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DGR/SH/13

Commissioner's File: CSB/072/1991

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 7 March 1990 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 my leave, against the decision of the social security appeal tribunal of 7 March 1990.

3. The question for determination by the tribunal was whether the subsisting award of supplementary benefit/income support should be reviewed and revised, so that no such benefit was payable from 29 August 1987 to 30 April 1988, and, if so, whether the overpayment amounting to £2,449.20 was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of his failure to disclose the material fact that he was, during that period, working as a self-employed taxi driver. In the event, the tribunal decided these matters adversely to the claimant.

4. However, the Secretary of State has identified one respect in which it could be said that the tribunal erred in point of law. He submits as follows:-

> " 3. In my submission the decision of the tribunal is erroneous in law because they have made insufficient findings of fact and have given inadequate reasons for the decision. The tribunal have determined that [the claimant] failed to disclose a material fact, that he was working as a self-employed taxi driver, and as a consequence of this failure supplementary benefit/income support amounting to

£2,449.20 had been overpaid and is recoverable from him. In reaching this decision the tribunal found that the claimant was working in excess of 30 hours per week ... for the period 23.8.87 to 30.4.87. I submit that the tribunal have made insufficient findings of fact to reach such a conclusion. At the tribunal hearing on 7.3.90 they heard the evidence of [the claimant] that he was working 4 days per week during the period in question but the tribunal failed to use their inquisitorial powers to determine either directly or on the balance of probabilities that he was working in excess of 30 hours. There appears to be no record of the number of hours being discussed with the claimant. In the tribunal's notes of evidence .. it is recorded that '[the claimant] was paying a full-time rental in the mini-cab business'. Again no findings were made as to what 'a full-time rental' consisted of, or if it was possible to pay a part-time rental."

I see the force of that submission, and accept it.

5. It follows that I must set aside the tribunal's decision as being erroneous in point of law, and direct that the appeal be reheard by a differently constituted tribunal who will ensure that they have regard to the criticisms set out above.

6. However, there is a further matter to which I should refer. The two decisions of the adjudication officer given on 16 January 1989 do not indicate that he went through the formality of reviewing the original award. Sub-section 4 of section 53 requires, in recovery cases, a review and revision of the original award. Unless that formality is complied with, it is not open to the Secretary of State to make any recovery of overpayment. It may be that the adjudication officer did go through the formality of reviewing and revising the original award, but it is not apparent from the language of his decision. In those circumstances it would be unsafe to assume that the formalities of sub-section 4 were properly complied with. The tribunal should have taken the point, and their failure so to do in itself renders their decision erroneous in point of law. However, as I have in any event to remit the matter to a new tribunal, they can consider this aspect of the case. If, on further investigation, it transpires that subsection 4 was complied with by the adjudication officer, then the matter will be disposed of. If, however, they find that such was not the case, then they can, as explained in my decision CSB/127/1989, rectify the omission in reliance on section 102(1) of the Social Security Act 1975, so as to obviate the need for the proceedings to be started all over again ab initio with all the wasted time and money involved.

7. Accordingly I allow this appeal.

(**Signed**) D.G. Rice
Commissioner

(**Date**) 2 March 1992