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Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 18 May 1984 is erroneous in point of law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.
2. On 3 November 1983 a supplementary benefit officer's decision was issued that supplementary allowance amounting to £1,500 had been overpaid from 14 June 1982 up to and including 1 August 1983 and was recoverable from the claimant because she had failed to disclose the material fact that she was in receipt of unemployment benefit. The amount of the alleged overpayment was later stated, on 5 December 1983, to be £1554, on 5 January 1985 to be £1500.99 and, after an adjournment of the claimant's appeal to a social security appeal tribunal "in view of the complete muddle the papers revealed", on 9 March 1984 to be £1427.94, the alleged period of overpayment being 19 July 1982 to 1 August 1983.
3. The tribunal finally heard the appeal on 18 May 1984. They had before them a revised form LT205 which states (among other matters) that the facts before the supplementary benefit officer were that the claimant made a claim for unemployment benefit on 9 June 1982 and, owing to a delay in the processing of that claim, also claimed supplementary benefit on 9 June 1982. Unemployment benefit was not actually paid until 17 July 1982 owing to disqualification, payment then continuing at various rates until 1 August 1983. The claimant had said she informed the Department of her receipt of unemployment benefit when she first received it, and that she had also told the visiting officer who saw her on 23 July 1982 and 25 January 1983. There was however no trace of any such notification "in [the claimant's] casepaper".
4. The tribunal had before them a form A11 signed by the claimant and dated 16 June 1982 and witnessed by an interviewing officer where at paragraph 4 it is stated that a claim for unemployment benefit had been made on 9.6.82 at Spurstone Office and that no benefit had been received in the last 14 days.

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5. The tribunal's recorded findings of fact were:

"Findings of Tribunal on question of fact material to decision

Appellant is separated from her husband and living with 3 dependant and 3 non-dependant children in owner occupied property. On 9.6.82 she registered for employment, claimed unemployment benefit and also supplementary benefit. Supplementary benefit was put into payment before the normal process had been completed of checking on eligibility for unemployment benefit and on the rate of mortgage interest. Four weeks later unemployment benefit was paid separately and continued thus during period of alleged overpayment. Appellant maintains that in making claim for supplementary benefit she indicated she had applied for unemployment benefit and that she therefore considered that there was nothing untoward in receiving 2 separate payments regularly. Three visits were made to the appellant following her claim but it was not until 26.9.83 that appellant advised that unemployment benefit had exhausted on 2.8.83. There is no record of any other notification of receipt of any unemployment benefit".

Their decision was:

"To confirm Benefit officer's decision that during the period 19.7.82 to 1.8.83 the sum of £1427.94 was overpaid and is recoverable by Secretary of State".

The tribunal's recorded reasons for decision were:

"The tribunal are satisfied that in failing to notify the Department of receipt of unemployment benefit the appellant failed to disclose a material fact and the consequential overpayment is recoverable in accordance with the provisions of section 29(1) of the Supplementary Benefits Act."

c. Before the tribunal, the Presenting Officer, according to the "note of evidence":

"conceded that normal procedure had not been followed in this case in that supplementary benefit had been put into payment before a check had been made as to eligibility for unemployment benefit..."

7. The decision of the tribunal is clearly erroneous in point of law on the grounds stated by the adjudication officer now concerned in paragraph 4 of his written submission dated 21 February 1985, namely failure to give adequate reasons and to find the necessary facts, in accordance with the requirements imposed by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984. For the claimant had submitted to the tribunal that she had, on 3 separate occasions, disclosed the award of unemployment benefit. The tribunal did not refer to this submission at all. It was crucial to the determination of the case. There is no indication as to why they rejected it, if they did consider it. The claimant is left entirely in the dark on this vital point.

8. The tribunal has also failed to record findings in connection with their reference to "the consequential overpayment" (which they found to be £1427.94). Section 20 of the Supplementary Benefits Act 1976 in terms provides for recovery only where the expenditure is incurred in consequence of failure to disclose a material fact (or misrepresentation). Since the claimant had stated on

16 June 1982 that she had claimed unemployment benefit on 9 June 1982 and the presenting officer had stated before the tribunal that normal procedure had not been followed with regard to unemployment benefit, there was a clear possibility that the overpayment was made in consequence of the failure of the Department to act on the claimant's statement of 16 June 1982. The failure to consider whether the expenditure was incurred in consequence of the non-disclosure was a further error of law.

9. I set aside the decision of 18 May 1984. It is neither expedient nor possible for me to give the decision that the tribunal should have given, because I have no power to find additional facts, in particular whether the claimant did in fact make the disclosure that she said she did. Accordingly, the case must be referred to another social security appeal tribunal which should, in accordance with usual practice, be entirely differently constituted. That tribunal should, in re-hearing the case, ensure that they consider and make findings of fact, and give reasons, on all relevant points raised by or on behalf of the adjudication officer or the claimant. Any further written submission by the adjudication officer to the fresh tribunal should make it clear whether repayment is sought on the ground of non-disclosure or misrepresentation or both, and should clearly identify the alleged non-disclosure or misrepresentation: see R(SB)40/84. As regards misrepresentation, the adjudication officer now concerned suggests that at least for the period following the claimant's declaration on form A11 dated 23 July 1982 (page 33 of the bundle) the possibility of misrepresentation arises. The claimant's representatives say there was no misrepresentation because the entry at 23 July 1982 makes no reference to any fact material to the issue and as far as the entry "no charges" on 25 January 1983 is concerned there had been no change in respect of the facts recorded at page 4 of form A11, in particular the claimant received no unemployment benefit for the period of 14 days prior to 9.6.82. on 25.1.83. If misrepresentation is alleged, findings will be needed on these contentions.

10. In making findings on the fundamental point, namely whether the claimant made the disclosure that she says she did, the first step must be to identify the visiting officer or officers who saw the claimant on 23 July 1982 and 25 January 1983 and to obtain particulars of the occasion and manner in which the claimant says she first informed the Department that she was receiving unemployment benefit and to see whether the person so informed, if the information is said to have been given orally, or the letter, if the claimant said it was given in writing, can be found. It should be kept clearly in mind by the tribunal that there is no principle that "what a claimant says is not evidence". If it relates to his or her own acts it clearly is evidence. By contrast, what a presenting officer says is not evidence unless it is backed up by some personal knowledge of the facts. If disclosure to the visiting officers of 23 July 1982 and 25 January 1983 is denied, the tribunal should ask to hear those officers, and afford the claimant's representative an opportunity for cross examination. If they do not appear, and that happens without adequate excuse, the weight of any assertions alleged to have been made by them may be considered to be reduced to little, or nothing. The position will be the same as regards any identifiable person in the Department whom the claimant says was first informed by her of her receipt of unemployment benefit. If such person cannot be identified, it will be necessary to consider the probabilities, in the light of all the evidence. Clear findings as to exactly why it is found that there was, or was not, disclosure on the three alleged

occasions, are essential. Where evidence is in conflict it should be stated which evidence is preferred and why.

12. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 17th July 1985.