

CSB 675/1982

JGM/FB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Christopher Andrew Lynch

Supplementary Benefit Appeal Tribunal: Barking

Overpayment

Agency agreement

(see Rst)

Case No: 7/50

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 26 January 1982 is erroneous in point of law and it is set aside. The matter is referred back to another appeal tribunal.

2. This is an appeal against a decision confirming the benefit officer's decision (save for an adjustment in the amount in issue) requiring repayment of an amount of benefit said to have been overpaid by the claimant, by reason of the fact that for part of the period in question the claimant's wife was in receipt of unemployment benefit and for part of it was employed and the amount of benefit paid to the claimant was arrived at without reference to these matters. The requirement of repayment was made under section 20 of the Supplementary Benefits Act 1976 under which the Secretary of State for Social Services is entitled to recover the amount of the expenditure incurred by him in consequence of the misrepresentation or failure to disclose any material fact. Broadly the decision of the benefit officer was that the claimant had failed to disclose his wife's earnings and unemployment benefit and that in consequence of this the Secretary of State had incurred expense (in the shape of an overpayment of benefit to the claimant) and that accordingly the claimant was liable to repay the amount of the overpayment irrespective of whether the failure to disclose was fraudulent or innocent. It has not been suggested that it was other than innocent.

3. The claimant in his notice of appeal to the appeal tribunal stated that when the visiting officer called at his house (on an unspecified day) he, the claimant, told the visiting officer immediately that his wife was working. The appeal tribunal adjourned their first hearing when it emerged that the claimant's wife's title to unemployment benefit was not established until 5 February 1981. It followed that (on the principles enunciated by Diplock J as he then was in Regina v Medical Appeal Tribunal, Ex parte Hubble /1958/ 2 Q.B. 228 at pages 242-243) he could not be treated as having failed to disclose that of which he was not aware. The tribunal called for a revised calculation of the overpayment relating only to overpayment

after that date. At their adjourned hearing on 26 January 1982 the tribunal in substance dismissed the appeal requiring repayment of the newly calculated overpayment of £961.58. In substance the sole finding of fact recorded was that there had been an overpayment. There is no finding whether the claimant did (as in his letter of appeal he said he did) tell the visiting officer about his wife's working, or if so when he did so. Indeed there is not in the final decision any finding that there was a failure to disclose or that the overpayment was in consequence of the failure to disclose. There was a finding that the claimant had not disclosed that his wife was working made by the tribunal that adjourned the matter. The record does not show whether the tribunal was identically constituted on both occasions. For the foregoing reasons the decision is erroneous in law and the matter must be referred to another tribunal to make findings on these matters. This conclusion makes it unnecessary for me to consider other grounds on which it has been suggested that the decision was erroneous in point of law.

4. There are one or two matters that have been raised to which I ought for the guidance of the new appeal tribunal to refer. First reference has been made to the fact that the claimant's wife had made full disclosure of the position in connection with her claims for unemployment benefit and the discontinuance of that benefit when she started working. On this issue the benefit officer has referred me to Decision C.S.B. 14/82 (on Commissioner's File C.S.B. 557/81) where the Commissioner intimated that the Department of Employment (D of E) is a different body from the Department of Health and Social Security (DHSS) and that information given to the one would not be deemed to be information given to another. The case was one of actual misrepresentation and not of failure to disclose. I understand the Commissioner's conclusion to have been that an actual misrepresentation in a claim for supplementary benefit addressed to the DHSS could not be treated as corrected by contrary information that had been given to the D of E in connection with an unemployment benefit claim. I do not consider that the decision should be treated as authority for the general proposition that disclosure to the D of E can never be a sufficient compliance with the requirement of disclosure implicit in section 20 of the Supplementary Benefits Act 1976.

5. A claimant required to register for unemployment as a condition of title to supplementary benefit under section 5 of the Supplementary Benefits Act 1976 is directed by regulation 3(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 to send his claim (for onward transmission to the DHSS) to the relevant unemployment benefit office, which is run by the D of E (albeit as agents for the DHSS). This provision plainly makes the D of E in cases where it applies agents of the DHSS to receive claims for a supplementary allowance; and in my judgment it also makes them agents to receive any information in connection with the claim given by the claimant or his agent in the transaction. In my judgment a claimant fulfils his obligation of disclosure if he makes such disclosure to the unemployment benefit office in association with his sending the claim to that office.

I think that the analogous rules about disclosure in insurance law may be relevant here. Thus for instance it is clear that a person seeking to insure his life who is sent to a doctor for medical examination on behalf of the insurance company fulfils his duty of disclosure of relevant medical matters if he makes the necessary disclosure to the doctor, even though the doctor has no power to issue a policy of insurance. (See Joel v Law Union and Crown Insurance Co /1908/2 K.B. 863). Where the disclosure is made to the D of E or other agent of the DHSS in a different transaction altogether the position may be otherwise.

6. In the present case it is not, I think, suggested that the claimant made any disclosure to the D of E in connection with his submission of his claim to that Department for onward transmission. ~~It is suggested that he made disclosure to the visiting officer and~~ it will be for the new appeal tribunal to decide on that as a matter of fact. Independently of this it is I think suggested that his wife's disclosure to the unemployment benefit office in respect of her claim for unemployment benefit was sufficient. This is not disclosure by the claimant or his agent at all. A claimant is in any case not in my judgment entitled to assume that information given in another transaction to the D of E or other agent of the DHSS will filter through to the officer adjudicating on his claim. If by any chance it does it could be for consideration whether any overpayment was the result of the officer's overlooking the information rather than the non-disclosure, but a claimant could hardly be advised that he could safely count on such a conclusion being reached.

7. I assume that the information that the claimant says that he gave to the visiting officer was, if given, given orally and not in writing. If this is found to be the case there will from the date that the information was given be no failure to disclose in terms of section 20, which does not require the disclosure to be in writing. I mention this as the benefit officer in his submission has referred to regulation 8 of the Supplementary Benefit (Claims and Payments) Regulations 1981 which requires certain changes to be notified to the Secretary of State in writing. I do not find it necessary to decide what precisely is the effect of non-compliance with this provision; but it does not in my judgment have the effect that a person who makes oral disclosure only of any matter to which it relates is to be treated for purposes of section 20 as having failed to disclose that matter. There is nothing in the Act to authorise the making of any regulation having such an effect.

8. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 2 June 1983

Commissioner's File: C.S.B. 675/1982
C SBO File: 690/82