

Overpayment - Claimant's evidence. Tribunal must explain why fact has been found and if evidence is rejected, why it is rejected.

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**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: Glasgow

Case No: 553 73156

1. This claimant's appeal succeeds. I hold the decision of the appeal tribunal dated 20 January 1994 to be erroneous in point of law and accordingly set it aside. I refer the case to the tribunal for determination afresh in light of the guidance which follows.

2. In September 1993 an adjudication officer reviewed a decision awarding income support to the claimant and revised it upon the ground of a relevant change of circumstances. That change was that the claimant had ceased to be entitled to a disability premium in respect that he had ceased to receive mobility allowance in November 1991. The reviewing adjudication officer then revised the decision holding the claimant entitled to income support at an appropriately lower rate from the latter date. The adjudication officer went on to determine that a certain amount of income support had been paid which would not have been paid but for the claimant's failure to disclose the cessation of receipt of mobility allowance and so that that sum was recoverable from him. The claimant appealed to the tribunal.

3. The tribunal upheld -

".. the adjudication officer's decision to recover overpaid benefit of £1,112.05."

It is against that decision that the claimant now again appeals with my leave.

4. The grounds of appeal are essentially two in number. The first concerns an allegation about a lack of natural justice in the tribunal's proceedings in respect of pressure into having the hearing in the necessary absence of the claimant's representative, then engaged before another tribunal, and further when that representative became available a refusal by the tribunal to allow her to assist. The second ground is that certain documentary evidence before the tribunal demonstrating that the Department had been aware of the claimant's mobility claim had not been taken into account. So far as the first ground is concerned, I have to say that I am not inclined to accept it. As is known to the claimant from the terms of document 41, whereby the tribunal chairman refused leave to appeal, it is clear in her report that the claimant had confirmed his wish to proceed in the absence of his representative and that the hearing only commenced after all other hearings had been disposed of. When towards the end of the hearing the representative became available the claimant again had confirmed that he was happy to proceed to a conclusion in the absence of that representative. Indeed that was, albeit briefly, made part of the chairman's

note of evidence in the record of proceedings. Even if the claimant had felt pressurised, which can happen even when no pressure is applied or even intended, I could not hold that there had been a breach of natural justice since, so far as the tribunal and its actings were concerned, they had given proper opportunities for the claimant to have his representative with him. The second ground of appeal is somewhat lacking in point. The question was not whether the Department were aware of the mobility claim but whether the claimant had told them of his cessation of entitlement to mobility allowance. Nor it is clear to me how the copy document now produced, and which may or may not have been before the original tribunal, deals with that, the central, issue. But since, on other grounds, the case must go back to the tribunal I say no more about the grounds of appeal.

5. The appeal is supported by the adjudication officer now concerned upon a ground with which I agree. Under reference to R(SB) 11/82 and R(A) 1/72 the adjudication officer points out that the tribunal have failed to record properly in their reasons why they rejected the claimant's contention that he had advised the local office of the cessation of mobility allowance. That was indeed the claimant's evidence. (I note his point that he is referred to in the record of proceedings as "Mrs" but I am satisfied from the manuscript original that he was correctly referred to as "Mr". Since the tribunal decision has been set aside it is pointless now to have a correction made). In the findings of fact it is recorded that the Department -

".. did not receive advice when this [allowance] ceased."

That finding could only be made if the claimant's positive evidence had been rejected. There is no explanation why that evidence was so rejected. That was particularly important when the present officer's position was not to negate the evidence but simply to say that -

".. there is no evidence to show that the claimant advised Department when he ceased to receive mobility allowance."

The central issue in this case for the new tribunal will be as to whether or not the claimant's evidence is to be accepted - in light of any supporting material that may be advanced and as against any proper contradiction thereof. Once a fact has been found one way or the other reasoning will have to be provided to explain why the fact has been found and why any evidence rejected, if any has been truly rejected.

6. There is a further matter with which I must deal. In granting leave I directed the adjudication officer to reveal certain material in regard to recovery effected by the Compensation Recovery Unit in respect of an award of damages and from which, in the usual way, the Department had sought and received a refund of all relevant benefits paid to the claimant. The material now before me makes it clear that the Department, albeit by a recovery decision subsequent to that of the local adjudication officer, has already received not only the benefits properly paid to the claimant but any benefit that may have been overpaid and in particular that which was the subject of the local adjudication officer's decision. That being so and because of the law's general prohibition against double recovery, I direct the new tribunal, if they are otherwise persuaded to uphold the original adjudication officer's decision, to do so in such a way as to indicate that there is no further right of recovery in the Secretary of State against the claimant. It follows, then, that the sole issue for determination by the new tribunal centres upon whether, upon the balance of probabilities, the evidence that may be put before them establishes that the claimant informed the Department reasonably soon after its determination that he had

ceased to be entitled to mobility allowance - and by "the Department" I mean of course the office thereof in respect of which he had had dealings regarding his income support at or about November 1991.

(signed)

W M Walker  
Commissioner

Date: 15 September 1994