

VGHH/BOS

CSB 804/1983

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Mary Wharton (Mrs)

Supplementary Benefit Appeal Tribunal: South London

Case No: 11/306

1. This appeal succeeds. My decision is that the decision of the supplementary benefit appeal tribunal dated 21 December 1982 is erroneous in point of law. I set it aside and refer the case to another tribunal for decision in accordance with my directions.

2. By a decision issued on 23 November 1982 a supplementary benefit officer decided that the amount of £92.80 had been overpaid and was recoverable from the claimant. The claimant appealed against this decision and in his written submission on the appeal the benefit officer stated that the facts before him were:

"[The claimant] lives in local authority accommodation with her grandchildren Marilyn, Christine and Robert aged 18, 14 and 16 respectively. She is a widow in receipt of widow's pension, and is solely responsible for her two dependent grandchildren, Marilyn and Christine for whom she receives child benefit and one parent benefit.

[The claimant] was also responsible for her grandson Robert while he was in full-time education. Robert, however, left school in the summer. On 1.11.82 the benefit officer wrote to [the claimant] asking her if Marilyn and Robert had left school. She replied on 3.11.82 saying that Marilyn would continue in education until 1983 and that Robert had left school and was unemployed, although he had not claimed supplementary allowance.

Prior to this time [the claimant] had not reported that Robert had left school"

3. The supplementary benefit appeal tribunal found the following facts as material to their decision:

"[The claimant's] circumstances were accepted as being those as detailed in "Facts before the supplementary benefit officer".

The tribunal noted that Robert had not claimed supplementary benefit and was stated as having no income. Because of this, taking [the claimant] and all the people in her household into consideration, the overall benefit overpaid was probably [sic] less than the overall amount of benefit which would be payable if Robert were to claim.

It was noted that [the claimant] had reported the change in her circumstances to the Child Benefit Centre."

The tribunal's unanimous decision was "Supplementary Benefit Officer's decision upheld".

There reasons for their decision were:

"Notwithstanding the point mentioned above, an overpayment of benefit had been made to [the claimant] herself and, in accordance with section 20 of the Supplementary Benefit Act 1976, this amount - £92-80 - was recoverable."

4. Section 20(1) of the Supplementary Benefit Act 1976, as amended, provides:

"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. It is paragraph (a) of section 20(1) which is in point in the present appeal. In order that the Secretary of State shall be entitled to recover money under this paragraph it must be found by the determining authority that

- (1) there was a misrepresentation or non-disclosure of a material fact
- (2) that the Secretary of State has incurred expenditure under the Act in consequence of the misrepresentation or failure.

In order to comply with the provisions of rule 7(2)(b) of the Appeals Rules, which requires the material facts to be found and the reasons for decision to be given, the determining authority should specify the material fact that was misrepresented or not disclosed, identifying which of these two alternatives apply and, if non-disclosure is the relevant head, finding that the claimant knew the fact in question (for there can

be no non-disclosure of a fact which is not known by the person alleged to have failed to disclose: see Regina v Medical Appeal Tribunal (North Midland Region) Ex parte Hubble [1958] 2 Q.B. 228 (on appeal [1959] 2 Q.B. 408) per Diplock J (as he then was) at page 242). It is then necessary to find what, if any expenditure, the Secretary of State incurred in consequence of such misrepresentation or failure to disclose.

6. The claimant says, in effect, that the expenditure occurred not because she failed to disclose a material fact but because (as she says she told the tribunal in evidence - and it has not been contested that she did tell them this) she was waiting for a visit by a visiting officer during the period of the alleged overpayment to whom it was inevitable that her change of circumstances would have been disclosed and the failure was that of the Department. The claimant also says that the instructions in her order book were not sufficient to alert her to the requirement to disclose that Robert had left school as he did not start work and was still dependent on her. The instructions require notification to be given to the issuing office when a dependant "ceases to be dependent (e.g. a child leaves school and starts work)". The chairman recorded in his note of evidence "YELLOW PAGES: state changes to be reported - was she misled by this information". There is, however, no finding by the tribunal on this point. In addition she says that her grandson might have applied for supplementary benefit, if he had been so advised. In other words, the point was raised that the claimant could not reasonably have been expected to make any earlier disclosure, so that she had not failed to disclose in terms of section 20 and, secondly, the overpayment was not "in consequence of" any non-disclosure. But unless a person could reasonably have been expected to make the disclosure and had not done all that could reasonably be expected of them to do so and the expenditure was in consequence of the failure to make it, the expenditure is not recoverable: see Decision R(SB) 21/82 at paragraphs 4(2) and 18 and the decision on Commissioner's file C.S.B. 275/82 (unreported). Since there were no findings on these material points, the decision of the tribunal was clearly erroneous in point of law and must be set aside. Since I have no jurisdiction to conduct a re-hearing, finding fresh facts, it is not possible to give the decision that the tribunal ought to have given and the case must go back to a fresh tribunal, which should be differently constituted.

7. The tribunal to whom the case is now referred, should make findings on the points referred to in paragraphs 5 and 6 above and should pay special attention to the need for a clear causal link between the overpayment of benefit and the misrepresentation or non disclosure i.e. the benefit must have been paid "in consequence" of the misrepresentation or failure to disclose.

8. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 9 September 1983

Commissioner's File: C.S.B. 204/1983

CSBO File: S.B.O. 180/83

Region: London South