

## DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the appeal tribunal sitting at Glasgow on 18 June 2003 is erroneous upon a point of law. I set it aside. I make the decision I see fit. It is that the appeal by the claimant to the tribunal against the decision of 25 February 2002, purporting to supersede a decision of 14 December 1999, is allowed and that the decision of the decision maker is set aside. Further, that the decision of 25 February 2002, purporting to revise a decision of 3 May 2001, made by the decision maker and recorded at pages 23 and 24, is null, void and of no effect. The matter is referred to the Secretary of State to proceed as accords in the light of the above decision.

2. This appeal came before me for an oral hearing on 30 September 2004. The claimant was represented by Mr Craig, a welfare rights officer of Queens Cross Housing Association. The Secretary of State was represented by Mr Brodie, Advocate, instructed by Miss Parker, Solicitor, of the Office of the Solicitor to the Advocate General.

3. By decision dated 14 December 1999, the claimant was awarded income support. A computer print out in respect of that award can be found at page 50 of the bundle. Thereafter, that decision was superseded on 3 May 2001. The award was superseded from 4 January 2001 to 4 April 2001, and was done so upon a change of circumstances which are set out in the computer print out as having been 6 April 2000. Thereafter, on 25 February 2002 a decision maker made two decisions in relation to the claimant's award of income support. The first is to be found at pages 21 and 22 and purports to be a supersession of the decision of 14 December 1999, incorporating an overpayment decision of £942, and the second of the same date purports to revise the decision of 3 May 2001 under s.9 of the Social Security Act 1998 and also makes a finding for the same period as the other decision of an overpayment of £942 from 13 April 2000 to 2 May 2001. It was accepted by both parties that this decision was null, void and of no effect. I find myself in agreement with that proposition. Accordingly, I have made the decision I see fit in respect of that decision in paragraph 1.

4. It was accepted by both parties that the tribunal erred in law. I accept that they did so. They confirmed the decision of Secretary of State issued on 25 February 2002 without stating which of the two decisions made on that day they were confirming. Paragraphs 2 and 3 of their reasons do not make it clear what it is they were seeking to do. In paragraph 2 of their reasons they said that they considered that the appropriate decision would be a revision on the basis of ignorance of material fact. If by that it can be inferred that they were confirming the decision at pages 23 and 24 of the bundle, they would have been in error of law in any event, as both parties and myself are of the view that that decision is null, void and of no effect. There was no decision of 3 May 2001 awarding income support. The decision of 3 May 2001 was a supersession of an existing award based on a change of circumstances on 6 April 2000 with a revised award from 4 January 2001.

5. The question then arose as to the disposal of the appeal.

6. It was Mr Brodie's submission that the decision at page 52 superseding the awarding decision of December 1999, erred in respect that the change should have taken effect from 13 April 2000 and not 4 January 2001. It was his submission that it would be open for me to make a further supersession of the decision of 14 December 1999 upon change of circumstances for the period of 13 April 2000 until 3 January 2001. I tested that argument

upon the basis that the decision of 3 May 2001, which was not the subject of revision at the appropriate time for the Secretary of State to rectify his mistake, had been based upon a change of circumstances on 6 April 2000 and in respect of which the Secretary of State had revised the award of income support from 4 January 2001. Thus, the change of circumstances relied upon by Mr Brodie in his submission was one which had already been taken into account in the supersession which had already been made. In these circumstances, I considered that it was not open for me to make such a further supersession. Mr Brodie accepted that if I was not persuaded by his argument and I adopted the course that I have indicated, then I should remit the matter to the Secretary of State to proceed as accords.

7. Mr Craig agreed with the analysis that I set out when testing Mr Brodie's argument. He did not dispute the proposed disposal of the case by me. Accordingly, I have made the decision set out in paragraph 1.

8. The appeal succeeds.

(signed)  
D J MAY QC  
Commissioner  
Date: 1 October 2004