

Invalid care allowance arrears awarded.  
AO purported to abate under s 12 SBA 1976  
after s. 12 had been repealed. Held should  
NOT be abated.

WMW/JOB

Commissioner's File: CSSB/47/88  
LO: Cumbernauld  
LO Ref No: 100959

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL  
TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Elinor REID (Mrs)

Social Security Appeal Tribunal: Glasgow East

1. I hold the decision of the Glasgow East Social Security Appeal Tribunal dated 3 October 1987 to be erroneous in law, and accordingly I set it aside. Because I consider it appropriate so to do I myself give the decision which the tribunal should have given. That decision is that the arrears of invalid care allowance of £1433 awarded to the claimant on 11 May 1987 may not be abated.

2. On 30 April 1987 an adjudication officer issued a decision that -

"The amount of £1423 of supplementary benefit would not have been paid if payment of invalid care allowance had not been delayed."

The claimant became a widow on 20 March 1986. Her husband was in receipt of a supplementary allowance from April 1979 to 20 March 1986. During the period 24 December 1984 to 23 March 1986 he was also paid an attendance allowance. Following upon his death the claimant sought an invalid care allowance. That was awarded and back dated to 24 December 1984. In his decision of 30 April 1987 the adjudication officer proceeded upon the basis of section 12 of the Supplementary Benefits Act 1975 which may broadly be described by its sidenote heading as a section designed to prevent the duplication of payment. He also referred to regulations made thereunder and in particular regulation 3 of the Supplementary Benefit (Duplication and Overpayment) Regulations 1980 which, again broadly, defined the payments of which duplication was to be prevented. Supplementary benefit and invalid care allowance were payments caught by those provisions.

3. The claimant appealed the adjudication officer's decision, upon the basis that she had never received supplementary allowance over the period in question and therefore it was wrong that her award of invalid care allowance should be abated by the supplementary allowance which she had not received but which her late husband had received. The tribunal upheld the adjudication officer's decision without explaining precisely why, so far as the claimant's point of appeal was concerned. I would on that ground alone have had to hold that the tribunal decision was erroneous in law being in breach of regulation 25(2) of the Social Security (Adjudication) Regulations 1987. That regulation requires

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there to be included in the record of such a decision a statement of the reasons therefor. The reasons require to deal with points raised by parties so that they can see what has been made of them.

4. The proper explanation, so far as the claimant's point was concerned, would have been to refer to the system by which supplementary benefit falls to be assessed, as matter of entitlement and as matter of amount. Broadly speaking it requires the assessment of the requirements and resources of a claimant and in that regard by virtue of paragraph 3 of Schedule 1 to the Supplementary Benefits Act 1976 where two persons are, as here, a couple, married, their requirements and resources fall to be aggregated. That Schedule is given, by section 2(2) of the Act, as the overall scheme for the determination of questions about entitlement to and the amount of any supplementary benefit. In short, therefore, when awarding invalid care allowance in arrears it was open to the adjudication officer, having regard to the statutory provisions to which he pointed, to review the award of supplementary benefit and to revise the award thereof in light of fresh calculations as to resources so as to include the invalid care allowance awarded to the wife. That would have had regard to the various pay dates that were relevant. None of that appears to have been done by the adjudication officer in this case, as the adjudication officer now concerned correctly points out. The result of such an exercise would have been to bring out at the end an amount of duplication of payment. The rather involved provisions of section 12(1) of the Act means that if a claimant is found entitled to payments such that supplementary benefit would not have been paid had those other payments been timeously sought, then it is that claimant who cannot keep the benefit of the award. In very short the answer to the claimant's point is that it is not, strictly speaking, that her invalid care allowance is being set against the supplementary benefit paid to her husband but because the law provides that if, because she had not timeously claimed the invalid care allowance supplementary benefit allowance has come to be paid, even to another such as her husband, then the statute forbids her receiving the award which she otherwise would have had. That may seem rather a tortuous way of doing things but that is what the law in this regard requires.

5. However all that may be the claimant in due course appealed to me, with leave of the chairman. The adjudication officer now concerned supports the appeal but on the matter of the calculation of abatement because upon a proper calculation he has determined that not the whole of the invalid care allowance arrears fall to be lost to the claimant. The claimant's ground of appeal is much the same as the one that she put before the tribunal. However I can not accept either of these submissions.

6. The adjudication officer now concerned has indicated that the arrears of invalid care allowance were awarded to the claimant on 11 May 1987. I do not entirely understand how that could be since it would appear that the offsetting award, which logically at least should have followed the award of invalid care allowance or at least have been contemporaneous with it, was dated 30 April 1987. However it matters not. My concern is that with effect from 7 April 1987 and by virtue of Schedule 11 to the Social Security Act, 1986, section 12 of the Act of 1976 was repealed. With it, as I understand it, went the Duplication

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and Overpayments Regulations. Accordingly as at 30 April 1987 the adjudication officer had no power to operate section 12 and the relevant regulations since they were no longer in force. So far as the facts are before me no rights either way in the matter of invalid care allowance or of offsetting had accrued either to the claimant or to the Secretary of State. Accordingly the provisions of the Interpretation Act, 1978, which allow for some continuation of repealed primary and secondary legislation where such rights have accrued prior to but have not been enforced by the time of repeal can not help the authorities in this case - Sections 16(1)(c) and 23(2). It is upon that simple ground that, in the event, I hold the tribunal decision also to be in error of law. It is also upon that ground that I have given the decision contained in paragraph 1 hereof.

7. The appeal succeeds.

(signed) W M Walker  
Commissioner  
Date: 20 February 1989