

JJS/1/LM

Commissioner's File: CSB/046/1990

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 is erroneous in point of law and accordingly I set it aside; I refer the case for determination to a new social security appeal tribunal.

2. This is a claimant's appeal against the decision of the Sheffield social security appeal, given on 9 July 1986, which decided that the sum of £1,881.39 by way of supplementary benefit had been overpaid to the claimant and was recoverable by the Secretary of State.

3. I have before me written argument prepared on behalf of the claimant by Mr Andrew Balchin, senior welfare rights officer with the City of Sheffield Metropolitan District, and a submission made by the adjudication officer now concerned which supports the appeal.

4. A long time has elapsed since the decision was given. Indeed the application for leave to appeal was not made until 22 March 1989. Leave to appeal was given on 30 January 1990. However the papers only came before me on 8 January 1992. The delay must be all the more the annoying to the claimant because it is accepted by the adjudication officer now concerned that the decision is erroneous.

5. It was not in dispute before the tribunal that supplementary benefit amounting to £1,881.39 had been overpaid to the claimant between 4 January 1984 and 27 March 1985 and that the cause of that overpayment was the ignorance on the part of the supplementary benefit section of the local social security office of the fact that the claimant's wife had been employed throughout that period. The question before the tribunal was whether all that money or any part of it was recoverable from the claimant. The members of the tribunal decided that the whole overpayment was recoverable from the claimant because he had failed to disclose that his wife was employed. It was the claimant's case before the tribunal that he had in fact reported the change in his wife's circumstances to the staff at his local unemployment

benefit office in February 1984, when he had been called there for an interview, and had produced to the officials his wife's wage slips. The members of the tribunal accepted that there was no fraudulent intent on the claimant's part and that he had done what he could to make disclosure to the unemployment benefit office in February 1984. They went on to say that when he received an increase of £18.00 per week there was a duty on him to take steps to ensure that the information he had given had been properly processed.

6. It is conceded by the adjudication officer now concerned that the tribunal, faced with the claimant's evidence, should have made sufficient findings of fact to enable them to determine whether what had passed between the claimant and the officers at the unemployment benefit office constituted sufficient disclosure and whether that disclosure was made in circumstances which made it reasonable for the claimant to think that the matter disclosed would be passed on to the local social security office. It is accepted by the adjudication officer now concerned that the tribunal failed to do this and that its failure constituted an error in law. I agree that this is so and that I have no alternative but to set aside the decision of the tribunal. I would have liked to have given the decision myself. But I could only do so if I held an oral hearing and it seems to me that to do so would cause even more delay. Consequently I refer the case back to a new tribunal. I direct that they be supplied with a copy of the adjudication officer's submission to the Commissioner dated 5 March 1990. I remind the members of the new tribunal in particular to follow the guidance given by the Tribunal of Commissioners in R(SB) 15/87. The new hearing should be conducted as expeditiously as possible.

(Signed) J J Skinner
Commissioner

Date: 3 February 1992