

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 Brixton social security appeal tribunal, given on 4 October 1990, is erroneous in point of law and accordingly I set it aside; I remit the case for determination to a new social security appeal tribunal.

2. This is a claimant's appeal against the decision of the Brixton social security appeal tribunal, given on 4 October 1990, which upheld a decision of the adjudication officer that an overpayment of £3,077.09 had been made to the claimant and was recoverable under the provisions of section 53 of the Social Security Act 1986.

3. I have before me written grounds of appeal prepared on behalf of the claimant by Mr Marcus Revell of the Welfare Rights Unit, GLC CABS, and a submission from the adjudication officer now concerned which supports the appeal.

4. On 31 May 1984 the claimant sought supplementary benefit by a claim made to the Wandsworth office of the Department of Social Security. He was paid through the sickness benefit section as he was unfit for work. At that time he was the owner occupier of 58 East Street and he had a mortgage with a building society. As he was unable to meet the mortgage payments the building society repossessed the property and the claimant and his family moved to a guest house at Ravenna Road, Putney on 25 March 1986. He reported this change to the Wandsworth local office. He then completed a form A1, which was issued to him on that date, and he was awarded supplementary benefit assessed on the information which he provided on such form. Benefit remained in payment on this basis until 29 March 1987. In the intervening period the claimant had changed address twice, to Durham Close and later to Tankerville Road. These moves were not known to the Department of Social Security and because they were not known the overpayment resulted. The tribunal found that the claimant failed to disclose the material fact, his change of address, and further that he misrepresented this fact by holding out to the Wandsworth office on a number of occasions that he still resided in the guest house. The case for the claimant before the

tribunal was that there had been disclosure of the material fact. His evidence was that he had written two letters dealing with the change to the different addresses and further that he had telephoned the Department of Social Security and was told that the letters had been mislaid. The claimant further stated that he had noted the sickness benefit section on 6 June 1986 of the fact of his change of address.

5. It is common case before me that the decision of the tribunal is erroneous in law for two reasons. First because the members have made insufficient findings of fact regarding the notification to the sickness benefit section of the office of the claimant's change of address. It is accepted by the adjudication officer now concerned that the sickness benefit section were aware of the change of address and that the tribunal should have made findings as to when the notification of such change was given and whether it was reasonable to expect the information to be transmitted to the supplementary benefit section. It is pointed out that the claimant may well have complied with the instructions in his order book by notifying the issuing officer and the production of the actual book would have assisted the tribunal in this respect. I accept that this contention is well founded. I commend to the attention of the new tribunal the guidance given in R(SB) 15/87.

6. Second it is accepted that the decision of the tribunal is also erroneous in law because they have not dealt with the question of the review required by section 53(4) of the Social Security Act 1986. In the case before me it is accepted that neither the adjudication officer nor the tribunal dealt with the review question. It would transpire from what is said by the adjudication officer in his submission that a review took place, and if this is so then the adjudication officer should ensure that the relevant papers are put before the new tribunal.

7. Mr Revell has taken the point that in so far as the notice to the supplementary benefit section is concerned, the tribunal erred in law in the way that they dealt with the proof of disclosure. I do not agree. I have read the findings of the tribunal with care and it is clear that they did not accept the claimant as a witness of truth in so far as such disclosures were concerned. They evaluated his evidence and they gave reasons - the discrepancy in the times and addresses - for not believing it. I agree that the reasons for the decision might have been more happily worded but it is clear from the decision as a whole that the tribunal did not accept the claimant's evidence.

8. Mr Revell has also taken the point that in the reasons for decision the tribunal found that the claimant misrepresented his address on the legal aid form which he completed. He submits that the representation made to the legal aid board is not a misrepresentation for the purpose of section 53. Undoubtedly that is so. While such a misrepresentation cannot be the basis for recovery of an overpayment under the section, it can be accepted by a tribunal as evidence of the claimant making

representations which are untrue as to the material fact, the address, which have a bearing on the question of the claimant's credibility. They were entitled to have regard to it when considering his truthfulness. It does not appear to me that they determined that it constituted the failure to disclose or the misrepresentation for the purposes of the section.

9. Mr Revell has rightly pointed to an error as to the relevant period for which overpayment was ordered. The adjudication officer before the tribunal conceded that recovery was sought only for the period 14 July 1986 to 29 March 1987 and that the overpayment made in respect of the period 14 April 1986 to 14 July 1986 was not recoverable. The tribunal in its decision referred to an overpayment of £3,077.09 in respect of the period 14 April 1986 to 29 March 1987. This was an error in so far as the period was concerned; the sum of £3,077.09 related to the period commencing at the later time.

10. I direct that the new tribunal in rehearing the case shall pay particular attention to the aspects to which I have referred in this decision above. Further they shall make and record their findings on all the material facts and given reasons for their decision. No doubt the adjudication officer will ensure that all the relevant papers are placed before them. It is to be hoped that the Citizens Advice Bureau will continue to give assistance to the claimant.

(Signed) J J Skinner
Commissioner

Date: 16 March 1992