

CS 8 28/1984

DGR/JA

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Shirley Anne Menzies (Mrs)

Supplementary Benefit Appeal Tribunal: Leicester

Case No: 7/110

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal dated 9 November 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal.
2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 9 November 1983.
3. On 7 March 1983 the claimant signed a statement on Form All to the effect that there were in her household six children, including Robert, and that these were her dependants. She received supplementary benefit on this basis. However, information was subsequently received by the Department that the claimant's son Robert had been in the care of the local authority since 3 February 1983. In the light of that information the benefit officer decided that by reason of the claimant's failure to notify the local office of Robert's entry into local authority care, she had been overpaid £57.15 for the inclusive period from 7 February 1983 to 20 March 1983 and that this sum was recoverable from her.
4. In due course, the claimant lodged an appeal against that decision, and the benefit officer looked again at his determination. In his submissions to the appeal tribunal he conceded that the correct amount overpaid was £39.60 only. In the event, on 9 November 1983 the tribunal dismissed the claimant's appeal, but decided that the sum overpaid and recoverable was in fact only the revised figure of £39.60.
5. In her statement contained on Form LT205 the claimant maintained that she had telephoned the local office sometime between 3 February and 7 February 1983 disclosing to them that Robert had been taken into care. Furthermore, at the hearing before the local tribunal her representative likewise contended that the claimant had given notice between those two dates. However in the tribunal's reasons for their decision there is included the following finding of fact namely that
  - "(1) wholly innocently, the claimant had failed to declare a material fact.
  - (2) As a consequence of failure to disclose the material fact that her son Robert (aged 16) had been admitted into the care of the Local authority at "Woodlands" children's home on 3 February 1983 supplementary benefit has been paid".

Now, the tribunal have neglected to say why they rejected the claimant's evidence that she had made a proper disclosure. The claimant has been left in the dark as to why she failed to satisfy the tribunal on this particular point. Manifestly, then, there has been a breach of rule 7(2)(b) of the Appeals Rules, and in consequence the tribunal's decision must be set aside as being erroneous in point of law. Furthermore, I direct that the matter be re-heard by a differently constituted tribunal.

6. In his written submission dated 8 March 1984 the benefit officer has contended that the new tribunal should make specific findings of fact as to

"(1) Whether or not the claimant declared her son's entry into care on some date between 3 February 1983 and 7 February 1983 as maintained by her;

(2) If they find that she did declare his entry into care, whether or not and if so, by what date, she would have had reason to suspect that her disclosure had been ineffective and therefore whether or not and by what date she had a further obligation to make disclosure (see Commissioner's decision R(SB)54/83 paragraph 18).

(3) Whether or not she or Mr Johnson [the father of her three youngest children] disclosed at the visit on 7 March 1983 that her son was no longer in the household and if they find that Mr Johnson made the disclosure whether this was adequate disclosure for the purposes of section 20 of the Supplementary Benefits Act 1976;

(4) Whether or not the claimant's statement dated 7 March 1983 on Form All was a misrepresentation of her dependants;

(5) If the tribunal find that the claimant did misrepresent her circumstances or fail to disclose her son's entry into care, what expenditure was incurred by the Secretary of State in consequence of that misrepresentation or failure to disclose."

I agree with the above analysis as to the specific findings required to be made by the new tribunal. They must also of course, give adequate reasons for their findings.

7. My decision is as set out in paragraph 1.

Signed D G Rice  
Commissioner

Date 30 July 1984

Commissioner's File: CSB/28/1984  
CSBO File: 1581/83  
Region: Midlands