Overpayments: disclosure to issuing office may be disclosure, even if it is to wrong section in that office.

JM/SH/12/MD

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C A O File: AO 2574/86
Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. This is a claimant's appeal, brought by leave of the chairman of the social security appeal tribunal, against a decision of that tribunal dated 18 March 1986 which confirmed the adjudication officer's revision of a decision originally issued by the adjudication officer on 28 October 1985.

2. I held an oral hearing of the appeal. The claimant attended and was represented by Miss K Wheat, solicitor, of the Dudley Law Centre. The adjudication officer was represented by Mrs A Saxon, of the Solicitor's Office of the Department of Health and Social Security. I am indebted to both Miss Wheat and Mrs Saxon for lucid and entertaining submissions which managed to wring a few more drops of juice from a lemon which one might have thought to have been already squeezed dry.

3. The lemon is section 20 of the Supplementary Benefits Act 1976. The relevant facts are straightforward and not really in dispute. The claimant lives with his wife and two dependent children. Since 1980 he has been almost continuously in receipt of supplementary benefit. He was unemployed down to 20 July 1984 - but he then fell sick and was awarded sickness benefit. There appear to have been financial problems in the family, for it was decided that sickness benefit should be paid direct to the claimant and that the supplementary allowance (assessed with due regard to the sickness benefit resource) should be paid to the claimant's wife. (Although no one could tell me for certain, it seems likely that that was done pursuant to regulation 23 of the Supplementary Benefit (Claims and Payments) Regulations 1981 [SI - 1981 - No.1525].)

4. But the claimant's sickness was protracted. On 31 October 1984 he was notified by the local office of the Department of Health and Social Security that he had progressed to invalidity benefit. That, of course, reduced the supplementary benefit to which the assessment unit was entitled. But the person or section in the aforesaid local office of the Department who or which was responsible for calculating the relevant supplementary benefit was not - apparently - aware of the claimant's progress from sickness benefit to invalidity benefit; and that situation continued down to 25 September 1985. In consequence, there was an overpayment of supplementary benefit in the sum of £684.17 in respect of the

inclusive period 5 November 1984 to 23 September 1985. The local adjudication officer so found - and determined that that sum was recoverable by the Secretary of State. The claimant appealed to the appeal tribunal. His appeal was disallowed.

5. Put thus baldly, the claimant's case looks unpromising. The precedents are well stocked with cases in which claimants have sought to justify their non-disclosure by arguing that the Department's files must already have contained the relevant information. For example, a supplementary benefit claimant who has not disclosed the child benefit received by the relevant assessment unit is wont to contend that the Department - which pays the very child benefit in question - could be taken to know of that child benefit when computing the claimant's entitlement to supplementary allowance. And that type of argument is normally doomed to failure. (The legal issues involved have recently been considered in Decision of a Tribunal of Commissioners on Commissioner's file CSB/966/1985 - almost certain to be reported.) In this case the appeal tribunal dealt with the claimant's argument thus:

> "The claimant's appeal was based on the failure of the Supplementary Benefit and Sickness Benefit sections to liaise, preventing an internal adjustment of the supplementary benefit paid to claimant's wife when claimant went from sickness benefit to invalidity benefit on 1.11.84. Tribunal rejected such argument. An obligation to disclose is personal to the claimant and it is he alone who must disclose any change of circumstances to the Department (as the notes in his order book require him to). It is insufficient to place absolute reliance on some inter-departmental procedure which may or may not exist. Even if such liaison did exist, this did not absolve a claimant from his obligation to disclose."

6. That is all very well - so far as it goes. But - in the particular circumstances of this case - I do not consider that it goes far enough. Somewhat surprisingly, the papers do not contain any specimen of the order book note or notes to which the appeal tribunal was referring. But Miss Wheat told me that, to the best of her recollection, the relevant notes instructed the claimant to make the required disclosure to "the issuing office" - and Mrs Saxon agreed that that was very likely. And it further appears that the "issuing office" in the context of the claimant's supplementary benefit was precisely the same office as dealt with his sickness and invalidity benefit. It is well settled law that the disclosure contemplated by section 20 is such disclosure as can be reasonably expected of the person in question.

7. So where does that leave the matter? On 31 October 1984 the "issuing office" wrote to the claimant notifying him that his sickness benefit would - with effect from 1 November 1984 - be replaced by invalidity benefit. Is it seriously to be urged that the reasonable man would thereupon have written to the manager of the "issuing office" in the following, or similar, terms:

> "Dear Sir,
>
> I thank you for your letter of 31 October last and wish to inform you of its contents."

I do not think that anyone would expect such a suggestion to be taken seriously. I need hardly say that Mrs Saxon did not.

8. I stress that I do not regard this as a case where the point in issue is whether the claimant was or was not reasonable in assuming that there would be internal liaison between different offices of the Department. Only one office was involved - and that was the office to which the claimant had been instructed to make disclosure. Those of us who are sophisticated in social security matters know that in one office there may be a number of sections, each relatively self-contained. Whether that can be assumed to be within the knowledge of the reasonable man, I do not know - but I do not have to decide that here. It

was not to any particular section that the claimant was instructed to make disclosure. It was to the "issuing office" - the very office which communicated to him the information which he is alleged not to have disclosed.

9. As I have indicated in paragraph 5 above, there have been many, many cases of this general type - some more meritorious than others. I cannot think that it is beyond the wit of those who draft the relevant instructions to claimants to devise a form of words which will make abundantly clear to claimants the precise officer or section to whom disclosure is required. If the Department should answer that this is too difficult, the obvious riposte will be: Why should a claimant be expected to appreciate a situation which the Department itself cannot explain clearly?

10. I have some sympathy with the appeal tribunal in this case. It obviously considered itself to be following well-established principles. But the facts of the case were a little out of the ordinary. They called for particular analysis. I regard the tribunal's failure to conduct such analysis as error in law.

11. I cannot, however, give the decision which the appeal tribunal should have given. As appears from paragraph 6 above, there is an element of speculation about the factual background against which I have set out my understanding of the relevant approach in law. The matter will have to go back to a fresh tribunal so that -

(a) there can be identified the precise note or notes upon which the adjudication officer relies;

(b) it can be established whether the office which notified the claimant of the progression to invalidity benefit was indeed the "issuing office" in the context of his supplementary benefit; and

(c) investigation can be made as to whether there was any such indication on any of the relevant documents as would have alerted the reasonable man to the fact that he was dealing with two distinct sections of that office.

12. I should add that I do not consider this to be a case in which the "continuing duty" of disclosure is relevant (see paragraph 28 of CSB/966/1985). It was to the "issuing office" that the claimant was instructed to make disclosure. If it was - as I have suggested above - reasonable for the claimant to believe that the "issuing office" was aware of information which that office had itself communicated to the claimant, the "continuing duty", as identified by the Tribunal of Commissioners, would not arise.

13. But there is another important dimension to this case which appears to have escaped all notice until Miss Wheat developed it before me. Shortly after the claimant moved to invalidity benefit, his wife noticed that he was then drawing a sum greater than that being paid to her by way of supplementary benefit (cf paragraph 3 above). She was affronted. I quote from the note of evidence taken by the chairman of the appeal tribunal:

> "After increase was implemented claimant and his wife went to [the issuing office]. She was querying why her supplementary benefit was so much less than his invalidity benefit. He didn't tell Clerk that his invalidity benefit had increased."

That note is so condensed that it leaves a number of important questions unanswered. But those questions must be answered - for the answers may provide an escape route for the claimant quite distinct from that with which I have dealt in paragraphs 5 to 12 above. I was told that it was to the supplementary benefit side of the issuing office that the claimant and his wife went on that occasion. That must be investigated by the fresh tribunal and the appropriate finding of fact recorded. Moreover, what was done and said in the course of that interview must be established with as much precision as is at this date possible. The

significance in law of all this needs little elaboration. If the fresh tribunal should find that -

(a) the interview took place at the supplementary benefit side of the issuing office; and

(b) the claimant's receipt of invalidity benefit was expressly mentioned,

the case of non-disclosure will fall to the ground - at least with effect from the date of the interview. Disclosure would undoubtedly have been made to the appropriate officer. Since the quantification of the relevant supplementary benefit was clearly in issue at the interview, such disclosure would undoubtedly have been disclosure in the relevant transaction. The significance of that interview appears to have been wholly overlooked by the appeal tribunal - which, no doubt, explains why it did not see fit to comb out the details thereof. That was also vitiating error of law.

14. As a makeweight, Miss Wheat - fortifying her argument by citing section 18 of the Marine Insurance Act 1906 - submitted that the claimant, as a reasonable man, was entitled to rely upon the fact that the supplementary benefit authorities would know that (and when) sickness benefit "automatically gives way to invalidity benefit". That hare will not run. The cost of administering the system would be substantially increased if the staff of benefit offices were called upon constantly to review the files of beneficaries in order to assess, by inference, what might or might not have happened to the resources of those beneficiaries. And I do not think that a reasonable man would expect them to do so. As I have myself said many times before, in the ordinary case the claimant is the person with the most immediate and direct knowledge of his circumstances. He is, accordingly, the obvious person upon whom to lay the duty of keeping the authorities appropriately informed. In the ordinary case he omits so to do at his peril. I have sought in paragraphs 5 to 12 above to indicate why I regard this as being an exceptional case.

15. My decision is as follows:

(1) The claimant's appeal is allowed.

(2) The decision of the appeal tribunal dated 18 March 1986 is erroneous in law and is set aside.

(3) The case is referred to a differently constituted appeal tribunal for determination in accordance with the principles of law set out in this decision.

(Signed) J. Mitchell

Commissioner

Date: 20th February 1987