

SUPPLEMENTARY BENEFITS ACT 1976

THE SOCIAL SECURITY COMMISSIONERS PROCEDURE REGULATIONS 1987
REGULATIONS 24(1)

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER - CORRECTION

Page 1 - paragraph 1(ii), line 4 -

Delete "recoverable from the claimant"

Insert "recoverable from Mrs Ahmed"

(Signed) D G Rice

Commissioner

(Date) 9 April 1992

Commissioner's File: CSB/1145/1989

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DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 17 April 1989 is erroneous in point of law, and accordingly I set it aside. At it is expedient that I give the decision the tribunal should have given, I further decide that -

- (i) the sum of £410.80, being arrears of attendance allowance in respect of the inclusive period from 27 April 1987 to 26 July 1987, is recoverable from Mrs. Ahmed as appointee of the claimant, pursuant to section 27(1) of the Social Security Act 1986, and
- (ii) the sum of £853.20, representing the overpayment of supplementary benefit in respect of the inclusive period from 27 July 1987 to 31 January 1988 is recoverable from the claimant, pursuant to section 53 of the Social Security Act 1986, by reason of Mrs. Ahmed's failure to disclose the material fact that she was for the relevant period in receipt of attendance allowance on behalf of the claimant.

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 17 April 1989. An oral hearing was directed, and at that hearing Mrs. Ahmed, as the appointee of the

claimant, though herself not present, was represented by Ms. Julia Bolus of the Nottingham and District Citizens Advice Bureau, whilst the adjudication officer appeared by Mr. M.D. Jobbins of the Chief Adjudication Officer's Office.

3. On 28 January 1988 Mrs. Ahmed, who had been accepted as the claimant's appointee, sent to the local office an SPI claim form on behalf of the claimant in which she stated that the latter "gets Attendance Allowance of £31.50 per week". It was subsequently found that attendance allowance had been in payment in respect of the claimant since 27 April 1987. A notice of entitlement thereto had been sent to Mrs. Ahmed on 8 July 1987 informing her that the Attendance Allowance Board had decided that from 24 April 1987 the claimant had become entitled to attendance allowance. A payment was issued to her in the sum of £410.80 covering the period from 27 April 1987 to 26 July 1987. An order book for payment from 27 July 1987 to 25 October 1988 was also issued. When it became apparent that, had the claimant received payment of attendance allowance timeously, there would have been no entitlement to supplementary benefit, the Secretary of State sought to recover the arrears of attendance allowance pursuant to section 27(1) of the Social Security Act 1986. This reads as follows:-

"27.-(i) Where -

- (a) a payment by way of prescribed income is made after the date which is the prescribed date in relation to the payment; and
- (b) it is determined that an amount which has been paid by way of income support would not have been paid if the payment had been made on the prescribed date,

the Secretary of State shall be entitled to recover that amount from the person to whom it was paid".

I am aware that the claimant was paid in respect of the relevant period supplementary benefit, not income support, but nothing turns on this point, in that under paragraph 2 of schedule 7 to the Social Security Act 1986 "section 27 above shall have effect in relation to supplementary benefit as it has in relation to income support".

4. In the present case, the arrears of attendance allowance were paid over to the claimant's appointee, and accordingly it is from her that recovery has to be made. On 7 November 1988 the adjudication officer decided that the arrears were to be recovered from Mrs. Ahmed as the appointee, and when the matter was taken on appeal, the tribunal upheld the decision of the adjudication officer. Incidentally, they correctly realised that the relevant statutory provision was section 27(1) not, as the adjudication officer had contended in his submissions to them, section 27(2). Both Ms. Bolus and Mr. Jobbins accepted that the relevant provision was section 27(1). Accordingly as far as the

arrears of attendance were concerned, the tribunal did not err in point of law.

5. After 26 July 1987 the appointee received attendance allowance on the prescribed dates. Unfortunately, she failed to disclose to the local office that she was in receipt of that allowance, and it was not until she completed the SPI form on 28 January 1988 that the position became known to the supplementary benefit authorities. When they became aware, the adjudication officer on 25 October 1988 reviewed his original award of supplementary benefit, and his revised decision was that there had been an overpayment of benefit amounting to £853.20 in respect of the inclusive period from 27 July 1987 to 31 January 1988, and that this sum was recoverable from the appointee by reason of her failure to disclose the material fact that she had been receiving on behalf of the claimant attendance allowance.

6. In due course, the claimant appealed to the tribunal on this issue, but in the event the tribunal upheld the adjudication officer. They gave the following reasons for their decision:-

"As for the sum of £853.20 representing the overpayment of supplementary benefit the Tribunal considered that:

- (i) Mrs. Ahmed knew that [the claimant] was in receipt of attendance allowance.
- (ii) Mrs. Ahmed knew that it was reasonable to disclose such payment.
- (iii) Mrs. Ahmed knew that [the claimant] was in receipt of Supplementary Benefit.
- (iv) Mrs. Ahmed failed to disclose receipt of Attendance Allowance.
- (v) Receipt of attendance allowance was a material fact.
- (vi) The overpayment of supplementary benefit was the result of the failure to disclose the receipt of attendance allowance

And consequently Mrs. Ahmed came within the provisions of Section 53(1) of Social Security Act 1986 as a person who fraudulently or otherwise failed to disclose a material fact as a consequence of which the overpayment was made; and within the provisions of S.53(2) as a person from whom the amount is recoverable because she failed to disclose the material fact".

I see nothing wrong with the tribunal's decision as regards the £853.20. The tribunal did not err in law on that issue.

7. However, Ms Bolus raised one further matter. She pointed

out that in the chairman's note of evidence there is a reference to Mrs. Ahmed having said that the claimant had really been charged £145 a week for her accommodation, but that owing to her poverty she had only been required to pay £130. Credit was sought for the difference against any sum repayable. Unfortunately, the tribunal do not appear to have considered this aspect of the case, and accordingly on that ground I must set aside their decision as being in breach of regulation 25(2)(b) of the Adjudication Regulations.

8. However it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently dispose of the appeal myself. There is no independent evidence that the claimant was actually ever charged £145 per week. The claim form SB1 dated 31 March 1987, completed by Mrs. Ahmed, states specifically that the claimant was required to pay £125 per week "increasing to £130 on 6.4.87". There is no documentation to indicate that this rate of payment was ever departed from. In my judgment £145 is merely the maximum figure which would have been claimable by way of supplementary benefit had Mrs. Ahmed charged the claimant with that figure. Accordingly, I reject the contention made by Mrs. Ahmed before the tribunal that the claimant was being charged at the rate of £145 per week.

9. My decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 2 March 1992