

DGR/JAW

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: John Samuel Dunn

Supplementary Benefit Appeal Tribunal: Plymouth

Case No: 07/371

ORAL HEARING

Decision C.S.B. 14/82

1. For the reasons given below the decision of the supplementary benefit appeal tribunal dated 19 August 1981 was erroneous in point of law, and accordingly I set it aside. As I am satisfied that it is expedient in the circumstances that I should give the decision that the tribunal should have given, in accordance with rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 I further decide that the claimant must make repayment of supplementary allowance overpaid amounting to £386.97.

2. The material facts of this case are not in dispute. The claimant was awarded supplementary allowance covering the period from 12 June 1980 to 10 September 1980, and the assessment was made on the basis of his declaration that the total income of himself and his dependants was child benefit of £4.00 weekly. However, on 6 January 1981 he disclosed to a visiting officer that his wife was working and earning £36.00 weekly. The supplementary benefit officer decided that, by reason of the claimant's original declaration that the total income of himself and his dependants was only child benefit of £4.00 weekly, he had been guilty of a misrepresentation, and that by virtue of section 20 of the Supplementary Benefits Act 1976 the Secretary of State was entitled to recover the overpayment.

3. The claimant appealed against this decision to the appeal tribunal, who unanimously took the view 'that the overpayment occurred as a result of a "gap" in the organisation of the Unemployment Benefit Office and the Department of Health and Social Security'. They therefore decided

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that the Secretary of State was not entitled to recover the sum in question. Thereupon the benefit officer lodged an application for leave to appeal to the Commissioner, and the necessary leave was given. He asked for an oral hearing, a request I acceded to, and at that hearing he was represented by Mr R A Birch of the Solicitor's Office of the Department of Health and Social Security, and the claimant appeared in person.

4. Section 20(1) of the Supplementary Benefits Act 1976 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) 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".

It is to be noted that the Secretary of State is entitled to recover, notwithstanding that the misrepresentation is otherwise than fraudulent. In other words, it avails not the person concerned that the misrepresentation for which he is responsible is wholly innocent. Once he has been guilty of a misrepresentation, for whatever reason, he is obliged to make repayment, and there is no escape route of the kind provided for under section 119(1) and (2) of the Social Security Act 1975. The claimant cannot escape repayment by establishing that throughout he exercised due care and diligence. In supplementary benefit cases the law is much harsher than it is in cases falling within the Social Security Act 1975.

5. It is not in dispute that, when the claimant registered for unemployment benefit, he was told, or perhaps more accurately, formed the impression that his wife, because she was working, was not a dependant. It is also not in dispute that, in claiming supplementary benefit, the claimant in his declaration of 3 June 1980 represented that the income of himself and of his dependants was only child benefit of £4.00 weekly, and that he did this because he believed, in the light of what he had ascertained from the unemployment benefit office, that his wife was not to be regarded as a dependant. His conduct was wholly innocent. It is likewise not in dispute that in the eyes of the claimant the unemployment benefit office and the supplementary benefit office were all part of one and the same Government body. As far as he was concerned, notification to the one office was in effect notification to the other. Moreover, he was encouraged in this belief by the fact that he received a single girocheque which covered both his entitlement to unemployment benefit and to supplementary allowance.

6. I have every sympathy with the claimant and with the desire of the tribunal to do justice. However, the claimant is confronted with certain insurmountable difficulties. First the Department of Health and Social Security, which is responsible for awarding supplementary allowance, is a different body from the unemployment benefit office. Information given to the one is not to be deemed information given to the other. In a sense it is perhaps unfortunate that in the public eye they work so closely together, particularly with regard to the issue of girocheques. A claimant could be forgiven for failing to appreciate the independent existence of these two departments. However, it is a fact that they do operate independently, albeit in close co-operation, and it must necessarily follow from this that, in informing the unemployment benefit office that his wife was working, the claimant had not at the same time informed the Department of Health and Social Security. I am not entirely sure what the appeal tribunal meant by "a 'gap' in the organisation of the unemployment benefit office and the Department of Health and Social Security". It may be that they were criticising the independence of the two Departments, or it may be that they regarded them as one entity where communication on the vital matter in issue had broken down. But, in any event, they appear to have overlooked the undoubted fact that the two departments are independent and under no obligation whatsoever to reciprocate as far as information is concerned. Manifestly, the claimant was guilty of a misrepresentation vis-à-vis the Department of Health and Social Security when he made his declaration of 3 June 1980, and this was not rectified by anything he was told at the unemployment benefit office. Moreover, it is immaterial that the misrepresentation was wholly innocent.

7. Accordingly, the tribunal's reasons for their decisions are wholly unsatisfactory. On the admitted facts they could not reasonably reach any other conclusion than that the claimant had been guilty of an innocent misrepresentation, and that by virtue of section 20, which allows no escape route, the Secretary of State was entitled to recover the sum overpaid. To conclude otherwise would be perverse. Accordingly, I have no hesitation in setting aside the tribunal's decision as being erroneous in point of law.

8. By virtue of rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, as amended by rule 6(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 I am empowered, if I am satisfied that it is expedient in the circumstances so to do, to give the decision that the tribunal should have given. I think this is such a case. The facts are not in dispute, and section 20, in all its rigour, must be applied. As to the amount of overpayment I am satisfied, as

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apparently by implication were the tribunal, that this comes to £386.97. Indeed, the claimant has never challenged the amount, but only the need to make any repayment at all.

9. Accordingly, I allow the appeal and give the decision set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 26 April 1982

Commissioner's File: C.S.B. 557/1981
C SBO File: S.B.O. 749/81