

**SUPPLEMENTARY BENEFIT**

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**Overpayment—failure to disclose a material fact.**

The claimant received fluctuating amounts of income by way of allowances in respect of his work as a district councillor.

Since 1977 it had been the practice to assess his supplementary benefit on the basis of his previous year's earnings, and to adjust the benefit on receipt of form P60 from the Inland Revenue showing his income for the current tax year. In 1980 the claimant received form P60 towards the end of August and submitted it to the Department in September. Pursuant to section 20 of the Supplementary Benefits Act 1976, the Secretary of State sought to recover the amount of benefit which had been overpaid since April, and an appeal tribunal confirmed that the overpayment was recoverable. The claimant appealed to a Social Security Commissioner.

*Held that—*

1. following the practice that had evolved between the claimant and the Department, the claimant had submitted the form P60 as soon as was practicable after he received it, and he was under no obligation to accelerate its receipt,
2. it is insufficient for a tribunal to conclude merely that there has been an overpayment, to be recoverable such overpayment must arise from a misrepresentation of, or a failure to disclose, a material fact

The appeal was allowed, and the matter referred to a differently constituted tribunal to be heard afresh

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1. I grant the claimant leave to appeal on a question of law from the decision of the supplementary benefit appeal tribunal dated 3 December 1980, and the necessary consents having been given to my treating the application as the actual appeal, I further decide that the said decision of 3 December 1980 was erroneous in point of law, and accordingly I set it aside.

2. The claimant was at the relevant time, and, as far as I am aware, still is, a district councillor. As such, he receives certain allowances varying with the extent of his attendances at Council meetings. The claimant claimed supplementary benefit as far back as 1977, and at that time it was realised by the officer of the Supplementary Benefits Commission that it would not be altogether easy to determine the extent of the claimant's income arising from such allowances. A practice was therefore adopted by the Supplementary Benefits Commission whereby the claimant's income from that source was deemed to be what it had been in the previous financial year. However, the amount of income deemed to be received by the claimant was to be revised after 5 April each year, and it was agreed that the amount stated in form P60 should be accepted as the income for this purpose for the year commencing 6 April. The obvious difficulty about this arrangement was that the P60 might not arrive on or soon after 6 April in each year. Indeed in practice it was normally received much later. Thus, the P60 for the tax year 1977/78 did not reach the claimant until June 1978 and the P60 for the tax year 1978/79 not until 3 September 1979. Nevertheless, this arrangement was accepted by the Supplementary Benefits Commission.

3. The P60 for the tax year 1979/80 was not in fact received by the claimant until the third or fourth week of August 1980. It had been arranged that an officer of the Department would call on the claimant on 10 September 1980, and the latter quite reasonably decided not to send off the P60 to the officer of the Supplementary Benefits Commission, but to retain it temporarily and hand it over in person when he received his visit on 10 September. Apparently it so happened that when the visiting officer called he did not hear her knock on the door, and in the event the visit was deferred for a further week.

4. When the P60 eventually reached the officer of the Supplementary Benefits Commission it was clear from the figure contained therein that the claimant had received an overpayment for the period from 7 April 1980 to 8 September 1980 amounting in all to £39.33. The Secretary of State sought repayment of this sum under section 20(1) of the Supplementary Benefits Act 1976, and, as the claimant refused to accept that any money was recoverable, then in accordance with section 20(2) (as it then was) the question was referred to the Appeal Tribunal. After considering the submissions the tribunal decided that—

“The sum of £39.33 had been overpaid to [the claimant] in respect of expenditure incurred under Part II of the Supplementary Benefits Act 1976 in consequence of misrepresentation or failure to disclose a material fact and this amount is recoverable from [the claimant] by the Department of Health and Social Security.”

The reasons for their decision were as follows—

“The appellant having received the money, it was not possible to quantify the adjustment necessary on an annual basis until the Commission had received all the facts. When the correct figure was available, there were no reasons why the appellant should not repay the overpayment.”

5. The claimant appealed to the Commissioner against the above decision and asked for an oral hearing, a request to which I acceded. At the hearing the claimant appeared in person and the benefit officer was represented by Mr P Milledge of the solicitor's office of the Department of Health and Social Security. Mr Milledge conceded at the outset that leave to appeal should be given and on behalf of the benefit officer he consented, as

did the claimant also, to my treating the application for leave to appeal as the appeal itself.

6. Now, it is clear from *the reasons* for their decision that the tribunal directed their minds solely to the question whether or not there had been an overpayment. However, as is plain from section 20(1) of the Supplementary Benefits Act 1976, it is not enough for there to be a mere overpayment; such overpayment has to arise from a misrepresentation or a failure to disclose a material fact. Section 20(1) reads 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) any sum recoverable under this Act by or on behalf of the Secretary of State is not recovered,

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

Manifestly in the present case the tribunal did not direct their minds to consideration of whether or not the admitted overpayment arose out of a misrepresentation or failure to disclose. Their decision was therefore plainly erroneous in point of law, and I have no option but to set it aside.

7. Although it is enough for me to dispose of this case on the above grounds, it may be helpful if I go on to say that, had the tribunal addressed their minds to the proper question, namely whether the overpayment had arisen from a misrepresentation or failure to disclose a material fact, I do not see how on any footing they could have ordered repayment. There is no question of misrepresentation in this case, and the only conceivable ground on which the tribunal’s decision could be based is that the claimant was required to disclose his income for the previous financial year at an earlier point of time than he in fact did. In this connection reference has to be made to regulation 8 of the Supplementary Benefits (Claims and Payments) Regulations 1977, (S.I. 1977 No 1142) (in substance re-enacted in regulation 8 of S.I. 1980 No 1579) which provides as follows—

“Every beneficiary....shall furnish in such manner and at such times as the Secretary of State may determine such certificates and other documents and such information of facts affecting the right to benefit or to the receipt thereof as the Secretary of State may require....., and in particular shall notify the Secretary of State in writing of any change of circumstances which he might reasonably be expected to know might affect the right to benefit, or to its receipt, as soon as reasonably practicable after the occurrence thereof.”

Now, although this particular provision is in wide terms, it is clear from the course of conduct which had grown up between the claimant and the Department that the only obligation imposed on the claimant as regards disclosure was to hand over his P60 as and when he got it. Mr Milledge conceded that the claimant had in fact disclosed the contents of the P60 as soon as was practicable after he had obtained it, and he likewise conceded that there was no duty on the claimant to accelerate its receipt.

8. Accordingly, in my judgment, there was no evidence on which the tribunal, had they addressed their minds to the proper question, could have found that the claimant had failed to disclose a material fact within the meaning of section 20(1), and any finding to that effect would have been perverse, and I would have been obliged to set it aside.

9. Accordingly, I grant leave to appeal, allow the appeal and set aside the decision of the tribunal of 3 December 1980. Furthermore, I direct that the case be heard afresh by a differently constituted tribunal.

(Signed) D. G. Rice  
Commissioner

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