

**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 31 July 1989 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 there has been an overpayment of supplementary benefit amounting to £1,569.78, and that this sum is recoverable from the claimant pursuant to section 20 of the Supplementary Benefits Act 1976 by reason of the claimant's failure to disclose a material fact.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 31 July 1989.

3. The question for determination by the tribunal was whether there had been an overpayment of supplementary benefit, and if so, the amount thereof, and whether the same was recoverable from the claimant pursuant to section 20 of the Supplementary Benefits Act 1976. In the event, the tribunal purported to confirm the decision of the adjudication officer, which would mean that the sum overpaid and recoverable was £3,273.44. However, the adjudication officer in his submissions to the tribunal contended that the true figure was £1,569.78 and produced a schedule in support thereof. By implication the tribunal seem, in the reasons for their decision, to have accepted that the figure of £3,273.44 was not correct, but it is not apparent from their decision exactly what they considered was the correct amount of overpayment. Clearly, the tribunal's decision cannot stand.

4. What was not in dispute was that there had been an overpayment of benefit by reason of the claimant's failure to

disclose the fact that he had capital assets over the statutory limit. As to the exact amount of that overpayment, the officer produced to the tribunal a new schedule and this clearly showed that the amount of benefit overpaid came to £1,569.78.

5. It is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision. I accept that the overpayment is correctly set out in the revised schedule presented by the adjudication officer, and accordingly the true sum overpaid is £1,569.78. There has been a clear failure to disclose a material fact on the part of the claimant, and as a result overpayment is recoverable under section 20 of the Supplementary Benefits Act 1976.

6. However, the chief ground of appeal to the tribunal, and seemingly to myself, is on a point wholly unconnected with the calculation of the overpayment. The adjudication officer now concerned in his submissions dated 16 May 1990 sets out conveniently the contention of the claimant:-

" 2. The claimant's main ground of appeal to the Commissioner is that the overpayment should not be recoverable because, had he been asked to repay it in a lump sum immediately following the withdrawal of benefit on capital grounds in February 1984, he could have done so at once and thereby brought his capital below the cut-off point bringing him back into benefit entitlement without a break. As it happened, he was not re-entitled to benefit until June of that year ...."

The adjudication officer now concerned answers this point as follows:-

" 3. [That] ground of appeal is not material to the determination under appeal. The overpayment period ended with the withdrawal of benefit from 6.2.84. The period in dispute ended on the previous day. A hypothetical question concerning possible entitlement from 6.2.84 is a matter completely separate from the one under appeal; the claimant is free to make a claim for benefit from that day to the day from which benefit was eventually awarded (29.6.84), and in the event that the claim fails on capital grounds, it will be a matter for the Secretary of State (not the adjudicating authority) to consider whether any compensation might be due because of administrative delay."

I accept that submission.

7. It follows that there is no force in the claimant's main ground of appeal. Nevertheless, I still have to deal with the question of the calculation of the overpayment.

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

(Signed) D.G. Rice  
Commissioner

(Date) 2 March 1992