

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 12 September 1985 was made without authority, and accordingly I must set it aside. The consequence of this is that the revised decision of the adjudication officer to the effect that the sum of £159.22 is recoverable from the claimant pursuant to section 20 of the Supplementary Benefits Act 1976 is the only effective decision.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 12 September 1985. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was not present, was represented by Mr Richard Drabble of Counsel, instructed by Messrs. Sinclair Taylor and Martin, solicitors, whilst the adjudication officer was represented by Miss A Saxon of the Solicitor's Office of the Department of Health and Social Security. I am indebted to them both for their submissions.

3. On 1 April 1985 the adjudication officer decided that supplementary benefit amounting to £276.50 had been overpaid in respect of the inclusive period from 19 April 1984 to 31 January 1985, and was recoverable from the claimant pursuant to section 20 of the Supplementary Benefits Act 1976 because he had failed to disclose the material fact that his girl friend had throughout the material time been in receipt of child benefit. The claimant appealed against that decision, and the appeal was heard on 12 September 1985. However, prior thereto, namely on 31 July 1985, the adjudication officer had reviewed and revised his earlier decision, so as to reduce the sum recoverable to £159.22. The effect of this revision was to nullify the earlier decision and render the appeal abortive. There was in fact nothing for the tribunal to adjudicate upon. There can be no question of the decision before the tribunal being the later one of 31 July 1985, because it is quite clear from the letter of Messrs. Sinclair Taylor and Martin dated 14 August 1985 that the decision which they wished to appeal against was that of 1 April 1985:

"Secondly, we would consider there is no need for the original appeal to be withdrawn, since [the claimant] wishes this to go ahead. The appeal against the decision to recover an overpayment, and any decision your office has made subsequently to reduce the amount overpaid does not effect [sic] the appeal against the decision to recover any overpayment."

Moreover, it is clear from the record of the proceedings that the tribunal were not considering the sum of £159.30 as the relevant sum recoverable. The effect of all this is that the revised decision rendered the original decision a nullity and there was nothing before the tribunal. Accordingly the revised decision of 31 July 1985 stands.

4. The above technical point was taken neither by Mr Drabble nor Miss Saxon. They were both concerned with the substantive issue as to whether any sum was recoverable. Although, strictly

speaking, the only matter that is within my jurisdiction is to set aside the tribunal's decision as being made without authority, nevertheless in view of the careful arguments mounted by the parties' representatives, it is appropriate that I should give guidance on the substantive issue underlying this case, namely whether, on the basis that the correct procedure has been adopted, any sum is recoverable.

5. It is not in dispute in this case that the reason why the overpayment of supplementary benefit came about was the failure of the adjudication officer, and of the staff in the supplementary benefit section of the local office, to realise that throughout the relevant period child benefit had been paid to the claimant's partner. It is also not in dispute that the claimant himself failed to notify the supplementary benefit section of the receipt of such child benefit. He had, admittedly, applied for maternity benefit in respect of his partner on 20 March 1984, he had subsequently informed the supplementary benefit section of the birth of a daughter, and the adjudication officer had increased the benefit previously payable to take into account the normal weekly requirements of the new baby. However, he had not specifically mentioned the receipt of child benefit. There is, however, a practice of the Department under which the Child Benefit Centre, located in Newcastle, notify the relevant local office when child benefit has been awarded, so that it can be taken into account in computing a claimant's entitlement to supplementary benefit. But, apparently in this case, for reasons which are obscure, this was not done.

6. Manifestly, the claimant was under a duty pursuant to regulation 8(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I.1981 No.1525] to inform the relevant section of the local office, namely the supplementary benefit section, of his change of circumstances. The receipt of child benefit was something which he might reasonably be expected to know could affect his right to benefit. The tribunal so found on the evidence before them, and were fully entitled to reach that conclusion.

7. However, Mr Drabble complains that, as the Child Benefit Center were fully aware of the situation, there had already been adequate disclosure, and in consequence nothing further was required on the part of the claimant. This presupposes that the Child Benefit Center in Newcastle and the supplementary benefit section of the local office should for present purposes be regarded as one administrative entity, so that disclosure to the one branch constituted disclosure to the other. This argument has been put forward on various occasions in the past to Commissioners and has been consistently rejected. Although, of course, all the various administrative divisions and sections of the Department of Health and Social Security are under the control of the Secretary of State, it is well established that information in the possession of one of such divisions or sections is not to be attributed to every other division or section. The position is set out in the unreported decisions on Commissioner's file CSB/360/1983 and CSB/114/1984. As was stated at paragraph 11 of the latter decision:-

"There is nothing in the argument that the claimant was under no obligation to disclose the receipt of child benefit increase. The position is governed by what was said in the unreported decision on Commissioner's file CSB/360/1983. In that particular case the overpayment of supplementary benefit was in consequence of a failure to disclose special hardship allowance, and not child benefit increase. However exactly the same principles apply. In paragraph 12 of that decision the Commissioner said:

"The principal ground on which the claimant based his appeal was that the relevant information was in the possession of the Department of Health and Social Security, and that this constituted notification so that on no footing was the claimant caught by section 20. The

Department were, admittedly, aware that the claimant was in receipt of special hardship allowance, but this does not assist the claimant. The Department of Health and Social Security are responsible for a wide range of contributory and non-contributory benefits, of which some are administered centrally and others locally from the same or different buildings. The characteristics of these benefits may be quite similar in some respects or widely different. Unlike other locally administered benefits, supplementary benefit is means-tested. It is administered separately from the other benefits. The information issued to recipients of supplementary benefit makes clear to them the nature of the benefit and their responsibilities. To be effective, disclosure for supplementary benefit purposes has to reach the section of the Department which administers that particular benefit, and the claimant cannot rely, normally at any rate, on the interchange of information between various administrative sections within the Department. Accordingly, in the present case it was incumbent on the claimant to bring to the attention of the section dealing with his supplementary benefit claim the fact that he was in receipt of special hardship allowance."

See also the unreported decision CSB/684/1981, paragraph 7.

8 Mr Drabble argued that, for present purposes, the Child Benefit Center at Newcastle and the supplementary benefit section of the local office should be regarded as one administrative entity. However, no evidence was presented to the tribunal or, for that matter, to me, suggesting that any such conclusion was justified. Apart from the obvious point that the office of the Child Benefit Center was situated geographically many miles away from the supplementary benefit section of the relevant local office, the Child Benefit Centre were dealing with a totally different benefit, governed by totally different legislation, from that with which the supplementary benefit section were concerned. The mere fact that it was the practice of the Child Benefit Centre to notify the relevant local office dealing with supplementary benefit of the payment by them of child benefit was only a back-up procedure to guard against the possibility that a claimant might neglect his duty to make proper disclosure. However, this back-up procedure in no way justifies the inference that the two relevant Departmental branches should be regarded as one administrative entity. Moreover, the absence of any evidence indicating that the two branches should be so regarded fully justified the tribunal in not investigating the matter.

9. However, Mr Drabble went on to contend that the cause of the Secretary of State's incurring expenditure was the failure on the part of the Child Benefit Centre to notify the local office of payment of child benefit, and that the claimant's failure to disclose was immaterial. In support of his contention Mr Drabble cited Hall Brothers Steamship Company Ltd v Young [1939] 1 K.B. 748 and Yorkshire Dale Steamship Company Ltd v Minister of War Transport [1942 A.C. 691].

10. Section 20(1) of the Supplementary Benefits Act 1976 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) ...

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

11. The two cases cited by Mr Drabble are concerned with marine insurance and are really a long way from the issue with which I am concerned. Questions of causation frequently tend to present difficulty, and the two cases cited give guidance in dealing with shipping matters. However, I do not find them of any real assistance in construing section 20. In my judgement, in applying section 20 one has to ask the question - if the claimant had not failed to disclose the relevant material fact, would the Secretary of State have avoided the relevant expenditure? If the answer is 'yes', then it is immaterial that the Secretary of State might also have avoided the expenditure, had the back-up procedure operated properly, and the supplementary benefit section been informed by the Child Benefit Centre of the payment of child benefit. If, irrespective of the intervention of any other party or event, the claimant's compliance with his duty to disclose would have prevented an overpayment, then the failure to disclose is for the purposes of section 20(1) the cause of the unnecessary expenditure. I agree with what was said in paragraph 7 of the unreported decision CSB/684/1981:

"...no doubt, departmental procedure when efficiently carried out does ensure that when child benefit becomes payable, recovery of supplementary benefit paid in lieu of child benefit is automatically effected. But the proximate cause of the overpayment in this case was the failure by the claimant to disclose the receipt of child benefit from September 1980 until 12 February 1981. This led to an overpayment of £77 for the period 20 October 1980 to 15 February 1981. If the claimant had performed his duty to see that the Department was aware of all the material facts, which section 20 of the Act imposes on him, he would not have been overpaid. The Department's failure to issue Form C73F does not absolve the claimant from his responsibilities under that section."

Accordingly, on the facts I do not see how the tribunal could have come to any other conclusion than that the sum overpaid was recoverable. However, as explained above, the tribunal were not properly seized of the matter, and I must therefore set aside their decision.

12. My decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

Date: 28th October 1986