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PLH *Commissioner's File: CDLA 4962/03*

SOCIAL SECURITY ACTS 1992-1998

APPEAL FROM DECISION OF APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Claim for:	Disability Living Allowance
Appeal Tribunal:	Cardiff
Tribunal Case Ref:	
Tribunal date:	10 July 2003
Reasons issued:	2 September 2003

1. This appeal by the claimant is dismissed, as in my judgment there was no error of law in the unanimous decision of the Cardiff appeal tribunal sitting on 10 July 2003 that a total of £15,853.95 overpaid disability living allowance for the period 8 April 1992 to 27 March 2001 was recoverable from him under section 71 **Social Security Administration Act 1992** by reason of his having failed to disclose the material fact that he was already getting the same allowance for the same disability under another name.

2. This case is one of a number deferred to await the decision of the House of Lords in *Hinchy v Secretary of State* [2005] UKHL 16, [2005] 1 WLR 967, which is the reason its final determination has been delayed for so long. The claimant has failed to respond to two separate directions dated 8 March and 22 April 2005 giving him an opportunity to make further representations in the light of that decision, and I now proceed to determine his appeal for which I originally granted leave on 20 January 2004.

3. It was not in dispute before the tribunal that two separate helpings of the higher rate mobility component had been paid and received in respect of the claimant for the period in issue of nearly nine years because claims had been made by him, or in respect of him by his parents, under two different surnames and national insurance numbers. The claimant is accepted as genuinely disabled and his parents are from Somalia. The tribunal made no findings about whether the duplication of his benefit claims, which did not come to light until a routine check in 2001, was deliberate or the result of some misunderstanding on the part of the family or the social workers who helped them with the forms: for the present purpose that does not matter. As the tribunal correctly directed itself, the question was whether the doubled payments had been made as the result of the claimant failing, innocently or otherwise, to disclose the material fact of his concurrent award of the same benefit under another name.

4. Its material findings of fact on that issue were that on 6 February 1990 an award of what was then mobility allowance had been made to the claimant for life, on a claim his father made for him on 11 December 1989. (Such an award would have been automatically converted into one of the higher rate mobility component of disability living allowance under the transitional provisions when DLA was introduced from 6 April 1992.) That award was still subsisting when on 19 May and 22 August 1992 further claims for DLA, including for help with mobility, were made for him in a different name, on which a further award also including the higher rate mobility component for life was made on 8 September 1992. The tribunal's statement at pages 167-170 says both 1992 claims were made by the claimant's mother on his behalf but the forms themselves at pages 37-92 appear to show the second one was completed by a social worker and signed by the claimant, as was a further form and correspondence in September and October 1992 successfully asking for the care component also to be increased to the highest rate: the claimant was born on 4 August 1976 so had attained 16 on 4 August 1992. Boxes had been ticked in the first form to show that claims for mobility, attendance and disability living allowances had been made in the last three years, but no indication was given anywhere that the claimant already had a concurrent life award in another name, and in June 1995 he had successfully sought payment of three years' arrears under that award saying he had not received any DLA payments since 1992 and the death of his father, who was his appointee. It was not until a routine investigation in 2001 that it was discovered he had been in receipt of the higher rate mobility component twice for the same period under two different surnames. The surplus entitlement under the 1992 award was duly revised to nil by the departmental decision of 27 November 2001, and the resulting overpayment for the period 8 April 1992 to 27 March 2001 was £15,853.95. The tribunal found that the claimant was aware of the duplication in 1995 when he requested and got payment of the arrears under the first award, and had failed to disclose it: as regards the period back to 8 April 1992 it found the conditions for recovery on the same basis were also satisfied as his affairs had been under parental control at that time.

5. The claimant having failed to attend or be represented at the hearing, the tribunal was in my judgment entitled to conclude from those findings and the evidence before it that there had been a failure to make the disclosure reasonably to be expected by or on behalf of the claimant throughout the period benefit was being overpaid because he was getting a double helping. There can be no doubt of this in relation to the claimant himself from at least June 1995, for the reasons the tribunal gave; as regards the period before that they were entitled to infer, and in my judgment are to be read as having inferred, that there was at all material times a sufficient knowledge of the duplication on

the part of either the claimant himself, or his father and mother when acting for him, to make the non-disclosure by him or on his behalf a "failure" for which recovery could be sought from him under section 71. Applying the classic test in **R(SB) 21/82** the full amount wrongly overpaid was therefore recoverable from the claimant, provided that the overpayment could be said to have resulted from this failure.

6. The question which delayed this appeal was whether that could be said to be the case, given that all the details of the two claims and awards were of course already "known" within the department's files and information systems: the problem was that no one made the connection and realised they related to the same person. In my judgment the principle of the House of Lords decision in *Hinchy* that the Secretary of State is not taken to "know" everything within the knowledge of every different section of his very large department, so as to relieve claimants from the obligation to make disclosure to the particular section or officer that actually matters, applies equally to a situation such as this. The fact that information may already be held in another file or computer record that relates (or appears to relate) to a different person does not prevent a claimant being liable under section 71 for failure to disclose its true significance to his own case when that failure is the cause of his getting overpaid benefit to which he is not entitled.

7. Accordingly, I dismiss this appeal. The full amount is recoverable from the claimant in accordance with the decisions of the Secretary of State and the tribunal.

(Signed)

P L Howell
Commissioner
6 July 2005