

DGR/SH/15

Commissioner's File: CSB/042/1991

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 27 March 1990 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the award of supplementary benefit should be reviewed and revised, so that there is no entitlement to benefit for the inclusive period from 12 February 1987 to 9 July 1987, and that the overpayment arising, amounting to £483.95, is recoverable from the claimant by reason of his failure to disclose a material fact.

2. This is an appeal by the claimant, brought with the leave of the Chief Commissioner, against the decision of the social security appeal tribunal of 27 March 1990.

3. The question for determination by the tribunal was whether there had been an overpayment of benefit for the inclusive period from 12 February 1987 to 9 July 1987, and, if so, whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986. In the event, the tribunal decided that there had been an overpayment, that it amounted to £483.95, and that it was recoverable from the claimant by reason of his failure to disclose the material fact that at the relevant time his children had been taken into local authority care. The tribunal went into the matter with a commendable thoroughness, applied the proper test as laid down in R(SB) 54/83, and were duly satisfied that, as a result of the claimant's failure to disclose the material fact of the children's being taken into care, the overpayment was recoverable. Moreover, they were entitled on the evidence to reach the conclusion they did.

4. The thrust of the claimant's complaint to the Commissioner is that not all the evidence before the tribunal was complete. He complains that page 26(a) of the bundle was not before the tribunal on 22 March 1990. That is correct, but as that particular page had no relevance to anything the tribunal had to determine, its omission was wholly immaterial, and there can be no question of setting aside the tribunal's decision on that ground.

5. However, the adjudication officer now concerned has pointed out that there would appear to have been no review and revision of the original award by the adjudication officer pursuant to sub-section (4) of section 53 of the Social Security Act 1986. Moreover, recovery under section 53 is not possible unless sub-section (4) has been complied with. It would seem that the adjudication officer at first instance never did review and revise the original award, and accordingly there was no power of recovery. Unfortunately, the tribunal failed to consider this point, and on this ground I must set aside their decision.

6. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision. As regards the failure to comply with sub-section (4), I can, pursuant to my decision in CSB/1272/1989, make good the omission in reliance on section 102(1) of the Social Security Act 1975, so as to obviate the need for the proceedings to be started all over again ab initio with all the wasted time and money involved. Accordingly, I do so rectify the omission, and I reinstate the tribunal's decision for the reasons relied upon by the tribunal. As regards the amount of the overpayment recoverable, I understand that this figure is not in dispute.

7. Accordingly my decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

(Date) 1 April 1992