

overpayment - relationship of OBE & DMS

C.A.O. LONDON

(47)

IEJ/SH/3/MD

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Region: North Western

overpayment - dis closure

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

IDENTIFIABLE DECISION
NOT TO BE SET OUT OF
RECORD

1. (1) This is a claimant's appeal against the decision dated 5 February 1985 of a social security appeal tribunal ("the tribunal") brought by my leave and upon the contention that the tribunal's decision was given in error of law. By their decision the tribunal upheld the decision of an adjudication officer issued on 13 November 1984 to the effect that £1,307.70 had been overpaid by way of supplementary benefit and was recoverable by the Secretary of State. The adjudication officer now concerned concedes that the tribunal's decision was given in error of law in respects which I will later below indicate, and I agree.
- (2) The appeal is allowed. I set aside the tribunal's decision as given in law in respects later below identified and direct that the claimant's appeal from the adjudication officer's decision be reheard by a differently constituted tribunal. I do not consider it expedient in the circumstances of the case to seek to give myself the decision which the tribunal should have given, as in my judgment a proper determination will require the ascertainment and finding of additional facts.
- (3) As the claimant has specifically sought that his appeal should not be remitted for rehearing by a tribunal but should be finally dealt with by the Commissioner, and I am nevertheless remitting his appeal, I should here mention that in cases concerning supplementary benefits (as distinct from certain other social security benefits) a Commissioner has no jurisdiction to rehear an appeal "on its merits" or investigate matters of fact and make findings of fact where relevant facts have not been found by the tribunal from whose decision the appeal has been brought to a Commissioner, so that where - as here - the Commissioner concludes that the tribunal's decision has been given in error of law, but concludes also that a proper determination will require the ascertainment and finding of additional facts, the case has necessarily to be remitted to a differently constituted tribunal for rehearing generally.

2. The basic facts have not been in controversy and can for my purposes be summarised as follows:-

- (1) The claimant was at all material times unemployed and "signing" at an

unemployment benefit office. At all material times down to 2 July 1983 the claimant had been single. On that date he married, so that his marital status became that of a married man. His wife was at all material times in employment and in receipt of remuneration. He had at the time of his marriage been unemployed since June 1981. He was not at any material time in receipt of unemployment benefit, but was at all material times in receipt of supplementary allowance.

- (2) Throughout the period the subject of the adjudication officer's decision the supplementary allowance of which the claimant was in receipt had been determined by assessments of the claimant's requirements and resources which had not taken account of his having married and of the aggregability of his wife's earnings as an income resource of the assessment unit of which antecedently to his marriage he had been the sole member but of which as from their marriage his wife was also a member. It was not in dispute before the tribunal that upon a correct computation taking account of his wife's earnings no supplementary allowance would have been payable in respect of any part of the material period, and that the amount overpaid was that indicated by the adjudication officer's decision.
- (3) Though not so expressed in terms, the adjudication officer's decision was given pursuant to section 20 of the Supplementary Benefits Act 1976 as amended ("section 20"). The claimant appealed to the tribunal against the adjudication officer's decision and attended their hearing at which he gave evidence and presented his own case. The case put against him under section 20 was that he had failed to disclose a material fact (namely his marriage), in consequence of which failure the specified overpayment had resulted. The claimant's case before the tribunal was that he had made a due disclosure of his marriage. He had, he maintained, reported his marriage to the local unemployment benefit office on his very next signing day following his marriage, which was 5 July 1983, and had upon so doing (and as expressly found by the tribunal in their findings of fact) "was told his status had changed but the amount of his benefit would not".

3. (1) The tribunal's findings of fact were expressed as follows:-

"The claimant had been receiving supplementary benefit since July 1981. In the past previous changes of circumstances had caused his benefit to fluctuate. On 5.7.83 [the claimant] informed UBO that he had married on 2.7.83 and was told his status had changed but the amount of his benefit would not. He believed that there had been a change in the regulations since his benefit was last reduced. [The claimant] would have received form UBL18 each year drawing attention to claimants receiving supplementary benefit to form SP9. This form specifically requires claimants to notify the social security office if they get married. [The claimant] did not notify DHSS. His wife worked full-time at [a named location]."

- (2) The tribunal's expressed reasons for decision were:-

"The amount recoverable is the difference between the amount paid and the amount due. Section 20 Supplementary Benefit Act refers. The tribunal considered R(SB)54/83. It appears that [the claimant] relied upon the information given to him at the UBO. He considered that he had done all that was required of him. His mistake was his failure to obtain form SB9 and act upon it."

4. There is nothing in the chairman's notes of evidence to indicate that any affirmative

case was put forward by the presenting officer as to the claimant ever having received a leaflet UBL18 (which does not itself indicate that any disclosure of marriage is to be made to anyone) or indeed any other official notification of an obligation to disclose his marriage. The chairman's notes do however confirm both that the claimant was not in receipt of unemployment benefit and that he would not during the material period have received any assessment in respect of his supplementary allowance putting him on notice as to how it was computed. In view of certain other aspects of the case to which I will shortly come it would have been helpful, to put it no higher, had the tribunal made express findings as to when if at all the claimant had received a copy or copies of leaflet UBL18. However, the claimant's case was not that he was unaware of the need to make a disclosure of his marriage but that he had made a disclosure, so that one may understand that the tribunal may not have thought the details as to when if at all he had received such leaflet of importance. Even so, a finding that he "would have" received it is a somewhat slender foundation for the attribution - which the decision goes on to make - that on that account he should have asked for a leaflet SB9 which would have directed his attention to an express requirement to disclose. For the "would have" is pregnant with the query "how and why would he?". But, passing that by, where the tribunal have started to go seriously wrong is in failing to direct their minds to the significance of their findings that he had indeed made disclosure to the unemployment benefit office on 5 July 1983; that he had been told there that the amount of his benefit would not change; and (though expressed in their stated reasons and not specifically as a finding) as to the significance of their acceptance that the claimant "relied upon the information given to him at the UBO" and "considered he had done all that was required of him". For those circumstances in truth opened up a number of substantial questions properly for their determination before concluding that the adjudication officer's decision should be upheld.

5. One of the matters intimated by leaflet UBL18, which it is general practice to issue to persons signing as unemployed upon first claiming, and periodically thereafter (and whether or not in receipt of unemployment benefit) is that such a person should if wanting to claim supplementary benefit ask the Unemployment Benefit Office ("UBO") for a claim form, that the Social Security Office will indicate to such person in writing whether he can get supplementary benefit, and that if he can "they normally ask us to pay it to you". That intimation touches upon a complex integration of procedures for the administration of supplementary benefit in the case of claimants for that benefit required to register, and registering, for employment, as between the Department of Health and Social Security ("DHSS") and the Department of Employment ("DOE"), a local UBO being an organ of the DOE. An outline of what are understood to be the arrangements between the DHSS and DOE in point is to be found in Appendix 2 to decision R(SB)36/84. But leaflet UBL18 itself emanates from the DOE and is primarily concerned with matters affecting unemployment benefit and with disclosures required to be made to the UBO. It is nevertheless true that the same paragraph of leaflet UBL18 as indicates that it will be the DOE who will normally pay the supplementary benefit which may be awarded to a claimant to whom leaflet UBL18 is issued also indicates "if you get supplementary benefit, read leaflet SB9 which tells you what changes to report to the Social Security Office. If you want to know more ask at the Social Security Office."

6. The basis for the tribunal's decision can be clearly identified as having been that the claimant was on notice of that element of leaflet UBL18, was on supplementary allowance, did not procure or read a leaflet SB9 (though they have made no finding as to that) and would, had he done so, have been upon notice that it was to a DHSS office and not to the UBO that he was required to make disclosure of his marriage.

7. Now, that was certainly an aspect of the case which, upon a due foundation, it was incumbent upon the tribunal to entertain. But there was much more to a proper determination than that. For, as is helpfully pointed out in paragraph 16 of decision

R(SB)54/83 (to which decision the tribunal were expressly referred), whilst a claimant's obligation to disclose under section 20 is "an obligation to take such steps as might reasonably be expected to ensure that the material fact reached the benefit officer charged with the awarding of benefit" [and that reference to "benefit officer" falls now, of course, to be read as a reference to "adjudication officer"] there then follow in paragraph 16 of decision R(SB)54/83 the qualifying words "but that is not to say that the local Supplementary Benefit Office must necessarily be informed by the claimant in person, if the communication is made in some other way which might reasonably be expected to reach the relevant office". And that the tribunal appear to have overlooked.

8. The tribunal needed to explore fully what had transpired on the occasion at which the claimant had, it was not in dispute, disclosed the fact of his marriage to the UBO. For if, upon a proper evaluation of what had then taken place, it fell to be concluded that the claimant might in the light of what had transpired properly be regarded as having taken such steps as might reasonably be expected to ensure that the fact of his marriage reached the adjudication officer charged with the awarding of his supplementary benefit, then there would have been no breach of the obligation of disclosure - and if it transpired (as was clearly the fact) that what had happened after such disclosure was made was that there had then been no onward communication of it by the UBO to the DHSS the claimant might properly have been regarded as guilty of no "failure" to disclose (see also, as to "failure" to disclose, decision R(SB)21/82).

9. Accepting as correct, for my purposes, the tribunal's finding as to what the claimant was told on the relevant occasion at the UBO (and passing by what whoever told him that had had in mind in so indicating, since if such person had been aware that the claimant was not in receipt of unemployment benefit but was in receipt of supplementary allowance the intimation was correct only if and so long as the change of status did not come to the attention of the officer in the DHSS concerned with the award of his supplementary allowance, whilst if he was in receipt of unemployment benefit his change of status, prima facie at least, would give rise to an eligibility for increase of unemployment benefit in respect of his wife) there then, properly, opened up the further question whether, should it be concluded that the claimant had not failed to disclose at that stage, there should be attributed to the claimant nevertheless a failure to disclose when put upon notice by some subsequent event or circumstance (perhaps a continuing receipt of supplementary allowance at the antecedent rate in an awareness or expectation of a reduction consequent upon disclosure) that the steps previously taken to disclose had not "got home" to the DHSS, and that accordingly an obligation to take fresh steps as to disclosure arose (see as to this also decision R(SB)54/83). And this facet of the case also the tribunal have not dealt with.

10. The omissions on the part of the tribunal to which I have already drawn attention constitute, in my judgment, ample foundation for attributing to the tribunal error of law such as to require that their decision be set aside.

11. All questions of fact will again be at large for determination by the tribunal concerned with the rehearing. I direct that they give close consideration to decision R(SB)54/83 and make findings of fact and express reasons for decision which take full account of the guidance there given in so far as relevant to the facts of the case as developed in the evidence before them. I further direct that, upon the authority of paragraph 35 in Appendix 2 to the Tribunal of Commissioners decision R(SB)36/84 the tribunal shall approach any question arising for their determination which involves consideration of interrelation and intercommunication between the DHSS and DOE in the administration of the supplementary benefit scheme arising in the context of a claimant subject to a condition of registration for employment in awareness that they are to make an ad hoc appraisal of the extent, if any, to which the claimant was entitled to expect that a disclosure to the UBO would suffice as disclosure also to the DHSS, devoid of a priori presumption that notice

given by a claimant to the UBO does not constitute notice to the DHSS by reason of the general principle that notice to one government department does not constitute notice to another. That does not, I should stress, constitute authority for the reverse proposition that notice given by a "signing" claimant to the UBO automatically constitutes notice to the DHSS. It is a matter of considering all the circumstances of the individual case.

12. I should in conclusion, and for the avoidance of doubt, make clear that I have not overlooked that section 20 stipulates misrepresentation of a material fact as an alternative head to "failure to disclose"; but I have found it unnecessary to make previous reference to "misrepresentation" in my present decision for the simple reason that no case in misrepresentation was relied upon by the adjudication officer who gave the decision from which the claimant appealed to the tribunal, or before the tribunal.

13. My decision is as indicated in paragraph 1(2) above.

(Signed) I. Edwards-Jones
Commissioner

Date: 20th November 1985