

Commissioner's File: CIS/241/1990

SOCIAL SECURITY ACT 1986

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 7 December 1989 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the original award of supplementary benefit/income support should be reviewed, and my revised decision is that there has been an overpayment of such benefit in respect of the inclusive period from 7 January 1988 to 26 June 1988, and that such sum is recoverable from the claimant pursuant to section 53 of the Social Security Act 1986.

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 7 December 1989.

3. The question for determination by the tribunal was whether the original award of supplementary benefit/income support covering the period from 28 December 1987 to 26 June 1988 should be reviewed and revised, so that such benefit was not payable for that period, and if such was the case, whether the sum overpaid amounting to £1,841.86 was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of the claimant's misrepresentation of a material fact. In the event, the tribunal, upholding the decision of the adjudication officer, decided these matters adversely to the claimant.

4. This is a recovery case under section 53(1), but before reliance can be placed on that particular provision there had, pursuant to paragraph (4) of that section, to be a review of the original award. Unfortunately, in the present case it is not clear that the adjudication officer ever carried out the necessary review. Moreover, the tribunal failed to consider the

matter, and accordingly on that score erred in point of law.

5. The tribunal were satisfied that, during the relevant period, the claimant had been living with a Mr R as his wife. They set out at some considerable length the reasons for their conclusion, and, in my judgment, they were entitled to reach the decision they did on this point. However, if there was to be any recovery, it had to be shown that the claimant had either failed to disclose the fact of her living together or had been guilty of a misrepresentation. The tribunal, like the adjudication officer, relied on misrepresentation, not on failure to disclose. This meant that they had to make a positive finding as to the form and time of such misrepresentation.

6. The tribunal made the following finding:-

"The Appellant misrepresented her circumstances throughout the period beginning 28 December 1987 to 26 June 1988. In this connection the Tribunal takes note of the following, namely:-

(a) on 3 February 1983 the Appellant completed a statement for supplementary benefit in which she described herself as separated and her circumstances as follows:-

'My husband left me 26 January 1983. The last I received from him was £35 on 21 January 1983. He is in full-time work ...

(b) On 7 January 1988 the Appellant completed form 07 in which she said that save for the information appearing in that form no other change had taken place to do with her or her family or her money.

Clearly as from 7 January 1988 the claimant was guilty of a misrepresentation on a material fact. Mr R was living with her as her husband, and in consequence her entitlement to benefit was affected.

7. However, such a finding does not justify recovery for any period prior to 7 January 1988, but the tribunal decided that recovery should extend from 28 December 1987. Accordingly on that count also the tribunal erred in point of law.

8. Accordingly, I must set aside the tribunal's decision. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision. As regards the apparent failure on the part of the adjudication officer to review and revise the decision pursuant to sub-section (4) of section 53, I can, pursuant to what I said in CSB/1272/1989, myself make good the omission, so as to obviate the need for the proceedings to be started all over again ab initio with all the waste of time and money involved, and this

I do. I agree with the decision of the tribunal that throughout the relevant time the claimant and Mr R were living together as husband and wife, and I adopt the reasoning of the tribunal in support of that conclusion. However, there can be no question of the overpayment being recovered as from 28 December 1987. The earliest commencement date must be 7 January 1988 or the earliest reasonable time thereafter to allow the adjudication officer to review the existing award. This will involve a recalculation of the amount overpaid. I will leave it to the adjudication officer and the claimant to agree the relevant figure. In the event of failure to agree, the matter may be referred back to myself.

9. Accordingly, my decision is as set out in paragraph 1.

(Signed) D.G. Rice  
Commissioner

(Date) 3 March 1992