

*Overpayment.*Commissioner's File: C.W.S.B.2/85
C.A.O. File: A.O.2122/85

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Raymond Sidney X

Social Security Appeal Tribunal: Pontypridd

Case No: 1/7

1. My decision is that the decisions of the social security appeal tribunal of 11 September 1984 are erroneous in point of law.

2. On 7 February 1984 the benefit officer (now the adjudication officer) gave this decision "That supplementary benefit of £402.02 has been overpaid to [the claimant] for the period 20 January 1983 to 1 January 1984 and is recoverable from him." He subsequently decided, on a date which is not given, that there had also been an overpayment to the claimant of £10.42 in respect of the period 11 January 1983 to 19 January 1983 and that it was recoverable from him. The claimant's appeal from these decisions to the appeal tribunal was disallowed by a majority on 11 September 1984. The claimant attended the hearing and was represented. The majority decisions were "1. Supplementary Benefit of £402.02 has been overpaid to [the claimant] for the period 20. Jan 83 to 1. Jan.84 and is recoverable from him 2. Supplementary Benefit of £10.42 has been overpaid to [the claimant] for the period 11 Jan 83 to 19 Jan 83 and is recoverable." The claimant has now appealed to the Commissioner on a question of law, having been granted leave to do so by me. In his submission to the Commissioner, the adjudication officer supports the appeal on the ground that the tribunal failed to fulfill the requirements of regulation 19(2)(b) of the Adjudication Regulations 1984 in 3 respects. He asserted that -

- (a) "There was evidence before the tribunal (recorded in box 1 page 17) that the claimant had declared receipt of a company pension in answer to question 3 of form B1 and that he took question 7 as referring to money to which he had not already referred. The form B1 is at pages 11 to 15 of the bundle. In box 2 of form AT3 (page 18) the tribunal record that "they accepted the facts before the benefit officer and also, having seen and heard the claimant accept his evidence of the way he completed the application form". In my submission, this is no proper finding of fact because of the inherent contradiction between the accounts given by the adjudication officer and the claimant. I submit that the tribunal was required to make proper findings of fact and record reasons for their decision, in particular in respect of evidence given by the claimant as to disclosure which they did not accept. In decision R(SB)11/82 a Commissioner held that a tribunal ought to give reasons why a claimant's evidence has

4

failed to satisfy them. That decision dealt with the similarly worded provisions of rule 7(2)(b) of the Appeals Rules and is, I submit, authority for the proposition that this tribunal has failed to comply with regulation 19(2)(b) of the Adjudication Regulations";

- (b) "the decision of the tribunal is one which no reasonable tribunal acting judicially or properly instructed as to the relevant law could have made because the evidence is inconsistent with and contradictory of the determination. The evidence before the tribunal on Form B1 in answer to question 3 was that the claimant had declared that he had a company pension and that he had used this and his final wages to live on between 8 October 1982 and 4 January 1983 when he claimed supplementary allowance. I submit that this constituted clear disclosure of the fact that the claimant was receiving a company pension and ought to have put the department on the alert to enquire as to the precise amount of the pension and I submit that the claimant's disclosure in answer to question 3 is not vitiated by his failure to state in answer to question 7 the precise amount of pension which he received"; and
- (c) "the decision of the tribunal erred in point of law by reference to the principles of law in decision R(SB)40/84 in that their reasons for decision (box 4, page 18) appear to be based upon the ground of failure to disclose when the submissions of the benefit officer were in terms of misrepresentation."

I am satisfied that each one of these assertions is well founded for the reasons given. Accordingly, I hold that the tribunal's decisions are erroneous in point of law. Unfortunately it is not expedient in the circumstances for me to give the decisions the tribunal should have given. Accordingly, I refer the case to a differently constituted tribunal. This tribunal should ensure that they comply with the requirements of regulation 19(2)(b). It will be of assistance to them if they take note of the omissions of the tribunal of 11 September 1984 and see to it that they are not repeated. They should also take heed of the guidance provided in the 2 decisions to which the adjudication officer made reference.

3. The claimant's appeal is allowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 8 March 1985