

Overpayment - disclosure to another part of DASS  
CSB 360/88

DGR/SG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 6 January 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal.
2. This is an appeal brought with my leave against the decision of the supplementary benefit appeal tribunal of 6 January 1983.
3. The claimant was in receipt of supplementary benefit during the period between December 1980 and March 1982 on the basis of statements made by him on Forms A11 and A235. These statements contain no reference to his being in receipt of special hardship allowance. This fact only came to light, as the benefit officer contends, on 10 March 1982 when the claimant reported to the supplementary benefit office that he was then in receipt of this allowance. Further inquiries were put in hand, and they revealed that the allowance had been payable since November 1980. The benefit officer initially determined that the claimant had received an overpayment of benefit amounting to £664.11 covering the period from 2 December 1980 to 18 March 1982. He further decided that this sum was recoverable pursuant to Section 20 of the Supplementary Benefits Act 1976. The claimant appealed against this decision, but at a later stage the benefit officer ascertained that entitlement to such a hardship allowance had not been notified to the claimant until 21 July 1981 following a successful appeal against disallowance. Thereupon, although he had no power so to do under the Supplementary Benefits Act 1976, the benefit officer purported to **review** his original decision and to make a revised decision to the effect that the amount of overpayment was £370.32 covering the periods from 24 July 1981 to 10 February 1982 and from 3 March 1982 to 18 March 1982. The claimant was advised that his appeal against the original decision would not now be forwarded to the tribunal, but that he had a fresh right of appeal against the revised decision. On this basis the claimant lodged an appeal on 19 July 1982.

(57)

4. In the event, the tribunal unanimously upheld the benefit officer, deciding that '£370.32 has been overpaid and is recoverable'. However, before considering the substance of the appeal I should first deal with the procedural point that the benefit officer had no power to review and revise his original determination that £644.11 was recoverable. His revised decision was in effect a nullity, but this does not mean that it was without effect. In my judgment, the position is governed by paragraph 6 of R(S) 13/81 (a decision of a Tribunal of Commissioners). Although that particular decision was concerned with an ineffective decision by an insurance officer under the Social Security Act 1975, I consider that exactly the same principles apply where the decision in question was given by a benefit officer pursuant to the Supplementary Benefits Act 1976. The relevant paragraph reads as follows:-

"Accordingly in our judgement, a decision given by an insurance officer without proper authority is (at any rate where, as in this case, the want of jurisdiction is not apparent on the face of the decision) nevertheless effective and binding until it is set aside. A fortiori it is susceptible of an appeal. The appealability of a vitiated decision was considered by Lord Wilberforce in the Privy Council case of Calvin v Carr [1979] 2 W.L.R. 755. The learned Law Lord says at page 763 of a contention that a decision of the stewards of the Australian Jockey Club was void for breach of natural justice:

'This argument led necessarily into the difficult area of what is void and what is voidable, as to which some confusion exists in the authorities. Their Lordships' opinion would be, if it became necessary to fix upon one or other of these expressions, that a decision made contrary to natural justice is void, but that, until it is so declared by a competent body or court it may have effect, or existence, in law. This condition might be better expressed by saying that the decision is invalid or vitiated. In the present context, where the question is whether an appeal lies, the impugned decision cannot be considered as totally void, in the sense of being legally non-existent. So to hold would be wholly unreal.'

Accordingly, the fact that a decision is one which ought never to have been made does not preclude its being appealed against. Any other view could cause manifest injustice..."

5. Accordingly, I am satisfied that the revised decision of the benefit officer that the overpayment was £370.32, notwithstanding that it was made without proper authority, was effective until set aside, or more accurately in the context of section 15(3) of the Supplementary Benefits Act 1976 until the appeal tribunal substituted therefor a fresh determination, and that such invalid decision was appealable.

6. Section 20(3) of the Supplementary Benefits Act 1976 provides as follows:-

"A person from whom, in pursuance of a determination of a benefit officer under the preceding sub-section, an amount is recoverable under this Section may appeal to the Appeal Tribunal against the determination; and sub-section (3) of Section 15 of this Act shall apply to an appeal under this sub-section as it applies to an appeal under that section".

Section 15(3) reads as follows:-

"On an appeal under this section the Appeal Tribunal may -

(a) confirm the determination appealed against; or ...

(c) substitute for any determination appealed against any determination which a benefit officer could have made".

7. Now, under paragraph (c) of the above sub-section the tribunal had power to substitute for the determination appealed against any determination which a benefit officer could have made, and accordingly had jurisdiction to decide that the sum of £370.32 was recoverable pursuant to section 20. However, although they had jurisdiction so to do, such jurisdiction had to be exercised properly, and I am afraid that in this instance it was not.

8. The tribunal gave as the reasons for their decision the following:-

"The tribunal were satisfied that the appellant has failed to notify the Secretary of State in writing of the award of special hardship allowance in accordance with Claims and Payments Regulation 8.

A recoverable overpayment of £370.32 has been correctly calculated. Section 20 of the Supplementary Benefits Act 1976."

9. On any footing the decision of the tribunal was erroneous in point of law because the tribunal appear to have proceeded on the basis that it was incumbent on the claimant to make disclosure of his award of special hardship allowance in writing. Section 20(1) provides as follows:-

"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) ....

the Secretary of State shall be entitled to recover the amount thereof from that person."

(5)

10. Now, for the claimant to escape the consequences of Section 20 there is no obligation on him to make the relevant disclosure in writing. It is perfectly in order for him to do orally (see in this connection the decision on Commissioner's file No: C.S.B. 188/1981). Of course, if a claimant makes his disclosures orally, he may have difficulty in subsequently proving that he did so. However, if he can satisfy the relevant authority that he has made the appropriate disclosure, it matters not that it was made by word of mouth. Moreover in this context regulation 8 of the Supplementary Benefit (Claims and Payments) Regulations 1981 has no relevance.

11. It follows from what has been said above that the decision of the tribunal is erroneous in point of law and accordingly I must set it aside. I direct that the matter be re-heard by a differently constituted tribunal.

12. The principal ground on which the claimant based his appeal was that the relevant information was in the possession of the Department of Health and Social Security, and that this constituted notification, so that on no footing was the claimant caught by Section 20. The Department were, admittedly, aware that the claimant was in receipt of special hardship allowance, but this does not assist the claimant. The Department of Health and Social Security are responsible for a wide range of contributory and non-contributory benefits, of which some are administered centrally and others locally from the same or different buildings. The characteristics of these benefits may be quite similar in some respects, or widely different. Unlike other locally administered benefits, supplementary benefit is means-tested. It is administered separately from the other benefits. The information issued to recipients of supplementary benefit makes clear to them the nature of the benefit and their responsibilities. To be effective, disclosure for supplementary benefit purposes has to reach the section of the Department which administers that particular benefit, and the claimant cannot rely, normally at any rate, on the interchange of information between various administrative sections within the Department. Accordingly, in the present case it was incumbent on the claimant to bring to the attention of the section dealing with his supplementary benefit claim the fact that he was in receipt of special hardship allowance.

13. Although the claimant cannot impute to the section dealing with his claim knowledge in the possession of another section of the Department, the claimant's contention is that in the present case he in fact brought the requisite information to the attention of the Supplementary Benefit section. Although it is not in dispute that he failed to inform them in writing, the claimant contended before the local tribunal that he took his special hardship allowance book 'to Broadgate House [where the supplementary claim was being considered] in late Summer 1981 with the rent book and child benefit book'. There is no record of any visit after 1 July 1981, and it may well be that the tribunal disbelieved the claimant on this point. However, the tribunal failed to make a finding of fact

on this particular issue, and as a result they were in breach of rule 7(2) of the Appeals Rules. Their decision was therefore erroneous in point of law on this ground also. I would say in passing by way of assistance to the new tribunal that, had the original tribunal found as a fact that the claimant did show his special hardship allowance book to the supplementary benefit section of the local office, they would, in my judgment, have been in error in deciding that overpayment was recoverable for any period after that date.

14. The new tribunal will consider the appeal afresh in the light of the above observations. My decision is as set out in paragraph 1.

(Signed) D C Rice  
Commissioner

Date: 12 October 1983

Commissioner's File: C.S.B. 360/1983  
C SBO File: 357/83  
Region: Midlands