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DGR/SH/15

Commissioner's File: CIS/333/1989

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 30 October 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 the tribunal chairman, against the decision of the social security appeal tribunal of 30 October 1989.

3. The question for determination by the tribunal was whether there had been an overpayment of income support amounting to £1,607.42 in respect of the inclusive period from 3 May 1988 to 6 March 1989, and, if so, whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986. In the event, the tribunal, upholding the decision of the adjudication officer, decided that there had been an overpayment of income support for the relevant period in the sum of £1,607.42 and that the same was recoverable from the claimant by reason of his failure to disclose the material fact that, throughout the relevant period, the claimant had been in receipt of sickness benefit.

4. The adjudication officer now concerned supports the appeal, and submits as follows:-

" 5. In my submission the decision of the tribunal is erroneous in law because they have made insufficient findings of fact and have given inadequate reasons for their decision. The tribunal have recorded that the claimant and his daughter, on separate occasions, queried the rate of benefit in payment. I submit, however, that they have failed to make sufficient findings to determine the nature

of these queries in order to establish if they were effective disclosures, sufficient to discharge his obligation. I would agree with the claimant's representative that the tribunal have not explained why his evidence concerning the return of his income support order book did not satisfy them or why the change in benefit, if any, did not amount to a disclosure."

I accept that submission. There has been a clear breach of regulation 25(2)(b) of the Adjudication Regulations.

5. Furthermore, as this was a "recovery" case, sub-section (4) of section 53 had to be complied with i.e. the adjudication officer had first to review and revise the original award. There is nothing to suggest that he did, and in the absence of this exercise there was no power of recovery under section 53(1). Unfortunately, the tribunal failed to consider this aspect of the case, and accordingly they erred in point of law on that point also.

6. It follows from what has been said above that I must set aside the tribunal's decision, and direct that the appeal be reheard by a differently constituted tribunal. It will be open to that tribunal, if they so decide, to rectify the omission on the part of the adjudication officer as regards sub-section (4) of section 53, in reliance on section 102(1) of the Social Security Act 1975, so as to obviate the need for the proceedings to be started all over again ab initio with all the wasted time and money involved (see in this connection CSB/1272/1989). If they decide to make good the omission, they must then determine the extent, if any, of the overpayment, and go on to determine whether the same is recoverable from the claimant under section 53. They should consider this matter both from the standpoint of failure to disclose and of misrepresentation. Indeed, it would seem to me that this case is one of clear misrepresentation by the claimant when he completed his application form for benefit. However, the claimant must be given every opportunity of dealing with this aspect of the case. But, in any event, in considering the matter both from the standpoint of failure to disclose and misrepresentation, the new tribunal must ensure they make findings on all relevant issues, and in the light of those findings give adequate reasons for their decision. They will particularly have in mind the criticism made against the tribunal of 30 October 1989.

7. I allow this appeal.

(Signed) D G Rice
Commissioner

(Date) 1 May 1992