when he gave an address in Leicester. On 4 August 1987 he informed the local office of the Department that the children had been taken into care. All these events have immensely complicated the factual background but it is common ground that the period in issue is from 31 August to 8 November 1987, as it is not alleged that the claimant made any misrepresentation or failure to disclose prior to 31 August 1987. In these circumstances I propose to limit this decision to consideration of that period.

6. The adjudication officer's decision of 18 May 1988 was upheld by the tribunal. However, while they made numerous findings of fact and gave lengthy reasons for their decision, they omitted - as is submitted in the first submission by the adjudication officer now concerned with the case, dated 4 May 1989 - to consider the effect of regulation 16(6)(a) of the Child Benefit (General) Regulations 1976, which provides that a person shall not be disentitled to child benefit in respect of a child who has been taken into care until the 9th consecutive week following the child's admission into care. That omission by the tribunal clearly renders their decision erroneous in point of law and accordingly I set it aside on that ground.

7. In the instant case, as the children were received into care on 29 July 1987, the claimant continued to be entitled to child benefit until 27 September 1987 in respect of Andrew and Donna, her entitlement to benefit for Leo having, of course, ceased at an earlier date, and no point arises regarding him. It was accordingly submitted that the claimant had failed to disclose the material fact of Andrew's and Donna's admission into care on 29 July 1987 and that child benefit for them at the rate of £7.25 each during the period of six weeks from 28 September to 8 November 1987, a total of £87.00 had been overpaid to and was recoverable from her.

8. Mrs Kofman submitted that that sum was not recoverable from the claimant, for the reasons set out in the submissions dated 22 February 1989 and 27 July 1989, which I may summarise as being

that disclosure was not reasonably to be expected of the claimant as, firstly, she was in the "traumatic situation" of having had her children "virtually kidnapped", secondly, that it was reasonable for her to assume that the Bradford social services department would inform the Child Benefit Centre that Andrew and Donna were in care and, "more importantly" as she puts it, the claimant's new partner, Mr D, had informed his local office that the children were in care when applying for supplementary benefit. In a second submission dated 24 May 1990 the adjudication officer submits that the information contained in Mr D's application was insufficient to discharge the claimant's continuing obligation to disclose any material fact which affected, or might affect, her entitlement to child benefit. Mrs Kofman reiterated her contentions in her observations dated 21 June 1990.

9. At the oral hearing on 27 September 1990 it rapidly became clear that I had insufficient information about Mr D's application to enable me to decide whether or not, applying the conditions regarding disclosure set out in the decision of a Tribunal of Commissioners in R(SB) 15/87, it could amount to adequate disclosure on behalf of the claimant.

10. I now have the assistance of further submissions from both the adjudication officer, dated 14 December 1990, and Mrs Kofman, dated 7 January 1991, as well as copies of Mr D's application dated 20 July 1987, his further statement to the local office dated 4 August 1987 and the letter dated 30 July 1987 from Bradford social services department to which I refer above.

11. Mr D listed as the people living with him the claimant and the two children, Andrew and Donna, who, he said -

" ... are on holiday - should be back in 2 weeks time - we will let you know when they return."

At that date, 20 July 1987, that was, of course, correct. On 4 August 1987 Mr D attended the local office and is recorded as stating -

"My children have been taken into care (see attached letter). They were due back from holiday on 27/7/87. I will let you know the outcome of the hearing."

12. In the submission dated 14 December 1990 the adjudication officer now concerned with the case summarises, correctly in my view, the circumstances in which it was held in R(SB) 15/87 that disclosure on a claimant's behalf could be regarded as adequate to discharge the obligation under section 20 of the Supplementary Benefits Act 1976, essentially similar provisions to which are now enacted in section 53 of the Social Security Act 1986. Those conditions are that -

- (a) the information was given to the relevant benefit office;

- (b) the claimant was aware that the information had been so given; and
- (c) in the circumstances it was reasonable for the claimant to believe that he or she needed to take no further action.

The adjudication officer contends that, while the claimant may well satisfy condition (a), there is nothing to indicate that she was aware that Mr D would disclose information about her and the children to the Department and, therefore, she cannot satisfy conditions (b) or (c). In conclusion it is conceded, and I accept, that the overpayment in respect of which recovery is sought now amounts to £65.25.

13. The issue has now become a narrow one. Mr D's application for supplementary benefit dated 20 July 1987 includes the claimant and Andrew and Donna, all of whose names and dates of birth are, so far as I am aware, accurately stated, information which must be assumed to have come from the claimant, as must the information that extra money was needed for Donna's washing. It seems to me highly improbable that Mr D could have completed the form without the co-operation of the claimant and, in those circumstances, I hold on the balance of probabilities that the claimant was aware of the information supplied to the Department by Mr D.

14. It follows in my judgment that the claimant satisfies the second condition of the R(SB) 15/87 test, and it only remains to be determined whether she had a continuing obligation to make disclosure or whether it was reasonable for her to believe that she need take no further action. I am persuaded by Mrs Kofman's comments dated 7 January 1991 on paragraph 6 of the adjudication officer's submission that, in view of the short period of time during which it now transpires she was not entitled to child benefit, it was reasonable for her to do nothing further.

15. This has been a complicated case and I am indebted to the adjudication officer concerned and to Mrs Kofman for the carefully reasoned submissions and for the additional information which has been obtained. In the light of these I have, on balance, come to the conclusion that, although the claimant was overpaid the sum of £65.25, that is not recoverable from her as she did not fail to make disclosure of a material fact.

16. The claimant's appeal is allowed and my decision is set out in paragraph 1.

(Signed) M H Johnson
Commissioner

Date: 16 April 1991