

re continuing obligation to disclose

- some time must elapse before correct original disclosure can be made

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Maxene Ann Huntley

Social Security Appeal Tribunal: Hove

Case No: 10/09/10

1. My decision is that the decision of the social security appeal tribunal dated 10 December 1984 is erroneous in point of law and is set aside. The matter must be referred to another tribunal.

2. The claimant when she claimed a supplementary allowance in October 1983 declared correctly that she was living as a boarder in accommodation where she was paying £35 per week, and her requirements were assessed accordingly. In December 1983 she went to live as a member of her parents' household and thus ceased to be a boarder. Supplementary allowance continued to be paid to her as if she had continued to be a boarder down to 24 September 1984 and there was a total overpayment of the allowance from 2 January 1984, amounting to £1269.45. The adjudication officer gave a decision requiring repayment of the amount under section 20 of the Supplementary Benefits Act 1976. The claimant appealed to the appeal tribunal who confirmed the decision of the adjudication officer and the claimant now appeals to the Commissioner.

3. Section 20(1) of the above Act, so far as material, provides as follows:

"If, whether fraudulently or otherwise, any person misrepresents, or fails to disclose, any material fact, and in consequence of such misrepresentation or failure -

(a) the Secretary of State [for Social Services] incurs any expenditure under the Act; or

(b)

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

The adjudication officer took the view that the claimant had failed to disclose in the right quarter the material fact that she had gone to live as a member of her parents' household with the result that the Secretary of State had incurred the excess expenditure above mentioned.

4. When the matter went to appeal the tribunal found as a fact that the claimant informed the unemployment benefit office she had changed her address from the beginning of January 1984, though it does not appear that they made any finding of disclosure that the change was to her mother's house or as to the date when she moved, though they found their cheques were paid to the new address from the beginning of January. They considered that she could reasonably expect such information to be passed on to the Department of Health and Social Security, so as to make such disclosure in the proper quarter in the light of Decision R(SB) 54/83 at paragraph 16. But they were clearly of opinion that the claimant did not fulfil the obligation of disclosure mentioned in paragraph 18 of that decision, where it was said that if after disclosure a claimant continues to receive benefit so that he (or she) has reason to suspect that his disclosure was ineffective he (or she) cannot sit idly by, but must take further effective steps to make the necessary disclosure. The tribunal found that the claimant had not fulfilled this continuing obligation and they dismissed the appeal.

5. The claimant's representatives submit that this was an incorrect finding, and they may develop that point before the new tribunal. I am setting the decision aside on the ground that the tribunal, having made very careful findings, did not go on to work out the exact consequences of those findings. If I assume that there was failure to disclose a material fact down to the date that the claimant told the unemployment benefit office that she was in her mother's house then expenditure (if any) incurred before such disclosure was the result of the failure to disclose, unless there is some other cause of the expenditure. The date of the disclosure is material. More significantly the claimant's continuing duty of disclosure did not arise at the instant that she made her original disclosure. Some time had to elapse before suspicion that the disclosure had not been acted on can be expected to arise. This may not be a very long time but some finding is essential on the point; and if the new tribunal agree that the continuing duty to disclose did arise and was not fulfilled, they will have to consider when it did so and how much of the overpayment was attributable to the breach of this continuing duty.

6. The claimant's appeal succeeds.

(Signed): J G Monroe
Commissioner

Date: 12 February 1986