

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 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 the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 29 March 1990.

3. On 7 December 1988 the adjudication officer reviewed an award of supplementary benefit income support for the inclusive period from 18 May 1987 to 5 June 1988 pursuant to section 104(1) of the Social Security Act 1975, and his revised decision was that supplementary benefit/income support should not be payable for that period. He further decided that the overpayment arising amounted to £2,453.61, and that this sum was recoverable from the claimant by reason of her failure to disclose the material fact that, during the relevant period, she had taken up employment. As the overpayment had already been reduced by £484.53, on account of arrears of supplementary benefit, he decided that the net sum repayable came to £1,969.08.

4. In due course, the claimant appealed to the tribunal. In his submissions to them, the adjudication officer conceded that there had been an error in the calculation of benefit. He submitted that the true sum recoverable was £1,478.21 covering the period from 2nd May 1987 to 4 April 1988, of which £683.93 had already been recovered. Therefore the balance outstanding came to £794.28. In the event, the tribunal upheld the adjudication officer on the substantive issue, and accepted his revised calculation of benefit overpaid and recoverable.

The tribunal gave as the reasons for their decision the following:-

"The claimant's representative has represented to us the family and domestic stress that the claimant was suffering but in our application of Commissioner's decision R(SB) 1/82 we conclude that the claimant failed to disclose the material change of circumstances and that failure was reasonably to be expected. We have noted that social workers were in attendance on the family and therefore they were not deprived of advice.

2. Section 53 of the Social Security Act 1986 applies and the balance of overpayment is recoverable. We request DSS check details of the arrears and satisfy themselves that travel costs had been properly allowed. In the event of continuing disagreement we are not granting liberty to apply."

5. Manifestly, the tribunal had to consider whether the overpayment was recoverable under section 53 by reason of the claimant's failure to disclose her part-time earnings during the relevant period. This involved consideration, inter alia, of whether the disclosure was reasonably to be expected. But so far from saying that such disclosure was reasonably to be expected, the tribunal appear to have said in effect the reverse. They said that "failure [to disclose] was reasonably to be expected". I suspect that the tribunal meant that "disclosure was reasonably to be expected, and that the insertion of the word "failure" instead of "disclosure", was a slip. However, as the decision now stands, their reasoning is inconsistent with their decision, and on that ground I must set it aside. But, more significant, the tribunal appear to have relied for their conclusion that the claimant was guilty of a failure to disclose on the fact that "social workers were in attendance on the family and therefore they were not deprived of advice". However, it is not clear what advice they gave, and what bearing it had on the need to disclose. The tribunal should have investigated this matter more fully, and made specific findings on this issue. Accordingly, there was a breach of regulation 25(2)(b), and on that ground also I must set aside the tribunal's decision.

6. Further, the tribunal have not dealt properly with the exact amount of the overpayment. They have expressed doubts as to whether travel costs had been properly allowed. They invited the parties to go into the matter again but instead of directing that, in the event of disagreement, the matter should be referred back to them for their determination, they expressly withheld liberty to apply. That too was an error of law. As was said in paragraph 8 of R(SB) 11/86:-

"There are certainly cases in which it is appropriate for an appeal tribunal to pass an issue of assessment or accounting back to the local adjudication officer in the hope that such issue can be disposed of by agreement

between the adjudication officer and the claimant. I have said before, it is essential, when such a decision is adopted, that the appeal tribunal should make it clear in the event that the issue cannot be disposed of by agreement between the parties, the matter must be referred to the appeal tribunal so that it - and it - may discharge its duty of finally determining the appeal thereto."

By failing to direct that, in the absence of agreement, the matter be restored to the tribunal, the tribunal erred in law. On that ground also I must set aside their decision.

7. Seemingly, the decision of the adjudication officer issued on 7 December 1988, when it was eventually issued on 17 January 1989, appeared in a truncated form. As a result there was no reference to the adjudication officer's having reviewed and revised the original award. Such a review and revision is essential in a recovery case pursuant to subsection (4) of section 53. Accordingly, the question arose whether in this instance the adjudication officer had ever reviewed and revised the award. For had he not done so, then recovery would not be possible. The tribunal should have gone into that aspect of the case, and their failure so to do also constitutes an error of law. However, subsequently it transpires that the adjudication officer did review and revise the decision, and that subsection (4) was complied with. Had it not, then it would have been open to the new tribunal, who are charged with rehearing the appeal, themselves to make good the omission pursuant to subsection (1) of section 102 of the Social Security Act 1975, in accordance with the decision CSB/1272/1989. However, in the event the point does not arise.

8. Accordingly, I must set aside the tribunal's decision and direct that the appeal be reheard by a differently constituted appeal tribunal who will have regard to the matters mentioned above.

9. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 1 April 1992