



**THE SOCIAL SECURITY COMMISSIONERS**

*Commissioner's Case No: CIS/1178/2001*

**SOCIAL SECURITY ADMINISTRATION ACT 1992  
SOCIAL SECURITY ACT 1998**

**APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW**

**COMMISSIONER: W M WALKER QC**

*Appellant:* ~~XXXXXXXXXX~~

*Respondent: Secretary of State*

*Tribunal: Whittingham House East*

*Tribunal Case No: U/45/164/2000/00994*

## DECISION OF SOCIAL SECURITY COMMISSIONER

1. This claimant's appeal succeeds. I hold the decision of the Whittingham House appeal tribunal dated 7 November 2000 to be erroneous in point of law and, accordingly, I set it aside. Because I think it appropriate so to do, I exercise the power contained in s.14(8)(a)(i) of the Social Security Act 1998 and give the decision which the tribunal ought to have given on the appeal. That decision is to allow the appeal from a decision made on behalf of the Secretary of State on 30 June 2000. The case is remitted to the Secretary of State to make of new his said decision and that to the effect of holding the claimant entitled to an increase in her income support applicable amount from the date of the award of child support to her in respect of her son, Connor. That date will require to be discovered. Thereafter, the Secretary of State will have to arrange for appropriate payments.

2. The Secretary of State's decision superseded a then in force decision holding the claimant entitled to income support. The terms of that decision are, so far as I can find, not with the papers. It seems that the supersession was based upon a relevant change of circumstances, and the superseding decision effectively increased the amount of income support by including a disabled child premium for one of the claimant's children and an amount in respect of her son, Connor, as a dependant. It is the increase in respect of the son, that is at the heart of this appeal. The decision held entitlement to that increase from 12 June 2000. That was the date on which the income support office discovered, in the course of a check about the daughter, that the claimant was in receipt of child benefit in respect of Connor. The claimant appealed to the tribunal.

3. The essence of the appeal was that the increase in entitlement in respect of Connor should have been backdated to the date on which child benefit had been awarded in respect of him. S.10 of the Social Security Act 1999 provides the Secretary of State with power to make decisions superseding earlier decisions and regulations may be made thereunder dealing with the circumstances in which, and the procedure by which, such a decision may be made. Regulation 6(2) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 deals with those circumstances. Sub-paragraph (e) provides that a decision may be superseded where the earlier decision:-

"is a decision where:-

- (i) the claimant has been awarded entitlement to a relevant benefit; and
- (ii) on a date after that entitlement arises, the claimant ...becomes entitled to, and is paid, another relevant benefit or an increase in the rate of another relevant benefit ..."

I have quoted the current form of the regulation but am aware that, at the date of the decision maker's decision, paragraph (e)(i) limited the award of the relevant benefit to one made by the Secretary of State. However, the difference and widening of the regulation play no part in this decision. The claimant's argument before the tribunal was that the two benefits here in question were "relevant benefits". The tribunal was unpersuaded and, since that is the sole issue of law in the case, I need not quote anything further from its decision. In written submissions before me the claimant's representative argues in principle that the two benefits are relevant each to the other. It is contended that the expression has its ordinary every day

meaning. My attention is drawn to paragraph 7(7), which provides that a decision superseded under 6(2)(e):-

"... shall be superseded as from the date in which the claimant ... becomes entitled to and receives the relevant benefit or increase in benefit referred to in regulation 6(2)(e)(ii)."

4. The Secretary of State supports the appeal and has drawn my attention to s.8 of the Social Security Act 1998 which is at the start of Chapter II. That chapter covers "Social Security Decisions and Appeals" and deals in particular with "Decisions". Sub section (3) provides that:-

"In this chapter 'relevant benefit' means any of the following, namely:-

- (c) income support;
- (g) child benefit ..."

The Decisions and Appeals Regulations, so far as relevant, were made under and for the purposes of that chapter. Accordingly, these two benefits clearly are "relevant benefits", each to the other.

5. The Secretary of State has also drawn attention to a decision by Mr Deputy Commissioner RCA White in which, under the preceding regulations, namely regulation 63(1A) of the Social Security (Adjudication) Regulations 1995 which provided similarly to Decisions and Appeals Regulation 6(2)(e), but somewhat differently, that there could be similar back dating where:-

- (a) the reason for the revised determination is that the claimant or a member of his family has become entitled to another benefit or to an increase in the rate of another benefit, and:
- (b) that other benefit or increase is awarded in respect of a period before the one month's period.

"One month's period" referred to the limitation to one month for backpayment of income support from the date on which the review was requested, imposed by Adjudication Regulation 63(1). But in that case it was necessary for the Commissioner to consider whether the benefits were related in the way that the adjudication regulation required, namely by the reason for the revision being the other entitlement. I do not in any way dissent from what he said but in this case I am dealing with a different, however much very similar, statutory scheme and regulations. I think it better to concentrate upon them and, putting it quite simply, and quite apart from any obvious relationship between an increase in income support because a child has become a dependant as being related to the same child, I hold that, since the two benefits in question here are made "relevant benefits" by s.8(3), then regulation 6(2)(e) operates, with the result that regulation 7 requires, for this case, an increase in her income support applicable amount in respect of the claimant's son, Connor. But that is not just from 12 June 2000 but rather from the date when was made the award of child support for him. That date does not appear in the papers before me and so I cannot make myself the appropriate supersession decision. It is for that reason that the case must go back to the Secretary of State of new to carry out the supersession, but from an appropriate date in respect of the child, Connor.

6. For clarity, I draw to attention that, since the precise terms of the decision being superseded and the precise terms of the supersession decision made, which I have set aside, are also not before me, it will be for the Secretary of State, in conducting that operation, to make sure that nothing is lost in respect of the daughter, Melissa. Accordingly, I must emphasise the need for careful recording of the full terms of any supersession decision. Should it be appealed then, in order that the tribunal know precisely what is being involved in any technical replacing decision, the terms must be properly set out. In any appeal system, considering points of law in particular, it is almost impossible to be sure what should be the answer, unless the decision being criticised is properly and fully recorded. That was a disadvantage from the which the tribunal suffered in this case, and from which consequentially I suffer, and in the end of the day it is the claimant who suffers by further delay. No doubt those concerned will take care to ensure that the terms of decisions are properly set out in future appeals.

7. This appeal succeeds and the case is returned to the Secretary of State in order to make the appropriate supersession decision in place of that set aside and in accordance with what is set out above.

(signed)  
W M WALKER QC  
Commissioner  
Date: 8 January 2002