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CSA 684/81
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VGHH/MC

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. This appeal fails. My decision is that the decision of the supplementary benefit appeal tribunal dated 13 August 1981 was not erroneous in point of law.

2. The claimant on 1 September 1980 told the local office that a child had been born to him. A child benefit order book was received by his wife on 15 September 1980. This was not disclosed by the claimant and it did not come to light until a home visit on 12 February 1981. All the above facts were found by the tribunal. It is not in dispute that, as a result of the payment of child benefit which was not taken into account when calculating the supplementary benefit, as it should have been, there has been an overpayment of £77.

3. The tribunal by a majority did not accept the submission on behalf of the claimant that the claimant had not failed to disclose any material facts and that he had done everything he considered was necessary to notify the local office of all relevant facts. They found that the Department was not informed of the receipt of child benefit until 12 February 1981 which would have caused a reduction in supplementary benefit entitlement and they ordered the repayment of the £77.

4. The only question of law of any substance in this appeal is the allegation on behalf of the claimant that by disclosing on 1 September 1980 that a child had been born to him the claimant had disclosed all material facts and that the tribunal accordingly erred in law in finding that the material facts had not been disclosed.

5. Section 20(1) of the Supplementary Benefits Act 1976 provides:

"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".

6. The material fact, in the present case, was the receipt of child benefit from 15 September 1980 by the claimant's wife, not the birth of the child. It was the failure to disclose such receipt which resulted in overpayment. The birth of a child to a claimant does not by itself involve payment of child benefit to any particular person. It was the receipt of the child benefit that should have been taken into account in calculating the claimant's supplementary allowance and would have operated to reduce it. The failure to disclose its receipt until 12 February 1981 had, as its consequence, an overpayment by the Secretary of State of £77. Section 20(1) accordingly clearly applied and the decision of the tribunal was not erroneous in point of law.

7. In further observations dated 16 July 1982, the claimant reiterates his complaint that the local office did not issue form C73F to the Child Benefit Centre and states that the completion of form C73F automatically ensures that child benefit is deducted from supplementary benefit as a resource and that the department were fully aware of the claimant's claim for child benefit on 1 September 1980. 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 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.

8. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 18 August 1982

Commissioner's File: C.S.B 684/1981
C.S.B.O File: 821/81