

REP

Commissioner's File: CSB/074/1991

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

Name: John Tegg

Social Security Appeal Tribunal: Manchester

Case No: 614:16331

1. My decision is that the decision of the social security appeal tribunal given on 21 March 1990 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the majority decision of the social security appeal tribunal of 21 March 1990.

3. On 20 July 1981 the claimant applied for supplementary benefit. In his claim form, he properly made reference to his being in receipt of an occupational pension. However, as he had capital in excess of £2,000, he was not eligible for benefit, and accordingly the claim failed. On 3 November 1981 the claimant reapplied for benefit, but unfortunately he failed to state on his claim form that he was in receipt of an occupational pension, and an award was made in the absence of that information. When the true position came to light, the adjudication officer reviewed the original award, and decided that there had been an overpayment of benefit amounting to £4,712.11. He further determined that this sum was recoverable from the claimant by reason of his failure to disclose the material fact of his occupational pension. In due course, the claimant appealed to the tribunal.

4. In his submissions to the tribunal, the adjudication officer made it quite clear that there had been a review and revision, and that section 53(4) had been complied with, and he grounded his case for recovery, not on a failure to disclose, but a positive misrepresentation contained in the claim form. He also contended for the recovery of only £767.22.

5. In the event, the tribunal upheld the decision of the adjudication officer, subject to a reduction in the overpayment to the new sum suggested, but appear to have based their decision that the overpayment was recoverable, not on misrepresentation, but on a failure to disclose.

6. The tribunal made the following findings of fact:-

"[The claimant and his wife] were interviewed twice (before they were married), on 20.7.81 and 3.11.81, by the same DHSS officer on each occasion. On the first occasion he disclosed all his capital and income, including his occupational pension and the officer completed a claim form for Supplementary Benefit which the appellant then signed. However, his claim was disallowed because his capital exceeded the limit of £2,000. By the time of the second interview it had been reduced to less than £2,000 and he was therefore eligible for Supp Ben. However, this time his occupational pension was not entered on the claim form although the appellant duly signed the same. This was clearly a material fact which ought to have been disclosed on the claim form. The appellant was overpaid £519.01 Supp Ben in respect of the period from 5.11.81 to 21.11.82, plus water charges rebate totalling £248.21 for a longer period up to 15.6.86 (plus housing benefit totalling £1,251.31, which was not within the tribunal's jurisdiction), all because his occupational pension was not taken into account, and in the opinion of the majority of the tribunal partly in consequence of his failure to specifically disclose the same in his second claim form completed at the interview with the DHSS officer on 3.11.81."

The tribunal gave as the reasons for their decision the following:-

".....

All the tribunal accepted the evidence of [the claimant and his wife] and also her daughter ... at the hearing, in particular that he had disclosed his occupational pension to the DHSS officer at both interviews. However, the majority view was that he should also have read through the second claim form before signing the same, and to this extent at least some of the blame for the error was his responsibility even though he clearly did not realise he was being paid too much benefit."

7. Now in so far as the tribunal based their decision on a failure to disclose, I do not think that their determination can stand in the light of their acceptance that the claimant had disclosed his occupational pension at the interview on 3 November 1981. Although the disclosure was not contained in the claim form, it was made orally and that should have alerted the local office to the need to take this income into account. Moreover, it was not, in my judgment, open to the tribunal to have taken the alternative view that there had been a misrepresentation. Although the omission from the claim form rendered the statement made by the claimant that all the information was "complete" was a clear misrepresentation, its effect was neutralised by the oral statement. The principle of R(SP) 18/85 applies. I agree with the submission of the adjudication officer now concerned:-

"The Commissioner then went on to say in paragraph 10 [of R(SB) 18/85] that a written statement may well be qualified by the production of evidence or oral disclosure. In the case before the Commissioner the claimant produced his army pension book, whilst in the present case the tribunal have accepted that pension slips were produced and that the claim form was not read back to the claimant. In the light of this the tribunal should have explained how they had distinguished the present case."

8. Accordingly, whether the tribunal considered the matter from the standpoint of a failure to disclose - and they appear to have dealt with the matter solely on that basis - or from the standpoint of misrepresentation, recovery was not possible under section 53. The tribunal therefore erred in point of law and I must necessarily set aside their decision. It is not open to me to determine the matter myself. For there is a complication. It would appear that a visit was made to the claimant's home on 14 April 1982, and it is the contention of the adjudication officer now concerned that the normal procedure would be that the earlier statement would be read back to him to check that it was accurate. It is not clear whether or not that practice was followed in this particular instance. This will have to be investigated by the new tribunal. If they are satisfied that there was a misrepresentation as from 14 April 1982 and/or a failure to disclose, then the amount of overpayment will have to be recalculated.

9. Accordingly I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 1 April 1993