

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Social Security Appeal Tribunal dated 1 September 1989 is erroneous in law and I set it aside. As it is appropriate for me to do so I give the decision the Tribunal should have given which is that supplementary benefit overpaid to the claimant in the period 27 July 1987 to 20 February 1989 was not paid in consequence of any failure on her part to disclose the material fact of her receipt of child benefit in respect of her son Stephen; accordingly the overpayment is not recoverable: section 53 of the Social Security Act 1986.

2. The claimant's son Stephen was born on 31 July 1987. At that time and for some time past the claimant was in receipt of supplementary benefit. She applied for child benefit in respect of Stephen on a form which she apparently obtained from her local Department of Health and Social Security Office to whom she had, produced the birth certificate. In mid-October 1987 she was sent an increased child benefit order book but she did not tell her local office of the award of benefit in respect of Stephen and they went on paying her supplementary benefit without taking that award into account. Eventually an adjudication officer decided there had been an overpayment of £601.75 in respect of the period referred to above and that that sum was recoverable because the claimant had not disclosed the material fact of the award of child benefit. The claimant unsuccessfully appealed to the Tribunal. She now appeals to the Commissioner.

3. There is one crucial and undisputed fact that I have not so far mentioned. That is that on 7 October 1987 the Child Benefit Centre had actually notified the local office that arrears of child benefit were due from 3 August 1987 to 18 October 1987 and that an increased order book had been sent out for payment from 19 October 1987. The undoubted purpose of

this notification was to alert the local office of the award of child benefit in respect of the second child so that they could adjust the amount of supplementary benefit. Unfortunately the local office failed to act on the notification.

4. As section 53 of the 1986 Act makes explicitly plain it is only where payment is made in consequence of a misrepresentation or failure to disclose that it is recoverable. In R(SB)15/87 a Tribunal of Commissioners considered, among other matters to do with failure to disclose, the position where the material fact not disclosed by the claimant is known to the local office because they have been told by somebody else. They said -

"Having regard to the manner in which information provided to the Department, is, or should be, dealt with, and to the general practice of the Department, ... it would follow that there could be circumstances in which the Secretary of State would be in possession of certain knowledge - even though not supplied to him by or with the knowledge of the claimant - which would make it impossible to say that he thereafter incurred expenditure in consequence of the claimant's failure to disclose. Indeed there must be many cases in which, for this reason, wrong expenditure is not incurred despite the claimant's failure to disclose. Again that will be a question of fact in each case ...".

Now this case seems to me to be the very sort of case which the Tribunal of Commissioners might have had in mind. How can the local office complain that the claimant did not tell them something of which they had officially be notified? The payments in question would not have been made had they acted on the information they already had and which had been supplied to them so that they could adjust the amount of benefit. How can one be sure they would any the more have acted on information give to them by the claimant? In my view in this case the overpayment was not in consequence of any failure to disclose on the part of the claimant. The adjudication officer who is now concerned with the case refers to CSB/64/86. That case was however quite different because there the Child Benefit Centre had failed to follow the usual practice of notifying the local office. I should make clear that the claimant has what might be thought a convincing explanation for not having told the local office of the award of child benefit but I do not need to be concerned with that.

5. The original decision was to the effect that the claimant should repay the amount overpaid in respect of the period 27

July 1987 to 20 February 1989; it was not of course until 7 October 1987 that the local office received the notification from the Child Benefit Centre. However, as the current adjudication officer submits, it was not until some time in October 1987 that the claimant received her increased order book and she could not in any event have been required to repay anything overpaid before then.

6. I allow this appeal. I see no reason in the circumstances remit the case to another Tribunal and I accordingly give the decision which they should have given, as set out in paragraph 1. I should not wish to conclude this decision without saying how much I was assisted by the very thorough written submissions made on behalf of the claimant by Mr. Robert English of the Free Representation Unit.

(Signed) R A Sanders
Commissioner

(Date) 27 March 1991