

JGM/RPM

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND  
APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL  
ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal: Woolwich

Case No: 20/9

[ORAL HEARING]

1. I grant to the claimant leave to appeal against the decision of the supplementary benefit appeal tribunal dated 7 October 1983 and the claimant, through his representative and the benefit officer (as he then was) having consented to my doing so I am proceeding to determine the question of law arising on the application as a question arising on the appeal. So treating it I allow the appeal and set aside the decision of the tribunal as being erroneous in point of law. The matter must be referred to another tribunal.

2. This is an appeal against a decision requiring repayment of overpaid supplementary benefit under section 20 of the Supplementary Benefits Act 1976. The amount found to have been overpaid by the benefit officer was £351.82 in respect of a period from 4 August to 3 November 1981, which he required to be repaid on grounds unspecified in the decision as summarised in the form LT 205, though it appears from that form that it was considered that the claimant had failed to disclose that his wife was in receipt of unemployment benefit. It also appeared from that form that the benefit officer considered that the amount overpaid had been wrongly calculated and (the claimant having appealed) the appeal tribunal were invited to substitute the recalculated amount (shown in a schedule produced to the tribunal) of £319.78 as the amount required to be repaid. The appeal tribunal confirmed the benefit officer's decision substituting the recalculated amount.

3. The benefit officer in the form LT 205 indicated that the fact that the claimant's wife was drawing unemployment benefit was unquestionably disclosed to the local office on 20 October 1981; and also (1) that the wife had been entitled for some time to an additional dietary requirement claimed on 6 September 1982, (2) that arrears were owing to him on that account and (3) that arrears

157/1984

Over payments  
set off  
not to be  
52 etc

amounting to £133.45 would be allowed against the amount required to be repaid by way of set-off, this being the amount of arrears back to 2 November 1981. The amount of this offset, being related to a different period from that of the overpayment claimed, was not treated as a direct deduction from the overpayment but merely as a sum allowed against it. As such it was not treated as affecting the decision appealed from but only the method of recoupment of the amount overpaid.

4. The claimant appealed against the appeal tribunal's decision. He was represented at the oral hearing before me by Miss J Allbeson of the Child Poverty Action Group and the benefit officer was represented by Mr E O F Stocker. The appeal tribunal recorded that the claimant (whose evidence in this respect was confirmed by his wife) reported that his wife was registering as unemployed and claiming benefit and credits. The tribunal however found as a fact that the claimant failed to notify the Department that his wife was receiving unemployment benefit. They presumably considered that he did not disclose enough (taking into account what he had put his name to on the claim form which did not mention it) to constitute disclosure of his wife's unemployment benefit. Miss Allbeson rightly conceded that there was no error of law in this finding, though, when the matter for other reasons goes back to another tribunal, the question will be at large again. I would point out to the fresh tribunal that if they do find that there was adequate disclosure on 11 August 1981 they ought still to consider the continuing nature of the obligation to repeat disclosure that arises if after disclosure has been made it should be apparent that the disclosure has been ineffective (see Decision R(SB) 54/83 at paragraph 18).

5. Miss Allbeson's criticism of the decision centered round two separate points. First she pointed out that, as appeared from the LT 205, full disclosure had been made on 20 October 1981 while part of the amount required to be repaid related to benefit in respect of a period ending on 3 November 1981 or possibly at the end of the week beginning 29 October 1981. She submitted therefore that the tribunal ought to have allowed some deduction from the amount to be repaid on this account. Mr Stocker however stated that the last relevant payment would in the ordinary course have fallen due for payment on 22 October 1981 and would probably have been dispatched on 20 October, in which case the disclosure would have come too late to stop the payment, and the previous non-disclosure would have continued to be the operative cause of the overpayment made at that time. This may of course be so. But the point was apparent from the form LT 205 itself and the tribunal made no findings relevant to it, and to all appearances overlooked the significance of it. In my judgment the findings do not deal with the point at all and the question whether (if the matter was not earlier disclosed) the cause of the last overpayment was the previous non-disclosure or the failure to have regard to the disclosure made on 20 October must be considered by the new tribunal.

6. Miss Allbeson's second point related to the additional dietary requirement. She said that if the additional dietary requirement should have been allowed from an earlier date, then the amount of

the overpayment during the period in issue would be reduced by the amount of the dietary requirement during such part of that period as it would have been payable. This (she submitted) would thus not merely have been a matter of set-off when it came to the actual repayment, but went to the correctness of the decision. Mr Stocker submitted that the mere fact that the tribunal had been told that the dietary addition was payable (and allowable by way of set-off from 2 November 1981) did not oblige them to go into the matter any further and enquire whether the additional requirement might have been payable from some earlier date. Had the tribunal simply been informed that the set-off was allowable from 2 November I should have agreed that (in the absence of a submission covering the matter) they were certainly not so obliged.

7. But the tribunal were given a good deal more information about the additional requirement in the form LT 205. This after indicating that the claimant's wife had called at her local office on 6 September 1982 for help with certain expenses including a special diet for an ulcer and that she had submitted a diet sheet on 16 November 1981 (meaning 1982) went on as follows:-

"An additional requirement for dietary expenses was then awarded and consideration was given to what payment of arrears should be made. In connection with this, the question of the overpaid benefit came to attention. Normally arrears would have been paid from a date 52 weeks prior to the time the dietary need was first reported i.e. from 6 9 81. However it was decided that in this case arrears should only be paid from the date that the wife's unemployment benefit was first taken into account in the assessment, i.e. from 2 11 81. This resulted in arrears of £133.45".

8. It was or should have been apparent from the form LT 205 that the date 2 November 1981 was taken as the start not because the diet only first became necessary on that date, nor even because that date was 52 weeks before the date of claim, but for the entirely irrelevant reason that that was the date from which her unemployment benefit was first taken into account. It again appears to me that there was an error of law, since I accept that part of Mrs Allbeson's submission that in relation to the period of the claimed overpayment it would be correct to compute the amount repayable by deducting any underpayment on account of the dietary entitlement from the overpayment found by reference to the non-disclosure of the unemployment benefit. In this respect I apply my decision on Commissioner's File C.S.B. 62/83 (to be reported as R(SB) 20/84).

9. It would be a remarkable co-incidence if the date fixed by the benefit officer for starting the additional requirement on such irrelevant grounds turned out to be the date as from which the additional requirement could on the facts have first been awarded; and it will be necessary for the new tribunal to ascertain whether it could have been awarded from some earlier date (and unless that earlier date was before the beginning of the period in respect of

which repayment is claimed, they will have to find the actual date, from which it could have been claimed). Had this case been simply one of review of the award by reason of the omission from it of the additional requirement, regulation 4(2) of the Supplementary Benefit (Determination of Questions) Regulations 1980 (or now regulation 87(1) of the Social Security (Adjudication) Regulations 1984) would have limited back-dating to 52 weeks back from the date of the application for review taken in this case to have been 6 September 1982. But, as was pointed out in the Decision on Commissioner's File C.S.S.B. 10/83 (to be reported as R(SB) 9/84) at paragraph 19 that provision relates only to a review the effect of which would be to increase the amount of benefit payable. In the present case review would under one head increase and under another reduce the amount of benefit that would have been payable and would on balance in relation to the period of claimed overpayment almost certainly be found to leave an amount overpaid. If that proves to be the case the review will not lead to an increase in the benefit payable and the backdating will not be restricted to the 52 weeks. It will not of course go back beyond the period of claimed overpayment as that would involve a payment of an increase of benefit, nor, in the unlikely event that the amount underpaid in any week (not within the 52 week period, exceeded the overpayment, would it lead to payment of the excess.

10. The new tribunal will thus have to consider the case anew in the light of the foregoing. Underpaid benefit in respect of any period subsequent to that of the overpayment will not affect the computation of any amount found to be repayable but will be allowable in account against any amount required to be repaid. But this will not affect the terms of the tribunal decision. Similarly if it be found that there was disclosure so that nothing is repayable, the tribunal will not be concerned with the question what is repayable on review by way of additional requirement. This will then be the subject of a different decision and will be limited to 52 weeks back from the date of review (if it be shown that the requirement existed for that long).

11. The appeal is allowed.

(Signed) J G Monroe  
Commissioner

Commissioner's File: C.S.B. 157/1984  
C SBO File: 171/84  
Region: London South

Date: 30 May 1984