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DGR/MB/13

Commissioner's File: CIS/305/1990

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 March 1989 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
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 March 1989.
3. The question for determination by the tribunal was whether there had been an overpayment of income support in respect of the inclusive period from 6 April 1988 to 1 November 1988 amounting in all to £137.50, and, if so, whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of his failure to disclose the material fact that the interest payable on his mortgage had decreased.
4. In the event, the tribunal, upholding the decision of the adjudication officer, decided that there had been an overpayment of £137.50 and that it was recoverable from the claimant under section 53. The tribunal made the following findings of fact:-
 - (1) [The claimant] was notified that mortgage interest rate had reduced.
 - (2) It was reasonable to expect [the claimant] to disclose the decrease.
 - (3) [The claimant] failed to disclose the decrease.

- (4) The failure related to a material fact.
- (5) Excess expenditure was incurred in consequence of the appellant's failure to disclose the decrease in interest rates".

The claimant had contended that he had never been informed of any decrease in interest rates. However, the tribunal rejected this contention, and anyway concluded that the media coverage of the universal decrease in mortgage rates had been sufficiently wide to have come to the attention of the claimant.

5. Unfortunately, the tribunal do not appear to have considered Regulation 69(2) of the Adjudication Regulations or paragraph 7(8) of Schedule 3 to the Income Support (General) Regulations 1987. The former provisions reads as follow:-

"69(2) A change mentioned in paragraph 7(8) of Schedule 3 to the Income Support (General) Regulations 1987 (fall in interest rates or reduction of outstanding loan capital) shall be deemed not to be a change of circumstances if the amount of the instalments payable to the lender remains constant but, in such a case, where a determination is subsequently review under section 104(1)(b) of the 1975 Act, that review will also take account of any such change".

Paragraph 7(8) of Schedule 3 provides as follows:-

"Where an amount is made under this paragraph, if, notwithstanding that the amount of interest payable is reduced by virtue of -

- (a) a reduction in interest rates; or
- (b) a reduction in the amount of loan capital outstanding,

the amount of instalments which the borrower is liable to pay remains constant, the amount met shall not be adjusted to take account of the new amount of interest payable except where a determination is subsequently reviewed under section 104(1)(b) of the Social Security Act (review of decisions).

6. There was evidence before the tribunal that, although interest rates had gone down, the claimant was still paying the same amount. Unfortunately, the tribunal did not consider this aspect of the case in the light of the statutory provisions cited above. It was incumbent upon the tribunal to determine whether the instalments paid throughout the relevant period had in fact remained constant, and, if so, to go on to determine whether that was because the claimant was legally liable to make those payments or because he had voluntarily elected so to do. If the former was the case, then provided that no other changes giving grounds for review under section 104(1)(b) of the Social Security Act 1975 had arisen - and there was nothing to indicate that they had - there was no change of circumstances calling for a review

and hence there was no overpayment. If, however, the continued payment of instalments at the old rate was a purely voluntary action on the part of the claimant, then there would have been a change of circumstances calling for a review and resulting in an overpayment of benefit. Moreover, if there was an overpayment of benefit, then the question arose for determination as to whether there had been a failure to disclose the change in the rate of interest, and whether such disclosure was reasonably to be expected of the claimant. Unfortunately the tribunal did not consider all these issues.

7. It follows that I must set aside the tribunal's decision as being erroneous in point of law, and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 10 February 1992