

RFMH/MB/6

Commissioner's File: CSB/1225/1989

## SUPPLEMENTARY BENEFITS ACT 1976

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

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 23 May 1989 is erroneous in point of law and accordingly I set it aside. I direct that the case be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is the claimant's appeal against the decision of the social security appeal tribunal of 23 May 1989, leave having been granted by the tribunal chairman.

3. On 22 April 1985 the claimant, then aged 55, claimed supplementary benefit on Form B1. He stated that he was registered unemployed, had savings under £100 and had no income. He was awarded supplementary benefit from 25 April 1985. On 8 January 1986 the claimant completed form A1 notifying his change of address. He stated that he had savings of less than £500 and no income. On 6 February 1987 he declared on postal review form A2 that he was in receipt of a monthly army pension of £80.43. The supplementary benefit was not reassessed at this time. On 5 May 1987 the claimant notified the local office that his army pension had increased to £57.25 weekly but that he was unsure of the exact date of the increase. On 29 May 1987 the claimant was asked to provide pension advice slips from the commencement of the pension to date. The claimant was unable to furnish this information. In reply to an inquiry the Army Pensions Office supplied the requested particulars on 17 August 1987.

4. In the light of the evidence the adjudication officer reviewed his decision awarding the claimant supplementary benefit. His revised decision was to the effect that supplementary benefit amounting to £1,728.90 had been overpaid to the claimant for the inclusive period from 25 April 1985 to

25 May 1987. He further decided that the overpayment for the inclusive period from 25 April 1985 to 2 February 1987 amounting to £1,213.64 was recoverable from him because he had failed to disclose the material fact that he was in receipt of an army pension. The adjudication officer accepted that the overpayment for the inclusive period from 3 February 1987 to 25 May 1987 was not recoverable from the claimant. Thereupon the claimant appealed to the tribunal. The adjudication officer subsequently discovered he had made a miscalculation of the amount of benefit overpaid for the inclusive period from 25 April 1985 to 2 February 1987 and that the true figure was £1,720.76. He produced the scheduled to show how the calculation was done.

5. The hearings of the appeal before the tribunal on 28 April 1988 and 12 January 1989 were adjourned to consider Commissioners' decisions and determine the question "as to whether or not the one year suspension of payments of Supplementary Allowance whilst the appellant attended a training course, meant that his application for supplementary allowance made thereafter constituted a new claim, so that he would be unable to rely on his previous frequent disclosures of army pension in protection him from liability to repay overpayment of supplementary benefit". The claimant attended the hearing of the appeal before the tribunal on 23 May 1989. In the event the tribunal dismissed the appeal. After recording the relevant findings of fact the tribunal gave their reasons as follows:-

"The Tribunal readily accepted the appellant's statement that the misrepresentation on his part was entirely innocent. The fact remains that the existence of his army pension had not been disclosed to the Department and this was the sole and immediate cause of overpayment which is recoverable in consequence. The Commissioner's decision 688/82 had to be distinguished in view of the fact that this was "a new claim" and the Department's error should have been immediately apparent to the appellant when he received details of the calculation of his entitlement. The tribunal found the appellant to be an intelligent, articulate and utterly correct. It was with regret therefore that the tribunal found that he had put himself in the position of having to repay the overpayment received."

6. In order to recover expenditure incurred by the Secretary of State under section 53(1) of the Social Security Act 1986 (the Act) (formerly section 20 of the Supplementary Benefits Act 1976) it must be shown that the claimant misrepresented or failed to disclose a material fact. A misrepresentation is quite distinct from a failure to disclose. A misrepresentation involves the making of a statement which is inaccurate whether "fraudulently or otherwise". A misrepresentation may be wholly innocent, for instance by reason of forgetfulness, but this is an immaterial consideration for the purposes of section 53(1) of the Act (R(SB)21/82 paragraph 4(3)). A failure to disclose entails the non-disclosure of something that ought to have been disclosed. The adjudication officer's written submission to a tribunal

relied on the claimant's failure to disclose a material fact. The tribunal based their decision on the claimant's misrepresentation of the material fact. The decision failed to comply with the statutory requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in that no reasons are given for concluding that there was a misrepresentation of the material fact as opposed to the failure to disclose a material fact. The tests to be applied are different. The new tribunal should determine whether the result in overpayment of benefit was as a result of a claimant's failure to disclose or the misrepresentation of a material fact. If the new tribunal decide that there was a misrepresentation of the material fact, they will have to consider to what extent there was an overpayment in consequence of it. However, if they decide that there was no misrepresentation, then they must go on to consider whether there was a failure to disclose a material fact. The new tribunal should refer to two decisions R(SB)54/83 (paragraph 13) and R(SB)9/85 for guidance in determining these issues.

7. I now turn to the claimant's grounds of appeal. The claimant contended, and still contends, that the true cause of the overpayment was failure on the part of the Department to check the information given by him on the relevant forms of 22 April 1985 and 8 January 1986 against those given on previous claim forms which he had completed. The tribunal rejected this argument on the basis that the claim of 22 April 1985 constituted a new claim. In my view the question as to whether or not this constituted a new claim is not decisive of the issue. The fact that there had been an earlier disclosure of the receipt of an army pension did not alter the fact that in the relevant forms of 22 April 1985 and 8 January 1986 the claimant made a misrepresentation or failed to disclose the true position with regard to his income. The Department were entitled to rely on the statements made in the relevant forms of 22 April 1985 and 8 January 1986 and had no "duty" to check their veracity with previous claim forms. It remains incumbent on claimants to be meticulous in their completion of claim forms so that there entitlement to supplementary benefit can be ascertained correctly R(SB)3/90.

8. For the reasons stated above the tribunal's decision was erroneous in law. The claimant's appeal is allowed and I give the decision set out in paragraph 1.

(Signed) R.F.M. Heggs  
Commissioner

(Date) 7 February 1992