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Commissioner's File: CSIS/7/94

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

1. This claimant's appeal succeeds in part. I hold the decision of the appeal tribunal dated 14 September 1993 upholding an adjudication officer's decision issued on 7 June 1993 finding that income support for the period 24 December 1991 to 2 March 1992 amounting to £570.50 have been overpaid and is recoverable from the claimant and endorsing that decision to the effect that said sum was recoverable from her by the Secretary of State for Social Security to be erroneous in point of law. Accordingly I set aside that decision. Because I think it appropriate so to do I give the decision which the tribunal should have given. The other decisions of the same date relating to other decisions of an adjudication officer issued on said date remain undisturbed.

2. That decision is to sustain the appeal from said decision of an adjudication officer issued on 7 June 1993 and to find that income support has been overpaid in the period 24 December to 2 March 1992 amounting to £570.50 but is not recoverable from the claimant by the Secretary of State.

3. My decision on this appeal as set out in the preceding paragraphs is somewhat unusual in form. On 2 April 1993 the local adjudication officer gave two decisions, and on 20 May 1993 a further decision, later all issued together on 7 June 1993. The first in date reviewed certain awarding decisions and determined first, that for the period from 19 to 25 November, and second, that for the period from 3 to 23 December, all dates in 1991, there had been overpayments of income support which would not have been paid had family credit paid in arrears on 21 December 1991 in respect of the period 12 November to 23 December 1991, been paid on time. That decision followed a review under section 74 of the Social Security Administration Act 1992. It provides for an accounting correction to avoid double receipt of benefit in a situation such as the present where one benefit has been paid at a rate in whole or in part which would not have been paid had a later award of benefit paid in arrears been timeously paid. That decision was not really challenged before the tribunal appears not to be challenged before me and I need say no more about it than that having perused the papers I see no criticism of it.

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4. The second decision determined, again upon a review, that for the period 24 December 1991 to 2 March 1992 income support had been overpaid to the claimant because she had failed to disclose said award of family credit. That decision was made under section 71 of the Act. which provides for an entitlement in the Secretary of State to recover benefit which has been paid but which would not have been paid but for the failure to disclose, whether that failure be fraudulent or otherwise. I say at once that there was and is no suggestion in this case that any fraud was involved.

5. The third adjudication officer's decision related to the period 30 August 1991 to 14 October 1991 and held that income support had been paid during that period because of a failure by the claimant to disclose that she was then working. The decision was again under said section 71. It was made following upon a review in respect of a relevant change of circumstances since the initial decision awarding income support had been made - namely that the claimant had commenced and continued at remunerative period in the period mentioned. That decision was based upon a failure to disclose at or about the start of the period of employment that remunerative work was involved.

6. The claimant appealed to the tribunal. The tribunal upheld the adjudication officer's decisions and set out a commendably full set of findings of fact and reasons, differentiating in the latter in particular between the three periods. As I have said, technically at least there were three cases before them. I am satisfied that the tribunal, although apparently giving only one decision, kept the three matters properly separate for consideration in respect of the applicable law for each and that their decision can properly be read separately in relation to each issue. With leave of the chairman the claimant has again appealed to the Commissioner.

7. The grounds upon which leave was granted were, first, a failure to provide adequate reasons and, as I understand it, in particular a contention that the claimant had not failed to disclose her commencement of employment. That was an issue of fact much investigated before the tribunal and centred upon a telephone call which the claimant said she had made to the relevant office. There is a further ground that family credit would have been known to the Department before to herself and so they had ample time to stop payment. I should observe that the telephone call issue was a matter of fact which was entirely for the tribunal to resolve and I am entirely satisfied that they considered it with care and rejected the claimant's account providing their reasons improperly but adequately as part of the narrative of finding of fact number 3. That that reasoning was not provided in the relevant part of the record of proceedings is not such an error as would warrant my interfering with the decision. I consider the reasoning to be sufficient in law. Whether I or another tribunal, indeed, would have come to the same view upon the matter is neither here nor there. This tribunal saw and heard the claimant and the issue was essentially one for them to resolve.

8. The other ground of appeal submitted for the claimant is equally unsound in law. What has been long established is that the duty of disclosure upon a claimant is to the office dealing with the benefit which would have been affected by the disclosure. That the Department has responsibility for all benefits is neither here nor there. For the reasons given above the challenge to the decision in respect of the period 30 August to 14 October 1991 fails.

9. That leaves for consideration the decision covering the period from 24 December 1991 to 2 March 1992. That was based upon an alleged failure to disclose by the claimant that she was in receipt of family credit there was an overpayment of income support which would not have been paid had there been such disclosure and so the relevant amount should be recoverable by the Secretary of State. As the adjudication officer now concerned points out there was before the tribunal information that the relevant office was told on 12 December 1991 that the family credit unit had awarded the claimant family credit at a certain weekly rate starting from 12 November 1991. There was and is no reason to find as a fact that that initial action was so made. Arrears were paid about the same time. The point then is that the relevant office were from at least 12 December aware that family credit had been awarded to the claimant at the rate in question with effect from 12 November 1991. The tribunal did not note that important piece of evidence. They did note that the claimant:

"...did not dispute that she had failed to make disclosure of the continuing award of that benefit. Her statement to the Tribunal today was that she assumed that the Department were aware of the payment both of income support and family credit to her. She did not suggest that she had made continuing efforts to alert the Department of this situation."

The adjudication officer now concerned draws attention to the important passage at paragraph 28 of R(SB)15/87 which explains what is involved in the obligation to disclose and how in certain circumstances it may become a continuing obligation. I reject the contentions made in that regard for this case because it seems to me that what is involved here is not a disclosure far less any continuing obligation. There was never suggested to have been any disclosure. Without such there can be no continuing obligation. The original obligation itself still exists. But what is important is that for section 74 of the Act it is necessary that the *cause* of the overpayment be established as the failure to disclose. It is incumbent upon an adjudication officer in a case such as this to discharge that onus. In this case it seems clear that the primary if not indeed the whole reason why there was an overpayment was that the relevant office failed properly to act when it received notice from the family credit unit. Undoubtedly there was a failure to disclose by the claimant and that is why words to that effect have been retained in my decision given in paragraph 2 above. But the overpayment in this case in my opinion was more probably *caused* not by that failure but by the failure of the office to act upon the information when it got it.

10. In fairness I should observe that I consider the adjudication officer now concerned has seen the point upon which I have held this appeal by the claimant to succeed. I think where the confusion may be is in the submission at paragraph 11 that there was:

"...no duty of disclosure on the claimant since she could not be required to disclose to the Department that which the Department already knew."

Of course, again, it is not the Department but the local office that matters and I so read the submission. At paragraph 9 the adjudication officer correctly notes that at paragraph 25 of R(SB)15/87 disclosure is effectively accepted as:

"the statement of a fact so as to reveal that which as far as the discloser knows was previously unknown to the person to whom the statement was made. "

Throughout the relevant period the claimant had no reason to suppose that the local office had been made aware of her award of family credit. That in a general way she supposed the Department to be so aware is neither here nor there. Accordingly there was not only a failure to disclose on her part but one that continued throughout the period. As I have noted, however, that is not the only question in law that arises. There is also the causation question. More by accident than design, I suspect, the claimant succeeds on that question and accordingly will not have to overpay the largest of the three sums involved.

(signed)

W M Walker
Commissioner
Date: 26 October 1994