

JSW/II

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON
A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

26/198

§. 20

to show that the deceased was not a resident in the United Kingdom at the time of his death and that the deceased was not a resident in the United Kingdom at the time of his death.

1. My decision is that the decision of the Buckinghamshire Supplementary Benefit Appeal Tribunal is not erroneous in law but is varied because of the death of the original claimant.
2. The original claimant (referred to as "the deceased") received supplementary benefit for the period 24 May 1976 to 12 March 1979. He was a single man, aged 64 years, when he was discharged from a hospital which cares for the mentally ill on or about 22 May 1976. He was released into board and lodgings accommodation following a lengthy spell of institutional care. At the request of the hospital social welfare worker, he was visited and a claim for supplementary benefit was made by him on 21 May 1976. He declared that his only income was invalidity benefit and his only capital was £173 in the Post Office savings bank. He continued to receive supplementary benefit and made oral statements and corresponded with the local office concerning his circumstances. He was visited on 19 March 1979, when he changed his address, and at that interview he declared that he possessed capital of several thousand pounds and that his financial affairs were dealt with by his brother, now the deceased's personal representative. In a letter, dated 26 March 1979, the deceased's brother (to whom I refer as "the personal representative") asked that the deceased be not approached as to his financial affairs since they were dealt with by himself as a receiver appointed by the Court of Protection. The first occasion on which the Court of Protection was brought to the notice of the Department of Health and Social Security or that the deceased had a brother who handled his financial affairs was on 19 March 1979. Following investigation, the personal representative confirmed that the deceased had capital assets to the value of £12,474. That was the total of money held in accounts with three building societies. On 12 November 1976 the deceased's home was sold for £5,823.
3. Supplementary benefit was paid to the deceased by order book which involved signing the order to pay each week. A portion of the weekly benefit was paid direct to the landlady in order to secure the deceased's accommodation to which he had been released from the hospital. The accommodation was designed specifically to meet the needs of psychiatric patients. Details of payments of benefit made are shown in a schedule in the case papers. Payment

of supplementary benefit was suspended from 19 March 1979 when it was disclosed that the deceased had capital of several thousand pounds pending further details from the personal representative. Further information revealed that, at 14 November 1977, the deceased possessed assets stated to be in the region of £14,163.

4. The benefit officer, in the written submission to the Commissioner, has referred to the relevant provisions of the Social Security Act 1966 (Ministry of Social Security Act 1966 (c.20)), Schedule 2, Paragraphs 21 and 22, as amended by the Social Security Benefits Act 1975, Schedule 3, paragraphs 2 and 3. The minimum amount of capital held at any time during the period of overpayment which would extinguish entitlement to supplementary benefit would have been £5,750 as the maximum amount of benefit payable was £22.50 under the statutory provisions in force prior to the legislation now operative. The Supplementary Benefits Act 1976, Schedule 1, paragraphs 20 and 23, also apply prior to the amendment of that Act by the Social Security Act 1980. The evidence shows that the amount of capital assets was throughout in excess of the above figure. As regards the overpayment and recovery of the amount overpaid, section 20 of the Supplementary Benefits Act 1976, as amended, and regulations 3 and 4 of the Supplementary Benefit (Transitional) Regulations 1980 [SI 1980 No. 984] apply.

Section 20 of the Supplementary Benefits Act 1976, as amended, provides as follows -

- "20 - (1) If, whether fraudulently or otherwise, any person misrepresents, or fails to disclose, any material fact, and in consequence of the misrepresentation or failure -
- (a) the Secretary of State incurs any expenditure under this Act; or
 - (b) any sum recoverable under this Act by or on behalf of the Secretary of State is not recovered,

the Secretary of State shall be entitled to recover the amount thereof from that person."

5. The benefit officer determined that the deceased was overpaid £1,641.79 for the period 24 May 1976 to 12 March 1979 and that the amount was properly recoverable. The personal representative appealed and appeared at the hearing before the appeal tribunal in his capacity as receiver for the deceased. The appeal tribunal confirmed the decision of the supplementary benefit officer and found that the overpayment arose due to the failure to disclose a material fact and that the computation of the sum of £1,641.79 was correct and was recoverable. To avoid any possible misunderstanding, no question of fraud or of misrepresentation arises: the issue is as to failure to disclose any material fact.

6. I granted the personal representative, as receiver for the deceased, leave to appeal on 26 March 1982. The appeal was lodged on 12 August 1982 which was out of time, but I granted an extension of time. The deceased died on 5 August 1982. Proceedings in the Court of Protection are in general abated on the death of the patient until his personal representative has been duly constituted (Halsbury's Laws of England, fourth Ed. Vol 30, paragraph 1274). I am informed that the personal representative is the personal representative of the deceased's estate and I assume that he has been granted letters of administration.

7. It was decided by the Court of Appeal in Secretary of State for Social Services v Solly [1974] 3 ALL E R 922, on identical language in section 26(1) of the Ministry of Social Security Act 1966 to that of section 20(1) of the Supplementary Benefits Act 1976, as amended, that the Secretary of State was enabled to recover expenditure incurred in consequence of a misrepresentation not only from the claimant, ie. the person who had made the misrepresentation, but also, when the claimant was deceased, from the executor. Although that was not a decision on the present Act and dealt with misrepresentation and not failure to disclose any material fact, I see no reason why it should not apply as authority in the present case on failure to disclose any material fact.

8. The Court of Protection has exclusive jurisdiction over all the property and all the affairs of the patient in all their aspects but not the management or care of the patient's person: In re W (E.E.M.) [1971] Ch. 123, explained in re S. (F.G.) (Mental Health Patient) [1973] 1 WLR 178, both decisions of Ungood-Thomas J. The management of the property and affairs of the patient (the deceased) were by order in the control and supervision of the Court of Protection under the provisions of the Mental Health Act 1959. By order of that Court, dated 22 November 1974, the personal representative, the deceased's brother, was appointed receiver with such powers only as were conferred on him by that order or by any subsequent order or direction or authority. The powers conferred on the personal representative, as receiver, covered a variety of matters affecting the welfare and property of the deceased. As far as relevant to this appeal, the powers included the following -

"3 The Receiver is authorised in the name and on behalf of the Patient to receive and give a discharge for:-

(a) the benefits to which the Patient is entitled from the Department of Health and Social Security and for that purpose to make immediate application for payment (accompanied by an office copy of this Order) to the local office of the said Department".

The receiver was also authorised to deal with the patient's dividends, interest and income and sums of money standing to the credit of the patient in a banking account and in a building society account. Sums of £3,421.77 and £7,635.87

on share accounts in two named building societies were to be allowed to remain, subject to the interest being paid to the receiver, and provided that no part of the principal sums were to be withdrawn except under sealed directions of the Court.

9. The benefit officer dealing with this appeal has referred to a textbook - Heywood and Massey, Court of Protection Practice - in which liability in tort of a person of unsound mind is considered. Hanbury v Hanbury (1892) 8 T. L. R. 560 is cited at page 230 in which -

"... Lord Esher M. R. said he was "prepared to lay down as the law of England that whenever a person did an act which was either a criminal or a culpable act, which act, if done by a person of perfect mind, would make him civilly or criminally responsible to the law, if the disease in the mind of the person doing the act was not so great as to make him unable to understand the nature and consequences of the act which he was doing, that was an act for which he would be civilly or criminally responsible to the law." The judgment containing the above remarks was concurred in by Lindley and Kay L. JJ. The textbook writers of that period, and since, adopted a very similar view. They state their arguments in the converse form, and point out that negligence, intention, or malice cannot be imputed to those who lack reasoning powers, and who consequently stand in much the same position as a very young child.

.....

However, although the law still cannot be regarded as finally settled on the subject, the matter has been carried a stage further by the decision in Morriss v Marsden ([1952] W. N. 188). The ratio decidendi of that case seems to be that if a person suffering from mental illness commits a tort (which in that case was assault and battery, ie not one in which malice is directly relevant), and that at the time of committing it he knew the nature and quality of his act, although he did not know that it was wrong, he is nevertheless liable."

10. In terms of section 20 of the Act of 1976, it is not necessary to show intention or malice or even negligence on the part of the deceased in failing to disclose at the relevant time his capital assets. In my opinion, it is necessary to show that the deceased either knew or with reasonable diligence ought to have known that he possessed such assets. I respectfully agree with statements to that effect in Decision CSB11/82 (reported as Decision R(SB)21/82, paragraph 20 (4). Since the reason why the Court managed and administered the deceased's property and affairs was because he was incapable, by reason of mental disorder, of doing so himself (Mental Health Act 1959, section 101) I am not prepared to infer, as a matter of law, that he either knew or ought to have known of his assets or of the amount disclosed by the personal representative or by the order of the Court of 22 November 1974. The deceased does not appear to have attended the hearing by the appeal tribunal and it would not now be possible for an appeal tribunal to ascertain his capacity for knowledge of such matters.

11. The responsibility for dealing with benefits to which the deceased was entitled from the Department of Health and Social Security and for making application to the local office of the Department was legally and plainly that of the personal representative as receiver. He knew of the deceased's assets, as set out in the order appointing him receiver, and he either knew or ought to have known that the deceased was receiving supplementary benefit, if only because a portion of the weekly benefit was being paid to the landlady to secure the deceased's accommodation. Section 20 of the Act of 1976 covers any person who fails to disclose any material fact. I agree with the observation in paragraph 4 (2) of Decision R(SB)21/82 above that -

"... a "failure" to disclose necessarily imports the concept of some breach of obligation, moral or legal - ie the non-disclosure must have occurred in circumstances in which, at lowest, disclosure by the person in question was reasonably to be expected: ...".

12. In my judgment, the decision of the appeal tribunal was not erroneous in point of law in confirming the decision of the supplementary benefit officer that the amount of overpayment was properly recoverable. The deceased who received the benefit has died since the decision of the appeal tribunal and the Secretary of State will be entitled to recover the amount overpaid from his estate. The personal representative, in failing to disclose the deceased's assets, was acting as receiver (or agent) on the deceased's behalf. The personal representative is acting in a representative capacity only in this appeal and, if there is any question as to his liability to the estate or to the Court of Protection in connection with the repayment, those are not matters within my jurisdiction.

13. The appeal is dismissed.

Signed J S Watson
Commissioner

Date: 14 March 1983

Commissioner's File: CSB/86/1982

C SBO File: 1003/81