

C28/1982

JGM/OG

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL
TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Overpayment
- disclosure of
part-time
earnings

Name: David Isadeha

Supplementary Benefit Appeal Tribunal: West London

Case No: A9/66

ORAL HEARING

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 22 February 1982 was erroneous in point of law for want of compliance with rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals Rules 1980 (the Appeals Rules), and the decision is set aside. The matter is referred back to another tribunal.

2. The claimant was in receipt of a supplementary allowance from 30 October 1980 (it was actually paid in error for one week before that, but no repayment claim is made in respect of it). He was doing part-time work for that part of the period of payment of the allowance that preceded the end of 1981. But his earnings from this part-time work were not disclosed. Indeed on his claim form the word "None" appeared in box 6 which provides for the inclusion of "Household: Particulars and any Income of Claimant and any Dependents living at the same address and of any Earnings or other Income of the persons named".

3. When the benefit officer learned about the claimant's part-time employment he concluded that there had been an overpayment of benefit amounting (as shown in a schedule of overpayments) to £197.53. He gave a decision pursuant to section 20 of the Supplementary Benefits Act 1976 requiring repayment of this amount though the precise grounds on which the decision was based do not appear from the form LT 205. The claimant appealed to the appeal tribunal, who recorded that the claimant maintained that he informed the unemployment benefit office that he still had the part-time job and that his statement when claiming made no mention of his part-time job. They confirmed the decision of the benefit officer giving as their reason the failure to disclose information about his income which had resulted in an overpayment of £197.53. The claimant now appeals to the Commissioner. He was represented at the oral hearing before me by Mr R Drabble of

Counsel instructed by Miss J Allbeson a solicitor with the Child Poverty Action Group; the benefit officer was represented by Mr D James of the Solicitor's Office of the Department of Health and Social Security.

4. Both counsel agreed that the decision of the tribunal must be set aside on the ground that the findings of material facts and the reasons for the decision were not stated sufficiently to satisfy the requirements of rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 and the debate at the hearing, so far as there was any, centred round the directions to be given to the new tribunal to whom the matter must be referred.

5. Section 20(1) of the Supplementary Benefits Act 1976 provides so far as material 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 [for Social Services] incurs any expenditure under this Act; or

(b)

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

6. For this section to apply there thus has to be a material fact which the claimant either misrepresented or failed to disclose; and the Secretary of State must in consequence of such misrepresentation or failure to disclose have incurred expenditure, that is expenditure that he would not otherwise have incurred. There can be little doubt that the admitted fact that the claimant was at the time of his claim working part-time was a material fact. The first question for determination is whether the claimant misrepresented or failed to disclose it. It will no doubt be contended by the benefit officer that in putting his name to the claim form (which appears to have been completed by someone on his behalf) with the word "None" in box 6 the claimant misrepresented the above material fact albeit not fraudulently; and that this is enough to support a requirement of repayment. The tribunal based their conclusion on failure to disclose the fact. They did not however make it clear in their decision whether they rejected the claimant's statement that he had disclosed the matter to the unemployment benefit office or whether they considered that disclosure to the unemployment benefit office was not such a disclosure as the section requires. It is primarily in this respect that the findings are inadequately recorded.

7. The claimant relies on his having disclosed the fact of his part-time job to the unemployment benefit office. If this was relevant disclosure (made at the right time and in the right place) it would be plain that there had been no failure to disclose; and it would be arguable that, notwithstanding any misrepresentation contained in the claim form, that misrepresentation was not the true

cause of the overpayment if there had also been disclosure at the right time and in the right place.

8. The new tribunal must make a finding whether disclosure was made. It is not sufficient to record that the claimant stated that he made disclosure without indicating whether the statement is accepted or rejected. They must make a finding as to when the disclosure was made and to whom and in what circumstances or context, i.e. whether it was made in connection with his claim for supplementary benefit or in connection with a claim for something else. If it is contended on behalf of the claimant that, having regard to any documents or leaflets with which he was furnished, it was reasonable for him to make disclosure only in the particular office in which he is found (if he is found) to have made disclosure they should also make findings as to what documents or leaflets were so received.

9. Much of the written submissions in this case is devoted to debate on the question how far the Department of Employment are agents of the Department of Health and Social Security in relation to the information which is given to them by claimants; and I was at the hearing told something of the differences between the arrangements by which the Department of Employment manages the administration of unemployment benefit on behalf of the Department of Health and Social Security and those by which it participates in the administration of supplementary benefit for the unemployed. It is however quite impossible for claimants to understand these differences; indeed the case papers contain a copy of a Report of 1981 entitled "Payment of Benefits to Unemployed People" which acknowledges this. And I do not think that in the end the question to be decided turns on the degree of agency between the two Departments. There are cases in which disclosure to an office which is manifestly part of the Department of Health and Social Security is inadequate (as where a claimant for supplementary benefit fails to disclose that he is receiving, say, special hardship allowance, about which some other office of the Department of Health and Social Security has full knowledge); and there are no doubt cases where disclosure to the Department of Employment is sufficient (see Decision R(SB) 54/83).

10. In my judgment the obvious intention is that disclosure should be made that will reach the person who has to award or refuse the benefit. Equally no disclosure that does not actually reach such person is likely to offset the effect of a misrepresentation that does reach him. I consider that the law is well stated in Decision R(SB) 54/83 above mentioned viz that the claimant must take such steps as might reasonably be expected to ensure that the fact disclosed will reach the officer concerned to award or refuse benefit. Disclosure, if it is to offset the effect of previous misrepresentation that has reached such an officer, will only prevent that misrepresentation from being the cause of any resulting expenditure by the Secretary of State if it in fact reaches such officer. This means that disclosure sufficient to meet an allegation of failure to disclose will not necessarily be sufficient to counter the effect of a previous (still less subsequent) misrepresentation.

11. The appeal is allowed and the matter must go back to another tribunal who will follow the guidance given above.

(Signed) J G Monroe
Commissioner

Date: 4 May 1984

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C SBO File: 614/82
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