

DGR/SH/13

Commissioner's File: CSB/196/1990

SUPPLEMENTARY BENEFITS ACT 1976
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 22 April 1989 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 mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 22 April 1989.

3. The question for determination by the tribunal was whether the total of arrears of Italian pension amounting to £6,770.77 should be abated to offset supplementary benefit already paid. In the event, the tribunal, upholding the decision of the adjudication officer, decided that such should be the case.

4. The adjudication officer now concerned supports the appeal, but on grounds different from those relied upon by the claimant. He first points out that the tribunal failed to make certain crucial findings of fact:-

"... in order to arrive at the amount recoverable they needed to find as a fact -

whether the Italian pension payable to the claimant was a prescribed income (regulation 8(1) of the [Social Security (Payments on Account, Overpayments and Recovery) Regulations 1987] and, if so;

- the dates on which each of the payments ought to have been made;

- the amount of pension payable on each of those days;
- to which supplementary 'benefit week' each payment of pension was attributable;
- the amount of supplementary benefit paid to the claimant for each of those 'benefit weeks';
- the amount of supplementary benefit which would not have paid had the pension been paid when it should have been;"

Unfortunately, the tribunal failed to go into those matters, and without those findings it was not possible to make a proper calculation.

5. The adjudication officer now concerned goes on to point out various errors in the calculation. He elaborates on this in paragraph 5 of his submissions dated 12 September 1990, and there would appear to be force in his contention.

6. It follows that I must set aside the tribunal's decision, and direct that the appeal be reheard by a differently constituted tribunal who must make the necessary findings, and then consider afresh the calculation of the arrears of Italian pension.

7. Accordingly I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 10 February 1992