

REP

Commissioner's File: CS/181/1992

SOCIAL SECURITY ACTS 1975 TO 1990

SOCIAL SECURITY ADMINISTRATION ACT 1992

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Appeal Tribunal: Durham

Case No: [REDACTED]

1. My decision is that the decision of the Durham social security appeal tribunal dated 16 September 1991 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the majority decision of the appeal tribunal confirming the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals. In respect of those matters and of the submissions of the adjudication officer dated 7 October 1992 then involved in these appeals and of the further submission of the adjudication officer now involved dated 20 May 1993 the claimant has through his representatives had the opportunity to comment and I have their final observations dated 7 June 1993. No useful purpose is to be served by my setting out these matters afresh here.

4. The relevant statutory provisions are referred to in box 2 of the submission of the adjudication officer first involved in these appeals to the appeal tribunal. Nothing is to be gained by my setting out those references afresh here. I would however add that the Court of Appeal has given judgment on 22 July 1993 reported in The Times Law Reports for that date in the cases of Jones v. Chief Adjudication Officer and Sharples v. Same. The relevant law as to failure to disclose and misrepresentation is there adequately dealt with. No useful purpose is to be served here by my rehearsing the law therein contained here afresh.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. The appeal tribunal confirmed the decision of the adjudication officer that invalidity benefit amounting to £454.13 is recoverable from the claimant but they have failed to explain - thereby breaching the statutory provisions imposed upon them under regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 - how they satisfied themselves that the overpayment calculation period was correct. I note a schedule of the overpayment is attached to the adjudication officer's submission at page 36. The appeal tribunal have failed to follow the requirement identified as scheduled and record that it is accepted by them. In this connection I need only refer to decisions R(SB) 9/85 and CSB/172/89. Since the hearing of the appeal tribunal and since the two submissions the second being dated 21 May 1993 the position of failure to declare and misrepresentation has been before the Court of Appeal in Jones v. Chief Adjudication Officer and Sharples v. Same their judgment being dated July 22, 1993. Accordingly the issues must be considered in the light of that judgment. A copy of the decision of the Court of Appeal should be before the appeal tribunal to assist them in their deliberations.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. As well as having a copy of the above decision of the Court of Appeal before them the adjudication officer should in adequate time to enable the claimant and the claimant's representatives to consider the same and before the further hearing of the newly constituted appeal tribunal make a further submission as to the effects if any on the instant case of the decision of the Court of Appeal.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner

(Date) 21 January 1994