

DGR/SH/13

Commissioner's File: CSB/220/1990

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 social security appeal tribunal given on 6 December 1989 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the original award of supplementary benefit should be reviewed and revised so that no such benefit is payable for the inclusive period from 1 November 1986 to 17 January 1988, and that the overpayment arising, amounting to £6,549.97, as set out in the schedule produced by the adjudication officer, is recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of his misrepresentation of a material fact.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 6 December 1989.

3. On 22 October 1986 the claimant applied for supplementary benefit by reason of his incapacity for work owing to a broken leg. His wife filled out the appropriate form on his behalf, and in it she stated that neither the claimant nor any member of the assessment unit had property other than the home in which they lived. This was untrue. As the claimant himself admitted in a statement dated 18 January 1988, he had "at least 2 years ago" converted the house which he had purchased in 1975-1976 into two flats and had let the top flat. Not surprisingly, when this information came to light, the adjudication officer reviewed and revised his original decision, and decided that the sum overpaid for the inclusive period from 1 November 1986 to 17 January 1988, amounting to £6,549.97 was recoverable from the claimant for misrepresentation.

4. In due course, the claimant appealed to the tribunal who in the event upheld the adjudication officer. However, they based their decision, not on misrepresentation, but on a failure to disclose. The adjudication officer now concerned has pointed out that, although it was open to the tribunal to determine the matter on the ground of failure to disclose rather than misrepresentation, if it was their intention to proceed on this basis, they should, in accordance with the principles laid down in R(SB) 40/84, have given the claimant the opportunity of dealing with this issue. I accept that submission. Furthermore, the adjudication officer has pointed out that the tribunal have not formally accepted the calculation of overpayment, as set out in the schedule produced by the adjudication officer. On that ground also the tribunal erred in point of law (see R(SB) 9/85). I accept that submission also.

5. It follows that I must set aside the tribunal's decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently deal with the matter myself. I will consider the matter solely on the basis of misrepresentation.

6. In his submissions to the tribunal the adjudication officer made the following observations:-

" 6.7 On the facts before him, the adjudication officer decided that [the claimant] had misrepresented a material fact because he represented that he only owned the property that he lived in and did not disclose that he had converted it into 2 separate self-contained flats. The adjudication officer decided that this was a material fact, because had it been known at the date of claim, [the claimant's] entitlement to supplementary benefit would have been nil. Accordingly, the adjudication officer decided that the amount of benefit paid as a consequence of the claimant's misrepresentation of a material fact, was recoverable under section 53 of the Act."

I accept that submission. Moreover, it is immaterial that the misrepresentation may well have been wholly innocent.

7. Accordingly, in my judgment, the overpayment is recoverable for misrepresentation of a material fact. The amount overpaid is set out in the schedule produced by the adjudication officer at the end of this submissions to the tribunal. I accept his calculation.

8. Accordingly, my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 3 February 1992