

DGR/SH/43

Commissioner's File: CSB/619/1989

Region: Wales & South Western

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Beryl Harris (Mrs)

Social Security Appeal Tribunal: Barnstaple

Case No: 321: 00775

1. For the reasons hereinafter appearing, the decision of a social security appeal tribunal given on 9 November 1988 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 9 November 1988.

3. The question for determination by the tribunal was whether, and if so to what extent, the claimant had been overpaid supplementary benefit, and whether any such overpayment was recoverable. Unfortunately, the tribunal were guilty of a variety of different errors of law. First, the tribunal which ultimately heard the matter, the case having been adjourned from 24 August 1988, was differently constituted tribunal as against the earlier tribunal, but, notwithstanding this, they failed to hold a complete rehearing. In their findings they stated:-

"At a tribunal hearing on 24 August 1988 it was determined that between 14 March 1987 and 9 May 1987 [the claimant] lived with a Mr W as man and wife."

The tribunal of 9 November 1988 were not entitled to assume any such cohabitation on the basis of a previous determination; they were required to rehear the case in its entirety and make their own findings.

4. Secondly, the tribunal misconstrued regulation 69 of the Social Security (Adjudication) Regulations 1986. That regulation operates to prevent payment of arrears of benefit for a period more than 52 weeks prior to the date of any review. It does not prevent an actual review and revision of a decision with retrospective effect for a period in excess of 52 weeks. Any entitlement arising can be offset against any overpayment (R(SB) 24/87).

5. Thirdly, the tribunal failed to make any findings of fact as to whether or not disclosure by the claimant was reasonably to be expected. Furthermore, they failed to determine whether such disclosure was reasonably to be expected from the claimant's partner. The tribunal's failure to go into these matters constitutes an error of law.

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. The new tribunal may find it helpful to refer to the observations of the adjudication officer now concerned made in paragraphs 5 to 8 of his submissions dated 29 June 1989.

7. I allow this appeal.

(Signed) D.G. Rice
Commissioner

Date: 25 August 1989