

CSB 22/1982

RFME/BW

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Van Thanh Chu

Supplementary Benefit Appeal Tribunal: Taunton

Case No: 10/152

ORAL HEARING

1. My decision is that the majority decision of the supplementary benefit appeal tribunal ("the appeal tribunal") given on 5 January 1981 was not erroneous in point of law, and accordingly I dismiss this appeal.

2. The claimant arrived in England from Vietnam on 11 July 1980. He and his dependent family were in receipt of supplementary benefit from 14 July 1980. On 1 August 1980 he moved to 3 Knightstone Close, Martock, Somerset with his wife, a dependant daughter and two unemployed non-dependant sons.

3. On 4 August 1980 an interviewing officer from the Department of Health and Social Security attended the claimant at his home. An interview was conducted through an interpreter and claims were taken from the claimant and at the same time from his two non-dependant sons. The claimant's form of statement was completed by the interviewing officer and signed by the claimant after being read to him. Unfortunately the statement omitted the information that the claimant's two non-dependant sons lived with the claimant. Accordingly the Commission omitted to deduct a rent share for either of them when calculating the claimant's entitlement to benefit. Furthermore no provision was made for the payment of the general rates on the house, as the exact amount was not then known.

4. When the particulars of the amount of general rates became known, the error in calculating the claimant's entitlement to supplementary benefit was disclosed.

5. The benefit officer reviewed the determination and revised the allowance having regard to the non-householder contribution from the non-dependant sons and the increase payable in respect of the general rates. This resulted in retrospective increase of £1.04 weekly during the inclusive period from 1 August 1980 to 14 October 1980. The claimant's non-dependant sons left his household on 16 October 1980 and this resulted in a further retrospective increase of £4.44 during the inclusive period from 15 October 1980 to 28 October 1980. The Supplementary Benefits Commission issued the decision concerning the amount of arrears payable on 30 October 1980 and on 21 November 1980 a social worker acting on behalf of the claimant wrote to question the decision. In a letter dated 26 November 1980 the Department gave the following information -

"Prior to the Department knowing about the rates payable on the property we paid the claimant £51.45 per week. When the rates demand was received the claimant was entitled to £52.49 so we paid him the difference ie £1.04 for the period 30 July 1980 to 14 October 1980 = 11 weeks. When the claimant's two sons left the household his benefit increased to £55.89 per week so we paid him his arrears of £4.44 from 15 October 1980 to 28 October 1980 = two weeks. This made a total of £20.32 arrears. We cannot pay more than the amount due to the claimant."

The claimant complained about the short-fall of £32.17 and appealed to the appeal tribunal. In a letter dated 3 December 1980 he stated -

"I wish to appeal against your decision not to pay me arrears of rates in full. I am entitled to £52.49 and you only sent me £20.32, so in fact I am owed £32.17. I realise that you claim that you overpaid me while my sons were living here. I do not understand your social security system and I could not possibly have known that you were over paying me by £3.40 per week. Your officer took my claim and those of my sons at the same time and therefore should have known that they were living at home with me. I do not feel that I should be penalised for your mistakes ..."

6. In the event the appeal tribunal dismissed the appeal in a majority decision, but the minority member expressed the opinion that the Commission was not entitled to reclaim an overpayment as a result of its error. The claimant applied for leave to appeal to the Commissioner and on 18 March 1982 I gave the necessary leave. The claimant asked for an oral hearing of the appeal a request to which I acceded. At the hearing held before me on 28 April 1983, the claimant did not attend but was represented by Mr J Douglas, Solicitor from the Child Poverty Action Group. The insurance officer was represented by Mr E O F Stocker of the Solicitor's Office of the Department of Health and Social Security. I am grateful to them both for their submissions.

7. The question at issue is whether the appeal tribunal erred in law in failing to consider section 20(1) of the Supplementary Benefits Act 1976, which provides as follows:-

"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; or

(b) any sum recoverable under this Act by on behalf of the Secretary of State is not recovered;

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

8. Mr Douglas argued that the Commission reviewed two different and separate determinations relating to two different aspects of the claim for benefit. The first determination related exclusively to the assessment of the claimant's entitlement having regard to his dependants and members of his household. This determination specifically excluded any reference to the payment of general rates as particulars of the amount payable were not known at that date and no demand had been received. As a result of that determination the claimant was entitled to conclude that no part of the benefit had been allocated to general rates. Accordingly Mr Douglas submitted an overpayment resulted because of an error in the first determination.

9. Mr Douglas then submitted that when the amount of the general rates payable became known, the Commission reviewed the determination under regulation 9(6)(a) of the Supplementary Benefits (General) Regulations 1977 and assessed the amount payable in respect of general rates to the claimant as specified in Part II of Schedule 1 to the Supplementary Benefits Act 1976. At the same time it came to light that the Commission had omitted to deduct a rent charge for the claimant's two non-dependant sons and accordingly the Commission reviewed the determination under regulation 9(1) of the Supplementary Benefits (General) Regulations 1977. Mr Douglas argued that the reviews were of two separate determinations and that accordingly the Commission had no power to off-set the overpayment resulting from the review of the first determination against an under-payment resulting from a review of a second determination without determining whether the overpayment was repayable under the terms of section 20(1). If Mr Douglas's submission is correct then the appeal tribunal erred in law in failing to consider the provisions of section 20(1).

10. Mr Stocker submitted that although supplementary allowance comprised different component parts it was one indivisible benefit. Accordingly he submitted as it was one benefit covering an indefinite period it was susceptible to review by necessity. Nevertheless although the reviews might have dealt with the different component parts, it still resulted in the review of one award in the respect of one benefit only. In the present case the assessment of the claimant's entitlement to supplementary allowance had been erroneously calculated on the basis that his two non-dependant sons were not members of the claimant's household and accordingly the Commission omitted to deduct a rent share for either of them. At the same time the Commission had omitted to allow any sum in respect of the payment of general rates. Mr Stocker contended that as the Commission had been satisfied that the determination had been based on both counts on a mistake as to some material fact, it had revised and reviewed the determination as provided by regulation 9(1)(a) of the Supplementary Benefits (General) Regulations 1977. Mr Stocker stressed that although two separate reviews had taken place they were both in respect of the same determination and accordingly it could not be said that an overpayment had occurred. The claimant had received his full entitlement and the appeal tribunal did not err in law in failing to consider section 20(1). I accept Mr Stocker's argument. The determination and subsequent reviews of that determination relate to the same period and I do not accept that proposition that each aspect of a claimant's final assessment to supplementary allowance has to be the subject of a separate determination. On the facts of the present case I am satisfied that there was one determination which became the subject of two reviews.

11. Accordingly there was no overpayment and the appeal tribunal did not err in law in failing to consider section 20(1). This decision is confined to the position prior to 24 November 1980 when the supplementary benefit (scheme) was substantially changed. I express no opinion as to the legal position from that date.

12. In view of my decision that the claimant did not receive an overpayment of supplementary benefit allowance, I do not propose to determine the question as to whether the claimant failed to disclose the fact that his two non-dependant sons were living in his house, as the question is irrelevant.

13. The claimant's appeal is dismissed.

(Signed) R F M Heggs
Commissioner

Date: 10 June 1983

Commissioner's File: CSB 22/1982
C SBO File: 952/81