

CPAC

DGR/SH/13

Commissioner's File: CSB/269/1990

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 29 June 1989 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 a Commissioner, against the decision of the social security appeal tribunal of 29 June 1989.

3. The question for determination by the tribunal was whether there had been an overpayment of benefit, and, if so, the amount, and whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986. In the event, the tribunal, allowing the appeal, decided that there had been an overpayment of benefit amounting to £122.65, but the same was not recoverable.

4. The adjudication officer now concerned supports the appeal and submits as follows:-

"It is my submission that it was incumbent upon the ... tribunal in accordance with regulation 25 of the Adjudication Regulations to set out clearly the findings of fact and reasoning which led them to their decision that there was a non-recoverable overpayment of £122.65, including the basis of any deductions made from the total. By failing to consider all the relevant stages and to show they had done so in a way which enabled the claimant to try and understand how they reached their decision, the ... tribunal have, I submit, erred in law."

I accept that submission.

5. Accordingly, I set aside the tribunal's decision, and direct that the appeal be reheard by a differently constituted appeal tribunal who will look afresh at the whole question of the overpayment from 9 September 1987 to 27 February 1989, and make full findings on the issue.

6. The adjudication officer now concerned in his submissions dated 16 July 1991 has drawn my attention to the fact that the original adjudication officer does not appear to have reviewed the original award pursuant to sub-section (4) of section 53. The tribunal should have taken the point, and their failure so to do renders their decision erroneous in point of law on this count also. However it is open to the new tribunal, pursuant to my decision CSB/127/1989, to rectify the adjudication officer's 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. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 2 March 1992