

JCAL/BB

SUPPLEMENTARY BENEFITS ACT 1976

FAMILY INCOME SUPPLEMENTS ACT 1970

APPEAL TO THE COMMISSIONER FROM DECISION OF
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: George Innes

Supplementary Benefit Appeal Tribunal: Paisley

Case No: 16/169

CSSB 8/81
IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

CSSB 8/81

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 16 February 1981 is not erroneous in point of law.
2. This is an appeal by the claimant to the Commissioner from a decision of the supplementary benefit appeal tribunal dated 16 February 1981 whereby the tribunal held that they had no jurisdiction to entertain the claimant's appeal against a deduction from his supplementary benefit of £2 per week made towards recovery of a previous overpayment of benefit. On 3 April 1981 I granted the claimant leave to appeal in respect of the question of law arising from the decision of the tribunal that they had no jurisdiction to deal with the claimant's appeal. I refused an application by the claimant for an oral hearing of the appeal as I was satisfied that this was not necessary for the proper determination of the appeal.
3. In this case a substantial overpayment of supplementary benefit was made to the claimant as a result of his failure to disclose that he was in receipt of special hardship allowance. The amount of the overpayment recoverable by the Secretary of State in the exercise of his powers under section 20 of the Supplementary Benefits Act 1976 was restricted to £165.15 and the claimant does not dispute recoverability of that sum. What he does dispute is the legality of the recovery being effected by the deduction of £2 per week from his current supplementary benefit. That was the issue which he sought to appeal to the appeal tribunal. The tribunal refused to entertain the appeal, holding that the method of recovery of overpaid benefit is a matter for decision by the Secretary of State and outwith the jurisdiction of the tribunal.
4. Section 20(1) to (4) of the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980 provides as follows:-
"20.--(1) 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)

- (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.

(2) If, whether in connection with any legal proceedings or otherwise, any question arises whether any amount paid by way of supplementary benefit is recoverable by the Secretary of State under this section, or as to the amount so recoverable, the question shall be determined by a benefit officer.

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

(4) Where any amount paid by way of supplementary benefit is recoverable under this section, it may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits."

In terms of section 34(1) of the 1976 Act "prescribed" means specified in or determined in accordance with regulations. Regulation 6 of the Supplementary Benefit (Duplication and Overpayment) Regulations 1980 provides:-

"6. The prescribed benefits for the purposes of section 20(4) of the Act (recovery in cases of misrepresentation or non-disclosure) are -

...

- (c) subject to regulation 7, supplementary pension or allowance."

Regulation 7 specifies the maximum amount that may be recovered in respect of any one benefit week.

5. The decision of the appeal tribunal in the present case raises the issue whether a question as to the amount which may lawfully be recovered by deduction from prescribed benefits in terms of section 20(4) of the Supplementary Benefits Act 1976 as amended and regulations 6 and 7 of the Supplementary Benefit (Duplication and Overpayment) Regulations 1980 is or is not a question "as to the amount so recoverable" for the purposes of subsections (2) and (3) of the aforesaid section 20 or is otherwise justiciable before a supplementary benefit appeal tribunal. The submission on behalf of

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the supplementary benefit officer is that once any question whether an amount overpaid is recoverable, or as to the amount so recoverable, has been decided by the benefit officer or appeal tribunal, the method of recovery of an overpayment is a matter for the Secretary of State alone and is not subject to appeal. The claimant maintains that section 20(4) does not apply to him but offers no reasons why this should be so.

6. In my opinion section 20 confers on the Secretary of State a right to recover the amount of benefit overpaid in cases of misrepresentation or non-disclosure of material fact, subject to the qualification that any question arising as to recoverability, or the amount so recoverable, is to be decided by the supplementary benefit officer or, on appeal, by the appeal tribunal. Where there is a sum which is admittedly recoverable or which has, in a disputed case, been established to be recoverable by decision of the benefit officer or appeal tribunal, the Secretary of State may effect recovery under section 20(4) by deduction from prescribed benefits. At that stage any adjudication by the benefit officer or appeal tribunal under section 20(2) or (3) is in my opinion past and I conclude that the application of the method of recovery by way of deduction from prescribed benefits is a matter for the Secretary of State alone. It is of course true that regulations 6 and 7 of the Duplication and Overpayment Regulations circumscribe and limit the Secretary of State's powers of recovery by deduction from supplementary benefit, and it is not difficult to postulate a situation in which it might be alleged that the deduction made was ultra vires as not being made in conformity with those regulations. It is also true that that could be regarded as raising a question as to the amount recoverable by the Secretary of State. It would however in my opinion not be a question as to the "amount so recoverable" within the meaning of sub-sections (2) or (3) of section 20 so as to be within the jurisdiction of the benefit officer or appeal tribunal. There is no other provision so far as I am aware rendering such a question justiciable before the appeal tribunal, and I have not been referred to any other such provision by the benefit officer. In my opinion therefore any such question, which would include the question now raised by the claimant, is outwith the jurisdiction of the appeal tribunal. It follows that in any case in which it is alleged that the deductions made by the Secretary of State are not in conformity with the provisions of the Duplication and Overpayment Regulations, any remedy would require to be sought by way of action in the ordinary courts. (I of course express no opinion on the form or prospects of any such action.) In the result therefore I consider that the appeal tribunal reached the correct conclusion in this case and that their decision is not erroneous in law.

7. The appeal of the claimant must be refused.

(Signed)

J. G. Mitchell
Commissioner

Date: 24 August 1981

Commissioner's File: C.S.S.B.8/81
S.B.O.: 61/81
L.O.: Paisley I.L.O.
L.O. Ref. No.: 1511-30162