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Commissioner's File: CSB/036/1992

SUPPLEMENTARY BENEFITS ACT 1976
SOCIAL SECURITY ADMINISTRATION ACT 1992
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is a claimant's appeal, brought by leave of the Commissioner, against a decision of the social security appeal tribunal dated 19 August 1991 which confirmed a decision issued by the adjudication officer as long ago as 6 September 1985. My own decision is as follows:

- (1) The aforesaid decision of the appeal tribunal is erroneous in point of law and is set aside.
- (2) Pursuant to section 23(7) of the Social Security Administration Act 1992, the case is referred to the appeal tribunal for determination in accordance with the principles of law set out in this decision.

2. The appeal involves events of quite staggering antiquity. The claimant's daughter Susan, who was born on 24 August 1967, left school in May 1983; left the claimant's home a few months thereafter; and claimed supplementary benefit in her own right on 5 September 1983. The claimant himself had been in receipt of supplementary allowance since January 1982. It is the adjudication officer's case that the claimant at no time disclosed the fact that Susan had left school or that she had left the claimant's home. It was not until 3 October 1984 that the adjudication officer noticed that -

- (a) the claimant's assessment of supplementary allowance included provision for Susan; and
- (b) Susan was claiming for herself.

There had, of course, been overpayment of benefit to the claimant. A brief but adequate schedule of the overpayment was annexed to the submission which the local adjudication officer made to the appeal tribunal. Correctly, the local adjudication officer applied to the case section 20 of the Supplementary Benefits Act 1976. (Section 53 of the Social Security Act 1986 had not even come onto the statute book, let alone come into effect.)

3. Enormous delays ensued. Between 3 November 1987 and 8 March 1990 the case came before an appeal tribunal upon no less than five occasions. Those tribunals adjourned for a variety of reasons, including incomplete membership and the 1990 postal strike. On 19 August 1991 the case was fully heard and the claimant's appeal was disallowed. The appeal tribunal had seen and heard the claimant and - not to put too fine a point upon it - the tribunal disbelieved his evidence as to an alleged disclosure. The tribunal treated the case as falling under section 53 of the 1986 Act (which was not, perhaps, surprising in view of the antiquity of the relevant events). Had that been the sole flaw, I should - in the circumstances of this case - have regarded it as venial.

4. But there was another flaw. The claimant is, of course, a man. All three members of the tribunal which sat on 19 August 1991 were women. Paragraph 1(8) of Schedule 10 to the Social Security Act 1975 provided that "if practicable" at least one of the members of an appeal tribunal should be of the same sex as the claimant; and a like provision now features as subsection (6) of section 41 of the Social Security Administration Act 1992. It is now more than two years since the appeal tribunal with which I am concerned sat. I have not thought it worth pursuing - at this late date - the issue of whether it was or was not "practicable" to have had a male member for the hearing. (It is usually the finding of a female member for an appeal involving a female claimant that presents the difficulty.) My own suspicion is that - at the time - the requirements of paragraph 1(8) of Schedule 10 were simply overlooked. That is unfortunate; and has resulted in a fresh tribunal's being required to investigate and pronounce upon events of 10 years ago. It is all so unnecessary. In R(SB) 2/88 the Commissioner gave simple and lucid guidance as to how the chairman of an appeal tribunal should act in this type of situation. The whole case will, of course, be at large before the fresh tribunal; and that tribunal will take heed of what is

said in paragraphs 7 and 8 of the submission dated 20 June 1992 made by the adjudication officer now concerned.

5. The claimant's appeal is allowed.

(Signed) J Mitchell
Commissioner

(Date) 20 September 1993