

**SUPPLEMENTARY BENEFIT**

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**Overpayments—oral observations to be considered in cases of misrepresentation.**

The claimant had claimed supplementary benefit. Form A11 recorded that he had no earnings or other income. He had signed a declaration that the form recording the information given by him had been read over to him and was true and complete. On two subsequent occasions he signed declarations to the same effect. In a later statement he declared that he had an army pension. The adjudication officer decided that the claimant had been overpaid and that the sum overpaid was recoverable under section 20 of the Supplementary Benefits Act 1976. On appeal, the tribunal decided that though there had been an overpayment the sum was not recoverable, accepting the claimant's statement that at each interview he had produced his pension book and had made it clear that he was in receipt of an army pension. The adjudicating officer appealed to a Commissioner.

*Held that:*

1. responsibility for the information in forms recording his financial and other circumstances rests solely with the claimant (paragraph 9);
2. in deciding whether misrepresentation has occurred it is necessary to consider not only the written documents but any oral observations made by the claimant which accompanied them (paragraph 10);
3. if the claimant without using express words indicates by his actions, e.g. by the production of a pensions book, that the legal effect of his pension should be taken into account, the written document should be regarded as qualified accordingly. — *Para 10*

The decision was set aside because of inadequate findings of fact and the appeal remitted for rehearing by a different tribunal.

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1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal (now the social security appeal tribunal) given on 24 November 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have regard to the matters referred to below.

2. This is an appeal by the benefit officer (now the adjudication officer), brought with my leave, against the decision of the supplementary benefit appeal tribunal of 24 November 1983. The benefit officer asked for an oral hearing of the appeal, a request to which I acceded. At that hearing the benefit officer was represented by Mrs. A. M. Stockton of the Solicitors' Office of the Department of Health and Social Security, and the claimant by Mr. M. Stock of Counsel appearing for the Citizens Advice Bureau.

3. On 6 July 1979 the claimant claimed supplementary benefit, recording on Form A11 that he had no earnings or other income. He further declared on that form that the information given by him and there recorded had been read over to him and was true and complete. In a further statement dated 17 January 1980, made on another form A11, the claimant again declared that the information given by him and there recorded was true and complete. He also did likewise in respect of a statement dated 11 January 1982. However, in a later statement dated 10 August 1982 the claimant disclosed on form A11 that he had an army pension of £20 a week, and further enquiries revealed that he had been in receipt of that pension, which had been at various amounts over the years, for the duration of his claim. In the light of that information the benefit officer on 15 July 1983 decided the claimant had been overpaid £2,674.03 and that this sum was recoverable.

4. In due course, the claimant lodged an appeal to the tribunal and the benefit officer then recalculated the amount overpaid. He submitted to the tribunal that the correct sum was £2,602.03. In the event, the appeal tribunal decided the claimant had been overpaid that sum, but went on to decide that overpayment was not recoverable. It is from that decision that the benefit officer has appealed.

5. 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.”

6. At the hearing before the tribunal the claimant’s representative stated that when the claimant was interviewed on 6 July 1979 and 17 January 1980, he produced his army pension book and made it clear that he in fact had an army pension. The tribunal in their findings of fact “accepted he did produce his order book (war pension) each time he was interviewed”. They gave as the reasons for their decision the following:—

“The tribunal are satisfied that [the claimant] was overpaid, but the overpayment was not in consequence of his failure to disclose, nor misrepresentation of, a material fact. Section 20(1) Supplementary Benefits Act 1976. The bald statement by [the claimant] in person to the tribunal that he did produce his War Pension order book on each occasion he was interviewed by an officer of the Department is accepted. There was no evidence from the Department to rebut this. He carries all his life with him and used his War Pension book as identification.”

7. Although the point is not made in the reasons for their decision, what seems to have influenced the tribunal is their finding that the claimant “believed ‘income’ meant earnings and that his belief (in his circumstances and that he produced his order book(s) was reasonable. Therefore he did not query the non-inclusion of his War Pension on the A11 statements”.

8. In her submissions Mrs. Stockton contended that this was a simple case of a claimant having misrepresented his resources. Manifestly, he had on each occasion when he signed Form A11 prior to 10 August 1982 declared that he had no earnings or other income. It might well be that he honestly believed that his army pension did not constitute either earnings or income, but this only went to the question of fraud. However, as the terms of section 20 clearly indicated, fraud or the absence of it was a wholly immaterial consideration (R(SB) 21/82 paragraph 4(3)). In so far as the tribunal regarded as reasonable the claimant’s belief as to the effect of his army pension, they were considering the wrong issue. Reasonableness or innocence had simply nothing to do with the matter in hand. Moreover, the Secretary of State had incurred expenditure as a result of the claimant’s misrepresentation and the sum involved was therefore recoverable.

9. Mr. Stock laid great stress on the fact that the claimant had produced his army pension book. He pointed out that the relevant forms had been filled up by a member of the staff of the Department of Health and Social

Security, and argued that, as he had been shown the pension book, he knew or ought to have known that the pension was a relevant factor and should have completed the forms accordingly. However, in my judgment, responsibility for the completion of the form rests with the claimant and the claimant alone. The fact that he may have relied on the guidance of the relevant officer of the Department does not lift the responsibility from him. Of course, it may be that if he can establish to the satisfaction of the Secretary of State that it was through no fault of his whatsoever that the form came to be completed inaccurately, he may be able to persuade the Secretary of State not to require repayment. However, that is not a matter for me and I express no view thereon.

10. Although Mr. Stock was able to point out that the evidence had satisfied the tribunal that the claimant had at the relevant times produced his army pension book, he very properly went on to say that there were no findings of fact relating to any other circumstances surrounding the signing of the relevant forms. This is unfortunate, in that I consider these circumstances may be crucial. Although Mrs. Stockton argued that such circumstances were immaterial, in that the claimant had made a positive misrepresentation in the written documents and that was the end of the matter, I do not think that the case can be disposed of so simply. The tribunal had to consider not merely the written documents, but any oral observations made by the claimant which accompanied them. Suppose, for example, the claimant either before or after having signed one of the forms A11 qualified it by word of mouth, stating that the Department should also have regard to his army pension. In that hypothetical situation, the tribunal could not simply direct their attention to the written document alone, but must construe it in the light of the oral qualification. I will take the matter further. If the claimant without using express words nevertheless by his actions e.g. by producing his army pension book, indicated that the legal effect of the pension should be taken into account, then, in my judgment, the written document should be regarded as qualified accordingly.

11. It follows from what has been said above that there may in the present case have been circumstances which put the forms A11 in a different light from that which they assume when regarded in isolation. Accordingly, the surrounding circumstances are crucial, and, in my judgment, they have not been fully investigated, or at any rate, if they have, there have been no adequate findings of fact.

12. Although Mrs. Stockton invited me to substitute my own decision for that of the tribunal, I do not think that I can properly do this in the present case. For the reasons given above, I am not satisfied that adequate findings of fact have been made, or at least recorded, and accordingly the proper course is for me to direct the appeal to be reheard by a differently constituted tribunal, who will have regard to the matters referred to above.

13. My decision is as set out in paragraph 1.

(Signed) D. G. Rice  
Commissioner