
SUPPLEMENTARY BENEFIT

Overpayments—effect of disclosure in an earlier claim on misrepresentation in a subsequent claim.

When claiming supplementary benefit in 1985 and March 1986 the claimant had disclosed that he was receiving superannuation payments from his former employer. In a subsequent claim for that benefit in November 1986 he stated, in response to a question on the claim form about his income, that he had no money coming in. Benefit was awarded without regard to his superannuation. The claimant again referred to his superannuation when completing a further claim form in September 1988. This caused the Department to look again at his claim made in November 1986. Subsequently the adjudication officer determined that during the November 1986 claim, benefit of £5,678.99 had been overpaid to the claimant in consequence of his misrepresentation and that it was recoverable from him. On appeal the tribunal confirmed the decision of the adjudication officer and the claimant appealed to a Social Security Commissioner.

Held that:

1. there can still be a misrepresentation of a material fact even though there has been an earlier disclosure of that fact (paragraph 11);
2. there applies the legal principle, that if misrepresentation in fact induces the representee to act to his detriment the fact that the representee had means of verifying the information is legally irrelevant. Thus in the present case the Department was entitled to rely on the statements given on the later claim form and had no duty to check their veracity against earlier documents (paragraph 11).

The appeal was dismissed.

1. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 30 March 1989 as that decision is not erroneous in law: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant a married man aged 53 at the relevant time, living with his wife then aged 49 and a child for whom they cared, then aged six. The appeal is against the unanimous decision of the social security appeal tribunal dated 30 March 1989 in the following terms,

“In the period 28/11/86–5/9/88 [the claimant] has been overpaid £5,678.99 which the Secretary of State is entitled to recover from him.”

That decision was given on an appeal from a decision of a local adjudication officer issued on 30 November 1988, which was on the basis of *failure to disclose* a material fact by the claimant (for details see below). The decision was subsequently ‘revised’ to put the decision on the basis of *misrepresentation* by the claimant of a material fact. Both issues were considered by the social security appeal tribunal which based its decision on misrepresentation by the claimant, not on failure to disclose. It is apparent to me that the parties were aware that both possibilities i.e. failure to disclose and misrepresentation would be considered by the tribunal and I also have considered them in this decision.

3. At the claimant's request the appeal was the subject of an oral hearing before me on 20 September 1989 at which the claimant was present and gave evidence to me and the adjudication officer was represented by Mr. J Stacey of the Office of the Chief Adjudication Officer. I am indebted to the claimant and to Mr. Stacey for their assistance to me at the hearing.

4. The tribunal in a carefully completed record of decision (on form AT3) made the following findings of fact,

“[the claimant] worked for the Post Office until 14/11/83. He was retired on medical grounds. He had injured his spine in an industrial accident when he was 24 but the cause of the retirement had been depression. [The claimant had had a nervous breakdown in 1976 and in that year had spent 6 months in hospital being treated for it]. [The claimant] applied for supplementary benefit in April 1985. He then disclosed that he had a post office pension. [i.e. superannuation paid to the claimant of £290.67 per calendar month]. Benefit was put in payment for a fortnight with the pension being taken into account as a resource. That claim then ceased (Unemployment Benefit having become payable). In March 1986 [the claimant] again applied for supplementary benefit. That claim was withdrawn [the claimant] being advised that having insurance policies with a surrender value of £6,000 he had too much capital. . . . on 26/11/86 he completed another B1 supplementary benefit claim form . . . in the answer to the last part of question 7, ‘Do you . . . have any other money coming in?’ against which appears the note ‘Count things like . . . pensions . . .’ [the claimant] ticked the box ‘No’. The tribunal accepts that this was not done dishonestly. [The claimant], still suffering from depression, seems not to have concentrated properly at that point. He knew of course that he did have the post office pension. On the basis of that reply the adjudication officer assessed [the claimant’s] supplementary benefit on the basis that the only income received by the family was . . . child benefit . . . [The claimant] did not disclose increases in his pension which in April 1987 went up from £62.87 per week to £64.42 and again in April 1988 when it became £67.06 per week. After March 1986 [the claimant’s] first mention to the Department of his post office pension was on 12/9/88 when, having returned from a course at the Employment Assessment Centre, [the claimant] completed another claim form.’

5. On those findings of fact the tribunal held that the claimant’s answer ‘No’ to the question on the form B1 dated 26 November 1986 “Do you have any other money coming in?” constituted a misrepresentation of a material fact. That related to section 53(1) of the Social Security Act 1986 which provides as follows,

“53. (1) Where it is determined that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure—

(a) a payment has been made in respect of [supplementary benefit]; or

(b) [not relevant]

the Secretary of State shall be entitled to recover the amount of any payment which he would not have made . . . but for the misrepresentation or failure to disclose.’

6. I consider that the tribunal’s decision in that respect was correct. Moreover I note that when the claimant signed the form B1 dated 26 November 1986 he declared, “As far as I know, the information on this form is true and complete”. Clearly it was not true or complete within the claimant’s knowledge and that constituted a further misrepresentation by the claimant. I fully accept also the tribunal’s finding of fact that the misrepresentation was wholly innocent, being due perhaps to forgetfulness when the claimant was still suffering from the after effects of his nervous breakdown and the treatment that he had received for it (electro-convulsive therapy, drugs, and psychiatric treatment). But that does not prevent there

having been a “misrepresentation” by the statement in the form B1 of 28 November 1986. Whether there can be circumstances in which mental incapacity prevents there being a misrepresentation made at all is a matter which must perhaps be explored at a future date but it does not arise on the facts of this case.

7. The point of law on which the chairman of the tribunal gave leave to appeal was set out in the tribunal’s reasons for decision as follows,

“[The claim on form B1 dated 28 November] was a new claim. It followed some 8 months after the March 1986 claim so that the Department still had [the claimant’s] papers. (Another year and the papers might have been destroyed as generally happens 18 months after the close of a claim). R(SB) 15/87 is claimed as authority for the proposition that disclosure once made by the claimant to the right office need never be repeated. The tribunal is in some doubt whether that relates to past claims as well as present ones. Plainly it applies during the currency of the claim in question but the language of paragraph 28 of R(SB) 15/87 does not appear in any rate necessarily to extend it to past claims. The practical problems if it does are very considerable. [The tribunal then gives examples of the practical inconveniences and problems that could arise if disclosure on an earlier claim were treated as sufficient when there was non-disclosure on a later claim].”

8. Those reasons for decision relate to the fact (as set out in the tribunal’s findings of fact) that although the claimant had not revealed the post office superannuation pension on the claim form on 28 November 1986 he had revealed its existence in the earlier claims of April 1985 and March 1986. The authority referred to i.e. paragraph 28 of R(SB) 15/87, a decision of a Tribunal of Commissioners, reads as follows,

“We accept that a claimant cannot be expected to identify the precise person or persons who have the handling of his claim. His duty is best fulfilled by disclosure to the local office where his claim is being handled either in the claim form or otherwise in terms that make sufficient reference to his claim to enable the matter disclosed to be referred to the proper person. If he does this, it is difficult, . . . to visualise any circumstances in which a further duty to disclose the same matter can arise.” (My underlining).

9. The tribunal gave the following further reasons for decision,

“The tribunal considers tht new claims lead to new duties. A claimant may request a reference back to a prior claim which would put the Department on notice as to the papers contained in that claim. There was, however, no such reference by [the claimant]. The duty of accurately completing forms even if they are the same forms as previously lies with the claimant. Because this was not done by [the claimant] the misrepresentation that he made did have causative effect. Since the point however has not been authoritatively decided leave to appeal was granted.”

10. The claimant argued forcefully that this statement of the law was incorrect and that, as he had declared the existence of his post office superannuation pension on the earlier claim forms, the Department should have associated those earlier papers with his claim of 28 November 1986, particularly as he was still living at the same address and dealing with the same office. He pointed out that when he did in fact again reveal the existence of the pension on a claim for income support dated 12 September 1988 the Department referred to his earlier claim of 28 November 1986 and

discovered the non-disclosure. He contended that if the Department had done that on one occasion they should have done it on the previous occasion when he claimed in November 1986.

11. In my judgment the tribunal's statement of the law is correct in every respect. The fact that there had been earlier disclosure of the superannuation pension did not alter the fact that in the form B1 of claim dated 28 November 1986 the claimant made a misrepresentation of fact namely that he had no income other than that disclosed. It was a misrepresentation even though there had been an earlier disclosure. The only question then is whether under section 53(1) of the 1986 Act the overpayment of supplementary benefit of £5,678.99 for the inclusive period from 28 November 1986 to 5 September 1988 was "in consequence of" that misrepresentation. The claimant's argument was that it was not "in consequence" of the misrepresentation but was "in consequence of" the Department's failure to refer back to the earlier documents on his file which would have disclosed the existence of the superannuation pension. I must reject that contention. It is a well known legal principle that if a misrepresentation in fact induces the representee to act to his detriment the fact that that representee had a means of verifying the information given is legally irrelevant (see e.g. *Redgrave v. Hurd* (1881) 20 Ch. D.I., C.A.). In the present case the Department was entitled to rely on the statements in the claim form of 28 November 1986 and had no 'duty' to check their veracity against earlier documents. The fact that coincidentally on a later claim for income support the Department did check back to a previous claim does not alter the operation of this legal principle.

12. The passage cited in paragraph 28 of R(SB) 15/87 (paragraph 8 above) does not in any way derogate from this. In that case the Tribunal of Commissioners were considering the currency of one claim only and the question of information given on earlier claims did not arise. The reference in paragraph 28 of R(SB) to the duty of disclosure being fulfilled "either in the claim form or otherwise in terms that make sufficient reference to his claim to enable the matter disclosed to be referred to the proper person" must be read in that context. Moreover there was nothing in the form B1 dated 28 November 1986 which would have alerted the Department to the possibility that there was relevant information in earlier claims. On the contrary, in answer to question 2 on the form B1 "Have you ever claimed supplementary benefit?", the claimant answered (in error) "No".

13. There is no doubt therefore that the tribunal arrived at the correct conclusion and that the Secretary of State is entitled to recover from the claimant the sum of £5,678.99 as specified by the tribunal. I ought to mention at this point that the original adjudication officer's decision had required repayment of a slightly larger sum than that, namely £5,754.59. The difference of £75.60 represents an off-set made by the tribunal for a 'laundry addition' for the period from 28 November 1986 to 14 April 1988. Mr. Stacey indicated to me at the hearing that in a future case (but not this one) the Chief Adjudication Officer might well wish to have considered whether or not a tribunal had power to make such an off-set in view of regulation 13 of the Social Security (Payment on Account, Overpayment and Recovery) Regulations 1988 [SI. 1988 No. 664]. However, after reference by Mr. Stacey to the adjudication officer's written submission on this point, dated 27 June 1989, Mr. Stacey very properly indicated that he did not wish to pursue that difficult point further in this particular case, particularly as there may well be difficulties in relation in regulation 13 of the 1988 Regulations and reported Decisions R(SB) 10/85 and R(SB) 24/87,

in the light of the 'new' section 53 of the Social Security Act 1986. I consider this point should be reserved for a future case and I make no further comment on it here.

Commissioner's File No: CSB 602/1989

(Signed) M J Goodman
Commissioner
