

**Before Judge Robin C A White**

**Decision:** The decision of the tribunal of 23 March 2011 is erroneous in law and I set it aside. I remit the appeal for consideration by a differently composed tribunal in the light of such directions and guidance as are contained in this decision.

### **REASONS FOR DECISION**

#### **Background**

1. The appellant, who was born on 6 September 1967, was in receipt of income support including the payment of a severe disability premium. The appellant is blind.
2. The appellant married in Nigeria in 2008 and his wife came to the United Kingdom to join him on 15 April 2009.
3. The Secretary of State has claimed that the appellant had failed to disclose that his wife had come to the United Kingdom to live with him. This resulted in an overpayment of the severe disability premium as part of the appellant's income support. A decision was made superseding the original award to reduce the amount of income support payable. A separate decision was made that the overpayment of benefit for the period from 15 April 2009 to 13 October 2009 was recoverable from the appellant.
4. The appellant appealed against that decision on the grounds that he had never received notification of his obligations to tell the Department about changes in his circumstances in Braille, and that he had disclosed to the Department in mid-May that his wife had come to the United Kingdom to live with him.
5. A written submission was prepared on the appellant's behalf by a representative. The appellant added a further detailed written submission about his appeal.
6. The appeal came before a First-tier Tribunal on 23 March 2011. The appellant attended with his wife, but was not represented. The Secretary of State was not represented. There is a helpful record of the proceedings.
7. The outcome of the appeal was a variation of the Secretary of State's decision. The tribunal concluded that there was a recoverable overpayment only for the period from 15 April 2009 to 20 August 2009. A statement of reasons was subsequently provided.
8. The appeal now comes before me with the permission of a Judge of the Upper Tribunal. The appeal is supported by the Secretary of State.

#### **The grounds of appeal**

9. The appellant's grounds of appeal are as follows:
  - (a) The tribunal did not have before it the entitlement decision which underpins the overpayment decision, and did not deal with this issue.

- (b) The tribunal has made no findings of fact about the information the appellant had received about his duty to disclose changes in his circumstances. This was central to the appeal since the appellant is blind.
- (c) The tribunal's approach was superficial and its reasons are inadequate.

#### **Did the tribunal err in law?**

- 10. The appellant's representative in the observations in response to the Secretary of State's submission now concedes that there is no issue concerning the supersession and recovery decisions. Though the entitlement decision is not reproduced in the bundle of papers, there is reference to it in the review of the Secretary of State's decision, and it is accepted that there was a proper entitlement decision superseding the earlier award of income support in addition to the overpayment decision. Accordingly no issue arises under section 71(5A) of the Administration Act 1971.
- 11. The tribunal's reasons are plainly inadequate. They amount to little more than a recitation of some of the evidence; and they fail to make findings of fact on key issues relating to the application of regulation 32 of the Claims and Payments Regulations. There should be findings of fact on the information the appellant received, and the form in which he received it, as well as much more precise details of his communications with the Department following the arrival of his wife from Nigeria.
- 12. The failure of the tribunal to make sufficient findings of fact and to state its reasons in the light of those findings constitutes an error of law. For this reason, I set the tribunal's decision aside.

#### **The way forward**

- 13. Since there remains a need for findings of fact on key issues raised in this appeal, I remit this appeal for determination by a differently composed First-tier Tribunal.

#### *Some directions and guidance for the new tribunal*

- 14. The new tribunal should proceed on the basis that there was an entitlement decision superseding the earlier income support award, and an overpayment decision based on the ground that the appellant failed to disclose the fact that his wife had come to live with him in the United Kingdom.
- 15. It will be helpful if the Secretary of State can produce a copy of the entitlement decision, but nothing will turn on his failure to do so.
- 16. This case is likely to turn on the extent of the duty falling on the appellant to disclose changes in his circumstances. The starting point is to make findings of fact on the information which was provided for the appellant. It is absolutely essential that the form in which any such information was provided is established. There must therefore be findings of fact as to whether the information was provided in a form suitable for effective communication to a person who is blind.
- 17. The Secretary of State is directed to indicate whether the information contained in Form INF4 is available in Braille and whether, and if so, when, such information was provided to the appellant in this form.

18. If it is established that the appellant never received specific instructions on matters to be disclosed in a form which constitutes effective communication to him as a blind man, then only the requirements in Regulation 32(1B) impose obligations to disclose on the appellant. The issues which arise in relation to that paragraph of Regulation 32 will need to be explored in detail.
19. The new tribunal must make clear findings of fact on all the relevant interactions between the appellant and the Department following the arrival of his wife in the country. In the light of those facts, the new tribunal will need to determine whether any of those interactions constituted proper notice to that part of the Department dealing with the appellant's income support entitlement of the change in his circumstances.
20. In the light of its findings of fact and conclusions, the tribunal will need to determine whether there is a recoverable overpayment of income support, as well as the period for which, and the amount of, any such overpayment.

*Directions to the Secretary of State*

21. The Secretary of State is directed to prepare a fresh submission for the new tribunal in the light of the directions and guidance I have given.
22. It will be of considerable assistance to the new tribunal if the Secretary of State is able to provide a representative for the new tribunal hearing.

**Final remarks**

23. Nothing I have said precludes the First-tier Tribunal making such further directions as it considers appropriate.
24. The appellant should not assume that he will win the appeal when it is reheard. I have set aside the original tribunal's decision because it contained errors of law. All issues are now for determination by the new tribunal following a complete rehearing of the appeal.

**Signed on the original on**

**23 April 2012**

**Robin C A White**

**Judge of the Upper Tribunal**

