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CWSB 60/84

SUPPLEMENTARY BENEFITS ACT 1976 *SBAT: no power to recover overpayment of HRS.*
 APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL
 ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal: *Wrexham*

Case No: 12/07

[HEARING]

1. My decision is that the decision of the social security appeal tribunal of 21 June 1984 is erroneous in law inasmuch as they concluded that the relevant overpayment amounted to £954.38. I set aside this part and this part only of their decision and substitute for this amount the sum of £746.23.
2. The claimant is a single person aged 66 years. She had been in receipt of supplementary allowance since 4 May 1977 when the supplementary benefit officer (now the adjudication officer) decided on 18 November 1983 that "an overpayment of supplementary pension amounting to £563.70 has occurred and is recoverable." The claimant's solicitors appealed from this decision on her behalf to the supplementary benefits appeal tribunal (now the social security appeal tribunal). In the meantime, the claimant's solicitors were informed that the overpayment, in fact, amounted to £954.38 (weekly supplementary benefit overpaid from 17 January 1980 to 24 November 1982 = £746.23; overpayment of housing benefit for the period 25 November 1982 to 12 October 1983 = £208.15). On 21 June 1984 the appeal tribunal gave the following decision - "Secretary of State is entitled to recover overpayment of supplementary benefit of £954.38." The claimant has now appealed from this decision to the Commissioner on a point of law, after being given leave to do so by the chairman of the tribunal. The appeal was heard by me on 4 December 1984. The claimant was represented by her solicitor, Mr. J.C.H. Jones, who had also represented her at the appeal tribunal. Mr. D.M. James, a member of the solicitor's office of the Department of Health and Social Security, appeared for the adjudication officer.
3. On 18 May 1977 and again on 26 November 1979 the claimant had intimated, on form A11, that no other person (including boarders) lived in the accommodation occupied by her and that no sub-tenancy existed. On 31 March 1978 and on 7 April 1979 she stated, on form A234, that there had been no change in the position. When interviewed on 26 September 1983, in connection with her benefit requirements, she appended her signature to the following statement - "Mr ... W.. (26.1.08) still lives here and is retired. Mr W.. has lived in my household for three years" and on 26 October 1983 she declared that "Rent is paid by DHSS apart from Mr W...' share of £3.10 weekly. He receives Retirement Pension only. We do not live as husband and wife. He has his own pedsitter at this address." According to the records, a combined payment of retirement pension and

supplementary benefit was paid to Mr. W up to 10 July 1980, that he ceased to receive supplementary benefit from that date and that he moved to the claimant's address in January 1980. In that month the officer of the Department of Health and Social Security, who was concerned with the question of Mr. W's entitlement to supplementary benefit, interviewed him at the claimant's home in her presence. Unfortunately, the Department's papers relating to this interview have been destroyed and it has not been possible to establish the identity of the officer who conducted the interview.

4. The findings of the tribunal were that "1. D L W.. moved into appellant's house in January 1980 where he was interviewed by visiting officer, in [the claimant's] presence. 2. At such interview, [the claimant] did not specifically identify herself as a supplementary beneficiary, discussion being confined to Mr W...' circumstances. 3. No DHSS officer has responsibility for beneficiaries in a given area or grouping whereby it would be reasonable to assume awareness of [the claimant] drawing supplementary benefit. 4. [The claimant] assumed that, as a result of above interview, in her presence, D.H.S.S. were aware of facts and no further reporting of Mr W...' occupying part of her home was necessary. 5. [The claimant] confirmed that no further communication with DHSS was made by her on Mr W...' presence until the visit to review her circumstances on 26 September 1983." They gave the following reasons for their decision - "The tribunal believed that [the claimant's] conviction that, as a result of the January 1980 interview of Mr W..., DHSS were aware of his presence in her house, was genuinely based. However, there is no evidence to show that DHSS were made aware, at such visit, that appellant was on supplementary benefit and that it would not be reasonable for the visiting officer to question her when the purpose of the visit was to interview Mr W.... [The claimant] had a duty to report this material fact and, although the tribunal sympathises with her mistaken view that DHSS could systematically link Mr W.. with her, there is nothing to indicate an act of error on DHSS' part that could reasonably lead the tribunal to consider whether the overpayment was due, totally or in part, to failure by DHSS to act reasonably or responsibly in any way. Failure to disclose was totally innocent but responsibility for disclosure still rested with the appellant, and this had not been done to the satisfaction of the Tribunal." Their findings and reasons for decision would appear to be based, in the main, upon the following evidence and submissions, which were recorded by the chairman - "At the hearing [the claimant], who impressed the tribunal as a reliable witness, could not recall that, at the January 1980 visit, any discussion took place on matters related to her benefit or that any comment was made relating to her being on supplementary benefit. She, and her solicitor, considered it reasonable to assume that since D.H.S.S related Mr W... as a new entrant to her home, then D.H.S.S would have related such a change to her records, particularly in view of her presence throughout the January 1980 interview" and that "Solicitor for appellant submitted that she genuinely believed that D.H.S.S. had been made aware of Mr W... in her home and, resultantly, there could be no failure by her in further not reporting the fact."

5. It would appear to me that the tribunal came to the conclusion that the claimant had acted in good faith at all relevant times, that she knew that she was under a duty to see to it that the Department were aware of the change in her circumstances, brought about by the arrival of Mr. W..., and that she "assumed" that her presence at the interview relating to Mr. W... in January amounted to a discharge of that duty. There is no suggestion

that those conclusions were not supported by the evidence. In addition, it would appear to me that, at least by inference, the tribunal also came to the conclusion that it was not reasonable, in the circumstances, for the claimant to have made this assumption, bearing in mind that there was no suggestion that it was based on anything other than her mere presence at the interview, that is to say it was not maintained, for example, that the interviewing officer had ever been concerned with her entitlement to supplementary benefit, or had any particular reason for being aware that she was in receipt of that benefit. I do not accept that the tribunal erred in law in coming to this conclusion. It was a conclusion to which they were entitled to come. If the assumption made by the claimant was not one which it was reasonable for her to make, then she cannot assert that it amounted to a discharge by her of her duty to disclose. Accordingly, I hold that the tribunal did not err in law when they decided that there had been a failure to disclose a material fact and that the overpayment which had occurred had occurred in consequence of the failure. When considering whether there had been disclosure, they mistakenly considered it to be of relevance to determine whether the Department had acted reasonably and responsibly. However, I do not accept that this mistake vitiates the basic conclusion to which they came. There is no dispute, and I accept, that the tribunal erred in law when they added the sum of £208.15, relating to housing benefit, to the overpayment of supplementary benefit to make a total of £954.38. They had no power to require the recovery of any expenditure paid by way of housing benefit. I am satisfied that it is expedient, in the circumstances, for me to give the decision the tribunal should have given. It is that which is set out in paragraph 1. I wish to compliment the tribunal on the way they dealt with this case and to also express my thanks to Mr. Jones and Mr. James for their most helpful submissions, which received my close attention.

6. Save in so far as the contrary is indicated, the claimant's appeal is disallowed.

(Signed) E. Roderic Bowen
Commissioner

Date: 12 December 1984

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