

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 social security appeal tribunal did not err in law in this matter in its decision given on 30 October 1989. I accordingly dismiss the claimant's appeal.

2. Pursuant to claims which he made under the Supplementary Benefit (Urgent Cases) Regulations 1981 [SI 1981 No. 1529] the claimant was on 3 April 1986 given a food voucher to the value of £25 and a giro cheque for £14.43 pursuant to regulation 10; a further food voucher to the value of £15 and a further giro cheque for £6.47 were received by the claimant on 10 April 1986. The total of the amount and value paid was £60.90.

3. It now transpires that on 10 April 1986 the adjudication officer concerned annotated the record "Total UNP recoverable £60.90". It is now common ground that the claimant was never told that the amount or value of the payments was recoverable and that the assertion in a letter seeking repayment from the Department to the claimant dated 10 December 1986 that the benefit was paid -

"..... on the understanding that you would be asked to repay it".
was quite wrong.

4. By regulation 7 of the Supplementary Benefit (Urgent Cases) Regulations it was provided that no sum paid by virtue of those regulations was recoverable by the Secretary of State (so far as material) save to the extent that an adjudication officer had determined in accordance with regulation 25 that it was so recoverable. A Commissioner by a decision dated 16 November 1988 determined on the evidence then available that there had been no such determination and accordingly set aside an earlier decision of a social security appeal tribunal dated 30 April 1987.

5. In my judgment the note to which I have referred makes it

clear that there was a sufficient determination by an adjudication officer (who has been identified) on 10 April 1986 for the purposes of regulation 7. That determination was not however notified to the claimant until a letter dated 13 January 1989 was sent to him, that is more than 2¹/₂ years after the decision to require repayment had been taken.

6. The material provision in regulation 25 of the Urgent Cases Regulations was Regulation 25(6), which was in the following terms:-

"(6) Any other sum paid by virtue of these regulations shall not be recovered where -

.....

(b) the claimant is not entitled to a pension or allowance pursuant to the Act but -

(i) the amount of his income resources, if any resources which would otherwise fall to be disregarded under the Resources Regulations are taken into account in full, is less than the amount of requirements applicable to him under the Requirements Regulations, and

(ii) he has no capital resources other than those which fall to be disregarded under regulation 6(1) of the Resources Regulations,

and it is, in the opinion of the adjudication officer, likely that sub-paragraph (a) or (b) would apply to him for a period in excess of 6 months from the date of the payment of the sum under these regulations".

7. It is settled that the applicability or otherwise of Regulation 25(6)(b) has to be determined as at the date of the respective payments, that is in the present case on 3 and 10 April 1986 respectively. It is clear that at that time the requirements of regulation 6(b)(i) (income resources below the appropriate requirements level) and (ii) no capital resources other than those to be disregarded) were satisfied. However, there is a third limb to regulation 25(6)(b), that as at the respective dates of payment on 3 and 10 April 1986 it was likely that (materially) sub-paragraph (b) would apply to the claimant for a period in excess of 6 months from the date of the respective payments. There was no material evidence then in relation to any potential change in capital resources from nil. However, there was then material evidence as to whether the income resource position then was likely to apply for a further 6 months. This evidence was principally that the claimant's wife was in work in circumstances which did not indicate that the employment was merely temporary and that she was reasonably to be anticipated to continue to receive rather more than £390 per month. It was also likely that unemployment benefit would

continue to be payable to the claimant unless in the meantime he obtained paid employment, and that his wife would be likely to receive back her amended child order book during the period together with any arrears due for the period. In my judgment it was open to the adjudication officer and on appeal from him the tribunal to conclude that as at the dates of the payments in April 1986 it was indeed not likely that regulation 6(b) and (i) would apply to the claimant for a period in excess of 6 months from the dates of payment. In my judgment there is no fault in law with the reasoning and findings of the tribunal on this point.

8. The claimant has made the point that the recovery cannot apply in respect of benefit received by him by way of voucher. There is a discretionary power for requirements of a claimant to be met in kind, under regulation 12 of the Supplementary Benefit (Claims & Payments) Regulations 1981. I do not agree that the exercise of that power excludes the value or amount of vouchers from being "sums paid by virtue of these regulations" within the recovery provisions in regulation 7 of the Urgent Cases Regulations 1981.

9. In my judgment the fact that the claimant was not told that the sums in question were recoverable is not a bar to the entitlement of the Secretary of State to recovery. However, as the adjudication officer in his submission to a Commissioner points out, it is for the Secretary of State to determine if recovery in fact is to be sought, and in the circumstances of the present case that decision will need careful consideration in my view. However, the decision is not for me.

(Signed) Leonard Bromley
Deputy Commissioner

(Date) 28 February 1992