

AWEW

Commissioner's File: CSB/267/1990

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 ("appeal tribunal") dated 15 July 1988 was not erroneous in law.

2. The claimant, with leave granted by the chairman of the appeal tribunal on 10 November 1988, appeals from that tribunal's decision, affirming the decision of the adjudication officer, that a payment to the claimant of certain arrears of severe disablement allowance fell to be abated by a sum of £561.34 in respect of supplementary benefit and income support made to the claimant for the period from 23 December 1987 to 2 June 1988.

3. The facts of the matter fall within a small compass. They were concurrently found by the adjudication officer and the appeal tribunal and are not in dispute. The claimant is a single man in his fifties and lives alone in a local authority flat. He has been in receipt of supplementary allowance or, its successor, income support since 30 June 1975. On 30 December 1987 he completed a claim form for severe disablement allowance, but payment of the allowance was not put into payment until 9 June 1988. When it was, the arrears were reduced by the sum of £561.34, representing supplementary benefit and income support paid to the claimant in respect of the period from 23 December 1987 to 2 June 1988.

4. The short factual background to this case was matched by the brevity of the reasons which the appeal tribunal gave for affirming the adjudication officer's decision regarding this abatement. They stated them as follows -

"Severe disablement allowance is a prescribed benefit by

virtue of Payments on Account, Overpayments and Recovery Regulation 8. The prescribed dates under regulation 7(2) are 23 December 1987 to 2 June 1988. The calculation of the amount to be abated due to the payment of supplementary benefit and income support is correctly shown in the assessment attached to the case papers. Regulation 31 has also been applied.".

5. The claimant, who is unrepresented, has appealed from that decision on the ground that it offended natural justice, by which I take it that he means it was wrong in law. My jurisdiction in this appeal is, of course, limited to questions of law.

6. In the case of income support the prohibition of duplication of payments arising from other benefits not having been paid on time is governed by section 27 of the Social Security Act 1986. Subsection (2) of that section applies to the present case. It reads -

"(2) Where -

- (a) a prescribed payment which apart from this subsection falls to be made from public funds in the United Kingdom or under the law of any Member State is not made on or before the date which is the prescribed date in relation to the payment and
- (b) it is determined that an amount ("the relevant amount") has been paid by way of income support that would not have been paid if the payment mentioned in paragraph (a) above had been made on the prescribed date,

then -

- (i) in the case of a payment from public funds in the United Kingdom, the authority responsible for making it may abate it by the relevant amount; and
- (ii) in the case of any other payment, the Secretary of State shall be entitled to receive the relevant amount out of the payment.".

The corresponding provisions relating to supplementary benefit are to be found in section 12 of the Supplementary Benefits Act 1976 and are substantially to the same effect.

7. Prescribed payments for the purpose of section 27(2) are set out in section 8(1) of the Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988 and embrace payment of severe disablement allowance. Again, the same position obtained under the supplementary benefit scheme. By regulation 11(2)(a) of the Supplementary Benefit (Resources)

Regulations 1981 payments in respect of severe disability allowance were required to be taken into account in assessing supplementary benefit.

8. The adjudication officer now concerned with the case does not support this appeal. In his submissions dated 20 November 1990, he contends that -

"In reaching their decision the tribunal properly recorded that severe disablement allowance is a prescribed payment within the terms of regulation 8 of the 1987 regulations and also recorded the first and last of the prescribed dates during the period at issue. By reference to the assessments provided by the adjudication officer and the schedule showing the excess income support paid to the claimant they also recorded the amount which would not have been paid to the claimant if the severe disability allowance had been paid on its due date. I would therefore submit the tribunal have done enough to support their conclusion that the adjudication officer's decision to abate that sum from the arrears of severe disability allowance payable was correct.".

9. In my view that submission is well founded and I accept it. For many years statutory machinery has been in place which is aimed at preventing double payments when certain benefits are not paid on time. I have no hesitation in holding that that machinery was properly invoked in the present case and properly applied and that the decision of the appeal tribunal was correct. My only criticism is that it would have helped the claimant if their reasons had been more detailed. However, I consider they were adequate. This is not a case where the claimant has suggested that there was any miscalculation of dates or of figures and none can be discerned.

10. In the upshot this appeal fails and I affirm the decision of the appeal tribunal.

(Signed) A W E Wheeler
Commissioner

(Date) 30 March 1992