

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows. It is given under paragraph 8(4) and (5)(a) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
  - 1.1. The decision of the Manchester appeal tribunal under reference U/40/072/2001/06221, held on 28<sup>th</sup> June 2002, is erroneous in point of law.
  - 1.2. I set it aside and give the decision that the appeal tribunal should have given without making fresh or further findings of fact.
  - 1.3. My decision is that the decisions of the Manchester City Council that were under appeal to the appeal tribunal are confirmed.

### **The appeal to the Commissioner**

2. This case concerns the recoverability from the claimant of an alleged overpayment of housing benefit and excess of council tax benefit for the inclusive period from 1<sup>st</sup> April 1997 to 7<sup>th</sup> January 2001. The claimant is the respondent. The appellant is the claimant's local authority.
3. The case comes before me as an appeal to a Commissioner against the decision of the appeal tribunal brought by the local authority with my leave.

### **The issue**

4. This case raises the issue of whether overpayments of housing benefit and council tax benefit can ever be recovered by a local authority which uses a computer to generate decisions.

### **The history of the case**

5. The local authority informed the claimant that he had been overpaid housing benefit and paid excess council tax benefit. These had occurred, because the claimant had not disclosed that he was receiving an occupational pension. The first response provided on his behalf was that he had mentioned the pension to the officer who filled in the claim form on his behalf: see page 14. However, subsequently that argument has been dropped. There is ample evidence, including his initial denial of the pension when interviewed, to show that he was withholding this information from the local authority. The later argument presented on his behalf was that the local authority had not shown that the decisions making the awards of housing benefit and council tax benefit had been revised to correct the erroneous facts on which the awards had been based. The local authority, in response to a direction from the appeal tribunal, produced a detailed statement. However, the tribunal refused to accept that the statement was sufficient to show that the local authority had revised the decisions.

### **Did the tribunal go wrong in law?**

6. Yes, it did.

7. The tribunal merely stated its conclusion in paragraph 10 of the statement of the reasons for its decision. It did not give any reasons, let alone any adequate reasons, for coming to that conclusion. The failure to give any reasons makes its decision wrong in law. The decision is also perverse. No tribunal, acting judicially and properly instructed on the law, could have come to that decision. I must set it aside.

**Is a rehearing needed?**

8. No. I am able to substitute the decision that the tribunal should have given.

9. I have no doubt on the information produced that the local authority did make the decisions that it says it made. Ideally, the local authority should produce a copy of the actual decision generated by the computer. Some systems used by local authorities can do that. Others cannot. If the system in use cannot produce a copy of the decision, other methods of proof are acceptable.

10. I have read the criticisms of the local authority's statement made on the claimant's behalf. I agree with the local authority's comments on those criticisms. They are general comments. The tribunal should have taken a sensible and realistic view of the evidence. On that approach, there is no doubt that the local authority has shown that it revised the decisions awarding benefit to the claimant.

11. The claimant's representative has cited a number of decisions made by the Commissioners on the social security legislation. Those and similar cases have been cited to me in other cases. They are not incompatible with my approach in this and other housing benefit and council tax benefit cases. Some of the decisions were made in the early days of the use of computers when Commissioners were not familiar with the form of printout provided by computers. None deals with cases in which it was impossible for a copy of the original decision to be provided. So, in short, I am not aware of any decision by a Commissioner that renders it impossible for a decision-maker to satisfy a tribunal that a decision has been made.

**Summary**

12. I allow the appeal and substitute a decision confirming the local authority's decisions. The overpayment of housing benefit and the excess council tax benefit are recoverable from the claimant. The mechanism of actual recovery is a matter for the local authority.

**Signed on original**

**Edward Jacobs  
Commissioner  
10<sup>th</sup> December 2002**