

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 dated 6 August 1990 is not erroneous in law. Accordingly this appeal does not succeed.

2. It appears that an award of supplementary benefit had been made to the claimant's husband from 7 April 1986. He died on 20 July 1986 and benefit was then awarded to the claimant in her own right I think from that date. In December 1986 it was apparently decided that the claimant was entitled to an award of invalid care allowance in respect of the period 7 April 1986 to 20 July 1986. Had the invalid care allowance been paid at the time that the claimant's late husband was receiving his supplementary benefit the amount to which he was entitled would have been adjusted to take account of his wife's receipt of invalid care allowance: see regulation 11(2)(a) of the Supplementary Benefit (Resources) Regulations 1981 as in force at the material time. That did not happen because entitlement to the invalid care allowance was not established until some time later. Section 12(1) of the Supplementary Benefits Act 1976 applied to that situation until its repeal as from 7 April 1987 and replacement by section 27(1) of the Social Security Act 1986. Common to both those provisions is the principle that allows the Secretary of State in effect not to pay arrears of one benefit when, had those arrears been paid earlier, some other benefit either would not have been payable at all or payable at a lower rate. This prevents double payment. This was the principle applied in the circumstances of this case by an adjudication officer in his decision issued on 31 July 1987 to the effect that arrears of invalid care allowance were "abated by the relevant amount of £345.00". The claimant unsuccessfully appealed to the tribunal. She now appeals to the Commissioner.

3. It is only the principle that appears to be in dispute. Neither the amount of the so-called abatement nor the period to which it relates have been challenged. The claimant's case is that the result is unfair and she says that no one told her she would not receive her invalid care allowance. It is not really for me to judge the supposed unfairness. I must apply the

provisions to which I have referred and they undoubtedly show that the tribunal's decision was correct. As to unfairness, I would say that if the outcome were to be as the claimant contends for, the £345.00 would, as between the claimant and her late husband (their resources being aggregated) have been paid twice.

4. The current adjudication officer has questioned whether the tribunal were right to apply section 12 of the 1976 Act rather than section 27 of the 1986 Act. In fact it makes no difference as they are to the same effect. However, following CSB/1204/88, it would appear that the tribunal were right to apply the earlier provision. There being no error of law on the tribunal's part, this appeal does not succeed.

(Signed) R A Sanders
Commissioner

Date: 14 April 1992