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**SUPPLEMENTARY BENEFITS ACT 1976**

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**Name:** Alan Melville Smith

**Social Security Appeal Tribunal:** Portsmouth

**Case No:** 15/34/10

**[ORAL HEARING]**

1. My decision is that the decision of the social security appeal tribunal dated 10 April 1986 is erroneous in point of law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. On 31 July 1985 an adjudication officer decided that supplementary allowance amounting to £708.00 had been overpaid between 11 June 1984 and 14 July 1985 and was recoverable from the claimant because he had failed to disclose the material fact that his daughter Deborah had taken up a place on a Youth Training Scheme. Subsequently the adjudication officer's decision was revised so as to reduce the amount of the overpayment to £474.60. The claimant appealed. The tribunal upheld the adjudication officer's decision. This present appeal is with leave which I granted. The claimant attended the oral hearing which he had requested. He was represented by Ms. P. Wood, Solicitor from the Child Poverty Action Group. The Department was represented by Mrs. E. A. Saxon of the Solicitor's Office of the Department of Health and Social Security. I am particularly grateful to both of them for their careful and very thorough submissions.

3. On 11 June 1984 Deborah took up a place on a Youth Training Scheme. If the Department of Health and Social Security had acted on that information they would have reduced the rate of supplementary allowance being paid to the claimant. But they did not act on it because they said they did not know. The claimant had failed to disclose the information to them. So benefit had been overpaid and the amount of the overpayment was recoverable. The Department first thought that they did not know the true position until July 1985 when the claimant stated on a form used for notifying changes of circumstances that Deborah had now finished her Youth Training Scheme and was in full-time employment. Then, following a further examination of the claimant's papers, the Department discovered that, in relation to a claim for free dental treatment made on 25 March 1987, the claimant had said that Deborah was on a Youth Training Scheme. So it was decided that the period during which the claimant had failed to tell them about Deborah ended on 24 March 1985 and the amount required to be recovered was reduced to the sum now in question. It has throughout been the claimant's case that he should not have to repay anything because he had in June 1984 told his unemployment benefit office about the Youth Training Scheme placement. Being a person whose right to a supplementary allowance was subject to the condition imposed by section 5(1) of the Supplementary Benefits Act 1976 that he was available for employment he was required by

regulation 3(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 to make his claim for supplementary benefit to his local unemployment benefit office. His dealings on supplementary benefit were therefore with the Department of Employment and not with the Department of Health and Social Security. So, said Ms. Wood, if he were going to tell anyone about any changes in his circumstances it would be natural for him to tell his unemployment benefit office.

4. Section 20 of the Supplementary Benefits Act 1976 provides, so far as relevant, that -

"20(1) 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;

.....

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

It has not been suggested that this is a case of misrepresentation. It has throughout been seen as a case in which the issue was whether the claimant had fulfilled his obligation to disclose the fact that Deborah had commenced her Youth Training Scheme placement. There are two aspects to this in this case. Firstly, did the claimant in fact do what he said he had done by way of disclosure? Secondly, if he did, was that a sufficient disclosure? If it was there is no obligation to repay because the overpayment was not in consequence of any failure on the part of the claimant.

5. According to the chairman's note of evidence the claimant told the tribunal that he had "verbally notified the local office that his daughter had been accepted on a Y.T.S. placement and had completed a B1 form to that effect at the same time...about six weeks later on a normal visit to the local office he had been asked to see the supervisor on a spot check and had been asked (my underlining) whether his daughter was still (my underlining) on a Y.T.S. course and replied in the affirmative". Then, according to the chairman's note, "The presenting officer showed the appellant and Tribunal an unemployment benefit form which [the claimant] had signed on 18.7.84. In Part 6 of the form "Change of circumstances" a declaration had been made that 'Child Benefit for Deborah Lynn now ceased May 1984' but there was no reference to her taking up a Y.T.S. placement". Now, as I understand it, it was an important part of the claimant's case that he had been asked on the spot check whether Deborah was still on the Y.T.S. course. When he confirmed she was the only change of circumstances that required to be entered on the form signed on 18 July 1984 was that child benefit had ceased in May. All this, it was said, helped to substantiate that the claimant had told the unemployment benefit office about the Youth Training Scheme sometime earlier. I should also add that in their reasons the tribunal say that "on spot check...he had again declared that his daughter was on a Y.T.S. course". That of course was not the evidence or at least the emphasis of the evidence that the claimant gave as recorded by the chairman. The point was that he had been asked if she was still on the course. The Department already knew about it.

6. Unfortunately the tribunal did not make any findings of fact on the crucial matters that arise on the evidence as the chairman recorded it. All they said was that they "accepted the facts as set out on Form AT2". That does not help at all. And in their reasons they said that the form produced by the adjudication officer "could well have been the form [the claimant] referred to at the time of the spot check". They went on to say that they accepted that documents can be lost or mislaid but "in this case the claimant stated

that he had notified the Department on three occasions about his change of circumstances...the Tribunal could not accept that 3 separate records of disclosure would all have been lost or mislaid". In my view there are several failures here on the part of the tribunal. Although they made no finding of fact as such it is plain from their reasons that they did not accept the claimant's evidence. But it seems that their reason for not doing so was that they could not accept that three separate records would all have been lost or mislaid. Leaving aside Ms. Woods' point that the tribunal was in any event wrong on the evidence about the number of records in question, the tribunal seem to have had, or at least recorded no evidence of what records the Department had and what those records contained or did not contain. In their reasons they say "Evidence from the Presenting Officer showed there was no record at the UBO of any B1 Form having been completed by [the claimant] in June 1984 (their records show that the last B1 Form issued to [the claimant] was in November 1983". Now I do not know whether the adjudication officer did actually give evidence as to there being no record of the form. Whether she did or not, there is certainly nothing to suggest that she or anyone else gave evidence as to the absence of any record of what the claimant says he told the unemployment benefit office. If the adjudication officer wished to rely on the absence of records then evidence should have been given as to what the relevant records did in fact contain and as to the departmental procedures for keeping records. It is of course a matter for the adjudication officer to decide what evidence is given on his or her behalf to the tribunal. But it is wrong for a tribunal, as this one seems to have done, to deal with the case as if evidence had been given. Furthermore, as the document referred to above was an important element in the claimant's case the tribunal should have made findings as to whether the document produced was in fact the document to which the claimant referred. It was not enough to say it could have been. If it was, the tribunal should of course have given reasons for rejecting if they did the claimant's case in respect of it. There is a further point that arises on that document. Consideration should have been given to whether the change of circumstances which it recorded could itself have amounted to a disclosure so as to bring the overpayment period to an end as at 18 July 1984. In the respects indicated the tribunal's decision was in my judgment erroneous in law and I set it aside.

7. A Tribunal of Commissioners in CSB/966/1985 has recently considered what is required by the duty of disclosure and the circumstances in which there may be a continuing duty to disclose notwithstanding that a sufficient disclosure has already been made. In paragraph 28 they said -

"28. We accept that a claimant cannot be expected to identify the precise person or person who have the handling of his claim. His duty is best fulfilled by disclosure to the local office where his claim is being handled either in the claim form or otherwise in terms that make sufficient reference to his claim to enable the matter disclosed to be referred to the proper person. If he does this, it is difficult, having regard to our acceptance of Miss Kearns' concession, to visualise any circumstances in which a further duty to disclose the same matter can arise. In the case of a claimant required to be available for employment, who is directed by regulation 3(2)(a) of the Supplementary Benefit (Claims and Payments) Regulations 1981 [SI 1981 No 1525] to deliver or send his claim to the relevant unemployment benefit office for onward transmission to the Department, disclosure on the claim form submitted must also be regarded as fulfilling the duty. But, as was pointed out in R(SB) 54/83, there can be other occasions when the duty can be fulfilled by disclosure elsewhere. This can happen, for instance, if an officer in another office of the Department of Health and Social Security or local unemployment benefit office accepts information in circumstances which make it reasonable for the claimant to think the matters disclosed will be passed on to the local office in question. It was in reference to this sort of case that the Commissioner included in paragraph 18 of Decision R(SB) 54/83 his statement about a continuing duty. A claimant who has made such disclosure has not in fact made disclosure to the right person or in the

right place, but he has done something which has the effect that, for the time being at least, further disclosure is not reasonably to be expected of him. We consider that paragraph 18 of R(SB) 54/83 is concerned with the case of a claimant who subsequently becomes aware, or should have become aware, that the information has not been transmitted to the proper person or place and who is then under a duty to make disclosure to that person or place. We desire to reserve for consideration when it arises the question whether the means of knowledge that the information has not been transmitted has the same effect as actual knowledge."

This identifies three kinds of sufficient disclosure. The first is that of disclosure to the local office of the Department of Health and Social Security either to the appropriate person or in circumstances which enable the matter disclosed to be referred to the appropriate person. The second is that of a disclosure on the appropriate claim form to the relevant unemployment benefit office by a person to whom regulation 3(2)(a) of the Claims and Payments Regulations applies. The third is that of a disclosure to an officer in another office of the Department of Health and Social Security or to someone in the claimant's unemployment benefit office in circumstances which make it reasonable for the claimant to think the matters disclosed will be passed on to the relevant local office of the Department of Health and Social Security. In the first two cases when disclosure has been made there is no further obligation to disclose the same matter. In the other kind of case there is a continuing duty to disclose when the claimant becomes aware or should have become aware that the information in question has not reached the proper person or place. So that a claimant in the last kind of case who knows that the information he has disclosed affects his benefit entitlement or the rate of benefit cannot just sit back and do nothing when it becomes apparent that the Department have not acted on the information. He must seek to make the disclosure effective.

8. In the present case if what happened as between the claimant and the unemployment benefit office amounts to a disclosure of the fact that Deborah had taken up a Y.T.S. place - as to which I express no view because I am not sure that I have all the material facts - it will be necessary to decide by reference to all the circumstances whether the claimant should have taken steps to make his disclosure effective in pursuance of the continuing obligation to which I have referred. That is because such a disclosure comes within the third category identified in CSB/966/1985. While the claimant was subject to regulation 3(2)(a) of the Claims and Payments Regulations it was not a disclosure on the appropriate claim form. Therefore the principle of continuing obligation applies.

9. There is a further point. As was made clear in R(SB) 54/83 the unemployment benefit office may be the agent of the Department of Health and Social Security to receive notice of change of circumstances from claimants who are signing on for unemployment benefit or, presumably, from claimants who are subject to regulation 3(2)(a) of the Claims and Payments Regulations. If the one is the agent of the other then the obligation to disclose will be fully satisfied merely by informing the unemployment benefit office of the change of circumstances - regardless of whether there are circumstances in which it can reasonably be expected that the information will be passed on to the appropriate person in the appropriate office. Whether or not the relationship between the two Departments amounts for the purpose in question to that of principal and agent requires to be established by reference to the necessary evidence in each case: see e.g. R(SB) 36/84. And I should say that I do not take the passage in paragraph 29 of CSB/966/1985 in which the Commissioners make reference to agency as suggesting that that point cannot arise. They were talking about agency "in connection with information given by some third party".

10. The new tribunal must have regard to the matters mentioned above, make all relevant findings of fact and give their reasons in accordance with the principles to which I have referred. The claimant's appeal succeeds. My decision is as set out in paragraph 1.

**(Signed)** R A Sanders  
**Commissioner**

**Date:** 9 April 1987