ATH/SH/7/MD

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Region: London South

CHILD BENEFIT ACT 1975
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Kaur Baljit (Mrs)
Appeal Tribunal: Sutton
Case No: 52/4

[ORAL HEARING]

1. I allow this appeal by the adjudication officer. My decision is that the claimant is required to repay the sum of £60.75 being the amount of overpayment of the "one-parent" increase of child benefit between 6 February 1984 and 20 May 1984. I set aside the decision of the social security appeal tribunal dated 11 March 1985 and substitute my own decision.

2. The claimant was born in 1959 in the State of Punjab in India. She is a Sikh and came to England in 1965. She was married in England in 1976 and one son was born in 1978. The claimant received child benefit for her son and in 1979 she was legally separated from her husband. In June 1979 she claimed and from 10 September 1979 she received an increase of child benefit - commonly known as "one-parent benefit". In 1980 the marriage was disolved by decree of divorce. In April 1983 the claimant went with her mother, two sisters and a brother to India. She took her son with her. They went to India to attend the wedding of her uncle's daughter. In the third week of their stay the claimant's son returned to England with her sisters. The claimant and her mother and her brother then went to stay at the claimant's father's village in the Punjab. On 11 May 1983 the claimant went through a ceremony of marriage in a small Sikh temple in the Punjab with a young man, aged, she said, about 16-17 years, whom she had not met but whom she recognised as having seen at the wedding of her uncle's daughter. After the ceremony the claimant and her new husband separated straightaway and the marriage was never consummated. On 22 May 1983 the claimant returned to England and her husband remained in India. She continued to receive child benefit and the increase of child benefit -"one-parent benefit". On 11 April 1984 the claimant wrote a letter to the local office of the DHSS in which she stated that she had "remarried last year". By a decision issued on 4 December 1984 the adjudication officer reviewed the decision of the adjudication officer to award the claimant increase of child benefit because there had been a relevant change of circumstances ie her remarriage and his revised decision was (i) that increase of child benefit was not payable for her son from and including 16 May 1983 because from and including that date she was residing with her husband; (ii) that as a result an overpayment of benefit had been made amounting to £203.85 for the period 16 May 1983 to 20 May 1984; and (iii) that repayment of that sum was required because it had not been shown that the claimant had throughout used due care and diligence in the obtaining and receipt of that benefit. The claimant appealed and on

11 March 1985 the social security appeal tribunal decided that the claimant was entitled to an increase of child benefit for the period 16 May 1983 to 20 May 1984 - and thereby in effect allowed the claimant's appeal. The adjudication officer now appeals to the Commissioner with leave of the tribunal chairman.

3. On 29 May 1987 I held an oral hearing. The claimant was present and was represented by Mr Luba of the Child Poverty Action Group. The adjudication officer was represented by Mr Qureshi of the Solicitor's Office of the Department of Health and Social Security. Having heard evidence from the claimant and Mr V C Kothali, a member of the English and Indian Bars, I adjourned the hearing and made a direction dated 29 May 1987 to obtain from an expert assistance regarding the formalities of a Sikh marriage. The hearing was resumed on 14 January 1988 and again the claimant was present and was represented by Mr Luba and Mr Qureshi again represented the adjudication officer. I am very grateful to them for their attendance and assistance.

4. In their findings of fact, form AT3, box 2, the tribunal stated:

> "(1) Claimant not residing with husband.
>
> (2) Claimant's spouse is in India since the marriage of 11 May 1983.
>
> (3) Claimant's husband's absence is permanent - no likelihood of husband joining claimant in United Kingdom."

And in their reasons for their decision, form AT3, box 4, the appeal tribunal merely stated that the claimant was not residing with her husband and quoted the relevant regulations.

5. <u>The Law</u>
In order to understand the appeal tribunal's findings of fact and decision it is necessary to refer to the law. There is no dispute that the claimant was at all relevant times entitled to child benefit. However, regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 provided for an increase of child benefit - "one-parent benefit" - in certain circumstances. Regulation 2(2) provides:

> " (2) ... in a case where in any week a person -
> (a) is entitled to child benefit in respect of a child ... and
>
> (b) either has no spouse or is not residing with his spouse;
>
> (c) is not living with any other person as his spouse,
>
> the weekly rate of child benefit payable in respect of that child, or, if that child is not the only, elder or eldest child in respect of whom that person is entitled to child benefit, the elder or eldest child in respect of whom that person is so entitled, shall, ... be increased by [specifying the amount]."

In other words, since the claimant was entitled to child benefit, she was entitled to the increase of child benefit - "one parent benefit" - if she was not "residing with [her] spouse" and was not living with any other person as his spouse. However regulation 11(1) of the Child Benefit (General) Regulations provides:

> "11. (1) Where a person is married, he and his spouse shall be treated for the purposes of the Act as residing together during any period of absence the one from the other falling before the date in that period of absence on which

(a) [not relevant] or

(b) they have been absent the one from the other for at least 91 consecutive days,

and, for any part of that period of absence from one another from the date on which they ... have already been absent from one another as specified in sub-paragraph (b) the spouses shall be treated for the purposes of the Act as not residing together where such absence is likely to be permanent but as residing together where such absence is not likely to be permanent."

In other words, once a particular claimant is married, that claimant will be treated as residing together with his/her spouse during any period of separation -"absence the one from the other" - not exceeding 91 consecutive days: during those 91 days of separation the claimant will not be entitled to the increased benefit - "one parent benefit". After 91 days of "absence the one from the other", the question whether the increased benefit will be payable will depend upon whether the absence is likely or not likely to be permanent. In the present case, of course, the period of absence began immediately after the date of the ceremony, 11 May 1983. The absence continued for 91 consecutive days ie until 11 August 1983 and during that period they will have been treated as residing together (notwithstanding the "absence the one from the other") and the claimant will not have been entitled to the one-parent increase of benefit during that period. However, the increase will have been payable on and after 11 August 1983 if the separation at that date was "likely to be permanent". If it was not at that date "likely to be permanent", then the increase will not have been payable, although the increase might have become payable at a later date if at and from that later date the absence was "likely to be permanent". Thus, if the claimant was married on 11 May 1983, the crucial issue for decision is whether, and if so when, the absence of the claimant from her new husband was likely to be permanent. But, says the claimant, I was not in fact validly married on 11 May 1983. Thus, the first question to be determined is whether or not she was validly married on that date; and only if she was validly married on that date, does the question of the likelihood of the permanence of the absence arise.

6. If the claimant was married on 11 May 1983, and if from 16 May 1983 to 20 May 1984 (the dates in the adjudication officer's decision) their absence the one from the other was not likely to be permanent, it will follow that the claimant during that period was not entitled to the one-parent increase of benefit and there will have been an overpayment to her. If there has been an overpayment, the amount of the overpayment must be repaid to the Secretary of State by virtue of section 119(1) of the Social Security Act 1975 unless the claimant has shown that she has throughout used due care and diligence. See section 119(2) which provides:

"(2) A decision given on appeal or review shall not require repayment of benefit paid in pursuance of the original decision in any case where it is shown to the satisfaction of the person or tribunal determining the appeal or review that in the obtaining and receipt of the benefit the beneficiary, and any person acting for him, has throughout used due care and diligence to avoid overpayment."

7. The issues

Thus the issues are now clear:

(1) Was the claimant married on 11 May 1983?

(2) If so, was the absence from her husband (which is undisputed) at any time on or after 11 August 1983 (i.e. after the lapse of 91 days) likely to be permanent?

(3) If the answer to (2) is no, has there been an overpayment?

(4) If the answer to (3) is yes, what is the amount of the overpayment?

(5) Is repayment required? Has the claimant shown that she "throughout used due care and diligence to avoid overpayment"?

8. Was the claimant married?

The claimant raised three grounds for invalidating the marriage:

(a) that the marriage took place without her consent and/or under duress;

(b) that there was a sapinda relationship with the young man with whom she went through the ceremony of marriage; and

(c) that the requisite formalities were not observed.

As to (a), the claimant in her evidence at the first hearing before me made it clear that it was her mother who arranged the marriage with the object of breaking the claimant's engagement to or association with a man in England; and that she, the claimant, was taken completely by surprise and went through the marriage ceremony in a sort of daze and completely under the domination and influence of her mother and her uncle. However, at the resumed hearing Mr Luba did not pursue that contention. That was understandable; for even allowing for the differences in attitudes and culture between East and West, it is difficult to believe that the claimant, who had already been married once and had a son of about four years of age, would be likely to have had her will so overborne that she did not consent to the marriage. However, since this contention has not been pursued, I do not have to make any finding in relation to that aspect of the case.

As to (b), the question of the sapinda relationship was raised at the resumed hearing and a form of family tree prepared by the claimant's mother was submitted (page 122 of the file). In that tree the claimant traced her ancestry through her mother to her grandfather and the husband's ancestry was traced through his father, his father's sister, her husband and that man's mother who turns out to be the sister of the claimant's grandfather. It seems to me that that family tree did not disclose a sapinda relationship within the meaning of section 3(f)(i) and (ii) of the Hindu Marriage Act 1955. After considering the matter very carefully, Mr Luba agreed and that point was not pursued.

As to (c) - the formalities. At the oral hearing in May 1987 the claimant stated that she was taken to a small Sikh temple. She was accompanied by her mother and her uncle's family and there were also present the young man to whom she was to be married and his mother. There were no other friends or relatives. The ceremony lasted about 20 minutes including waiting time. She and the young man walked round the Holy Book four times and there were some prayers in a language that she did not understand, recited by a man that she did not know. She was not asked to say or do anything. There were no exchanges of gifts before the ceremony; nor were there any greetings or agreement or food in the temple. She said that her first ceremony of marriage had taken about two hours and that her uncle's daughter's marriage had taken about three hours. She said that it was usual to have a Sharif from the villages of the boy and of the girl to recognise that a wedding had taken place; but she did not see any person there whom she recognised as a Sharif. She heard her uncle tell her mother that two Sharifs should have been present. However, a few days later she went with her mother to a county court office and her mother obtained a marriage certificate, although the claimant made it quite clear that her mother only obtained that after some difficulty and possibly the payment of a bribe. Apparently the person at the office said that two legal officials should have been present but when her mother told him that if he caused a problem she would ring the Minister who would clear the problem, the official begged her pardon and said that a clerk and another person could verify that they were at the ceremony but that her mother must pay them. A marriage certificate was then

produced: but sometime later, in one of her furious arguments with her mother which resulted from that ceremony, the claimant was so angry that she tore up the certificate. She said that she had now consulted solicitors in England concerning the validity of the marriage.

9. The Hindu Marriage Act 1955, section 2(1)(b) is expressed to apply to not only to a person who is a Hindu by religion but also to (amongst other persons) any person who is a Sikh by religion and section 7(1) provides that a Hindu marriage may be solemnised "in accordance with the customary rights and ceremonies of either party thereto". Mr Kothali, who gave evidence as an expert in Indian Law, stated that the Hindu Law of Marriage applied to Sikh marriages - and some other communities. He said that registration was not mandatory, that is to say under the Hindu Marriage Act non-registration did not affect the validity of the marriage in any way whatsoever. He said that from what he had heard going round the Holy Book four times created a valid and binding marriage and he understood that to be an Anand marriage. The Anand Marriage Act 1909 subtitled "An Act to remove doubts as to the validity of the marriage ceremony, among the Sikhs called Anand" provides in section 2:

> "All marriages which may be or may have been duly solemnised according to the Sikh marriage ceremony called Anand shall be, and shall be deemed to have been with effect from the date of the solemnisation of each respectively, good and valid in law."

That Act does not, however, define or describe what is required for the marriage ceremony called Anand. As Mr Kothali was clearly not holding himself out to be an expert in Anand marriage law, I issued a direction (at page 102) that the adjudication officer obtain from an appropriate expert the answer to the following question:

> "If a man and woman walk together around the Holy Book (the Guru Granthi Sahib) four times in a Sikh temple (Gurdwara) in the Punjab, India while a priest or a religious person recites prayers, would that ceremony constitute a valid ceremony of marriage?"

The reply from the President of the Central Gurdwara in London dated 11 June 1987 (page 105 of the file) reads as follows:

> "It is not true that marriage is performed by just walking round the Holy Guranthi Sahib. But a complete ceremony has to be performed, part of which is walking round the Holy Guranthi Sahib, while particular hyms are recited by the Ragis. Whole ceremony takes about an hour. Both father and mother of the bride and bridegroom or in the absence of parents some elders must stand by and take a vow."

Although the President has made it clear that part of the ceremony consists of walking round the Holy Book while hyms are recited, he does not state expressly what other formalities are required. He says that the father and mother of the bride and bridegroom or in their absence some elders must stand by and take a vow, but it is not clear whether or not that is the only other formality or whether other formalities are required. No other evidence on this point was adduced at the resumed hearing. In particular, no evidence was adduced to show why the ceremony performed on 11 May 1983 did not constitute a valid marriage. Mr Luba submitted that since the adjudication officer was asserting that the claimant was validly married on that date, on the principle of 'he who asserts must prove', the onus of proof was upon the adjudication officer that there was a valid marriage. On the other hand Mr Kothali in his evidence had stated that if a ceremony was performed there was a presumption as to its validity. I refer also to Mulla on Hindu Law 13th Ed. at paragraph 438 which reads:

> "Presumption as to legality of marriage -

Where it is proved that a marriage was performed in fact, the court will presume that it is valid in law, and that the necessary ceremonies have been performed. A Hindu marriage is recognised as a valid marriage in English law."

Below that paragraph is the following commentary:

"Presumption as to marriage and legitimacy -

There is an extremely strong presumption in favour of the validity of a marriage and the legitimacy of its offspring if from the time of the alleged marriage the parties are recognised by all persons concerned as man and wife and are so described in important documents and on important occasions. The like presumption applies to the question whether the formal requisites of a valid marriage ceremony were satisfied ..."

It seems to me to be clear from the evidence that the claimant herself gave that everyone who attended the ceremony accepted and recognised that a marriage had been performed. The claimant said, for example, that after the ceremony "I was furious with my mother - she had achieved what she wanted to do." And, as I have already indicated, her mother did obtain a copy of the marriage certificate, even though, as the claimant asserted, the mother had possibly to bribe two officials in order to obtain it.

10. I am satisfied on the evidence at present before me that a valid ceremony of marriage was performed on 11 May 1983. Even if I were not so satisfied on the evidence, I would have held that there was a presumption that the formal requisites of a valid marriage were satisfied, and that that presumption had not been rebutted since it had not been established what formalities were required and were not in fact complied with. Furthermore, in her letters dated 11 April 1984, 24 May 1984, 6 June 1984, 19 August 1984 and in her notice of appeal dated 11 March 1985 (see pages 2, 11, 12, 14, 20 and 33 of the file) there were continual references to her marriage without any suggestion that the marriage was invalid through lack of the requisite formalities. I find, therefore, that the claimant was married on 11 May 1983 in accordance with the requirements of Hindu Law and that the marriage is therefore recognised in England. I was referred to R(G)3/74 but it has not helped me to decide the point.

11. Was the absence likely to be permanent?

As I have already indicated, by virtue of regulation 11(1) of the Child Benefit (General) Regulations, for the first 91 days following the date of the marriage, the claimant must be treated as residing together with her husband. At the resumed hearing Mr Luba conceded that the claimant was not entitled to the increase of child benefit from 11 May 1983 to 11 August 1983. It is quite clear that in her letters between 11 April 1984 and 19 August 1984 she never expressed any intention of never living with her husband and her attitude seems to be summed up in the letter dated 17 December 1984, in the third paragraph:

"Although I did get married last year, the facts remain that we are separated by the distance through no fault of ours. This separation will be indefinite depending on the decision of the Home Office."

However, in that letter the claimant does, for the first time, deal with the question of the likelihood of permanence. She said:

"Secondly, this separation is likely to be a permanent one since I was married off by my mother against my wish. I will notify the Home Office at the interview of my intention."

It seems likely that she raised that matter in response to the letter from the Child Benefit Centre at Newcastle dated 4 December 1984 in which the writer stated:

"Although you are not living with your husband, your absence from him cannot be accepted for benefit purposes as your separation is not likely to be permanent."

However, in reply to the question in form CH15: "If your husband was allowed into Great Britain will he live with you as husband and wife?" she replied "No, I will not". That answer was signed and dated 15 January 1985 (see page 21 of the file) and Mr Qureshi on behalf of the adjudication officer conceded that as from that date the separation was likely to be permanent. I must, therefore, deal with the period from 11 August 1983 to 15 January 1984.

12. In her evidence, the claimant sought to explain the fact that she had not from the beginning asserted that she had no intention of living with her husband and that the absence one from the other was likely to be permanent by saying that she was only answering specific questions and that in any event she was during that period ill; that she was scared of her mother; and that she was not sure what were the procedures for entry into this country. She contended that if she had said that she did not want her husband to join her, life would have been very much easier for her. She said that the basic plan had been to get her husband into this country and that it was very difficult in an Indian family to withstand family pressure. In any event, what she had in mind was that even if he gained entry into this country, she was not going to live with him. The only question that she was concerned with in her dealings with the DHSS officers was whether or not they were going to pay her the one-parent allowance.

Mr Luba on her behalf conceded and submitted that her letters were inconsistent, or at any rate ambiguous, and that the explanation was to be found in -

(i) her ill-health

(ii) her emotional state and

(iii) the fact that she was addressing herself specifically to the questions being posed to her.

He submitted that in determining whether or not the absence the one from the other was likely to be permanent, the fact of the separation was clear and undisputed and it was necessary for me to determine what was the intention of the claimant. It is always difficult to determine what is a person's intention: it depends upon that person's state of mind. All that one can do is to infer what was a person's intention from what he or she says or does at the relevant time. I think that the probability is that the claimant never applied her mind to the point until it was mentioned for the first time in the letter from the Child Benefit Centre on 4 December 1984 and more specifically in the question in form CH15 (at page 21 of the file). I am satisfied, having heard her evidence, that she was not a willing bride at the ceremony on 11 May 1985; nevertheless, no doubt strongly influenced by her mother, she did go through the ceremony and on her return to England she informed, as she said in her evidence, the local DHSS office of her change of circumstances, that is to say that she had been to India and had been married; and Mr Qureshi accepted that she did inform the supplementary benefit office in July or August 1983. In her letters in 1984 she was explaining that the separation was due to and depended upon Immigration Control; and in her reply in the form sent to her from the Kingston local office and dated 15 May 1984 (C5 of the file) she stated: "Husband not living in this country" but she did not indicate that she would not be living with him if he were in this country. Not until, as I have said, 15 January 1985 did she declare her intention not to live with her husband as husband and wife. I accept the possibility that if she had been asked that precise question on some earlier occasion, she may have given that same answer. I do not know. It is true that she was hoping and planning to marry the man in England to whom she was engaged (either officially or unofficially) before she left for India but she said in evidence that she could not get married to him "until the question of the ceremony in the temple was clarified". Although I have had considerable doubts on this issue I have come to the conclusion that on

the evidence as it stands at present before me, I am not satisfied that prior to 15 January 1985 the absence the one from the other was likely to be permanent. The question had not in fact arisen and the possibility of the husband's entry into this country had not been put to the test. Mr. Qureshi explained at the hearing before me that it is the practice of the immigration authorities, before permission for permanent entry is granted, to grant an entry permit on a temporary basis in order to see whether or not the parties live together.

13. Overpayment

From what I have said above, it must follow that the claimant was not entitled to the one-parent increase of benefit between 11 May 1983 and 15 January 1985. However, I am concerned only with the period covered by the adjudication officer's decision namely 16 May 1983 to 20 May 1984. There was, in my judgment, therefore, overpayment of the increase of benefit for that period.

14. The Amount of overpayment

I was told by Mr Qureshi that as the claimant had been in receipt of supplementary benefit and the amount of that benefit had been reduced by reason of the increase of child benefit, there was no requirement to repay any overpayment of the "one parent" increase of child benefit for the period 16 May 1983 to 5 February 1984 - after which date the claimant began employment. The only period for which the adjudication officer was now seeking repayment was the period from 6 February 1984 to 20 May 1984 and the sum totalled £60.75.

15. Is repayment required? Due care and diligence

The claimant may avoid repayment of that sum if in the obtaining and receipt of that benefit she had "throughout used due care and diligence to avoid overpayment".

I must emphasise that the requirement to repay under section 119(2) does not depend upon any dishonesty or lack of integrity on the part of the claimant. In R(S)13/81 at paragraph 12 the Tribunal of Commissioners said:

> "In reaching this conclusion we must emphasise that there is no question of the claimant's integrity being called into question. In the words of paragraph 11 of Decision R(G)1/79:
>
> > 'The statutory language does not necessarily import considerations of honesty or good faith but a standard of care and diligence which it is expected will be exercised.'"

The facts are as follows. Before going to India in 1983, the claimant had been in receipt of child benefit and the one-parent increase of benefit. I think that she must also then have been in receipt of supplementary benefit. At any rate, she told me in her evidence that after she had returned to England namely in July or August 1983 she wrote to the social security local office at Kingston notifying them of her change of circumstances - "I told them I went to India and that I had been married and that this was to notify them of the change as requested". That, she said, was the office that was paying her supplementary benefit. Someone came to see her at her home and took details - "the day I got married; when I went to India and when I came back". Mr Qureshi on behalf of the adjudication officer accepted that she informed the supplementary benefit office in July or August 1983. Supplementary benefit continued to be paid at the same rate that is to say it continued to take into account the fact that she received child benefit and the one-parent increase. On 6 February 1984 the claimant commenced employment. Her supplementary benefit accordingly ceased. There was some query concerning the date when she first received wages and on 11 April 1984 the claimant wrote to the local office referring to that matter and in the letter she continued:

"While we are at this, I would also like to clear about the child allowance book. At the moment, as you know by my records, I receive single-parent allowance as well as the child allowance. Does it interfere [with] my rights, as I have remarried last year. But I still bring up my son alone and I don't know when my husband will be allowed to come over from India. It could well be until another year or six months depending on the immigration entry. So, could you tell me how I stand in this matter because I want to be clear on all these matters as I don't wish to be in any more confusion, or I might get something else wrong."

The manager of the local office replied by sending form CH173(LO) dated 15 May 1984. The first part of the form contained a formal letter which reads as follows:

"Dear Madam,
Thank you for letting me know of your marriage.

So that we can amend our records will you please complete Parts 1 and 3 of the form overleaf. Your husband's name will be shown on the front of your child benefit order book so that either of you may obtain the benefit, but see paragraph 2 of the enclosed leaflet CH1 (a general guide to child benefit).

...

Please return the completed form in the enclosed addressed envelope, together with any child benefit order book(s) you may be holding.

...

We may have to ask for more details about particular points of your claim, but if you need any help or further information about this or any other child benefit matter your local Social Security Office will be glad to advise you."

She completed the form and at page 3 of the form she stated: "Husband not living in this country" - but she did not (as I have already said) give any indication that she would not live with him even if he were in this country. She did not return the child benefit book on that occasion. On 22 May 1984 the Child Benefit Centre (Washington) sent her form CH181A, the formal part of the letter of which thanked her for telling them of her return to this country "after your marriage in India" and asking her to complete the accompanying form and return any child benefit order book she may still hold. The claimant completed the form and by a letter dated 24 May 1984 she pointed out that the form was "completely non-applicable in my case" and explained that her mother had married her off while she was in India on 11 May 1983 and that her husband was supposed to come to this country "but I don't know when, it depends on Immigration Control people." She enclosed the child benefit allowance book. On 6 June 1984 she wrote to the Child Benefit Office (Washington) saying that when she returned from her holidays -

"I did inform the local social security about my changes. They didn't say anything at the time about my receiving the single-parent child allowance. Anyway, the only change occurred was on paper that I have got married but not physically day to day. I still support my child on my own because my husband is still in India and I don't know when he will be allowed to come here. You can call it that we are separated temporarily. I might have to divorce him if they don't allow him to come. So my situation is more or less ... the same as before. You must also bear in mind, that only recently, I wrote to my local social security again asking whether I was eligible for single-parent allowance. That's how all this came about!"

Then on 19 August 1984 she wrote a letter in which she said that she had married Mr [H S] in India in May 1983, that he had never been in this country and no maintenance was paid to her whatsoever during that period and she concluded "We have not lived together since the day I got married". Finally on 4 December 1984 the adjudication officer made the decision which was the subject of these proceedings and in a letter of the same date it was stated:

> "I am writing to tell you that one-parent benefit is not payable to a claimant who is married. Although you are not living with your husband, your absence from him cannot be accepted for benefit purposes as your separation is not likely to be permanent."

That led to her letter dated 17 December 1984 to which I have already referred and to her completion of form CH15 in which she made it clear that she would not live with her husband if he was allowed into Great Britain. That was signed and dated 15 January and received on 18 January 1985. To complete the recital of the facts, I must refer to pages 22 to 25 of the file which, as I understand the position, are the instructions contained in the child benefit allowance book (form CH43) and those instructions contain the following words (at page 23 of the file):

> "Additional Changes Affecting One-Parent Benefit.
>
> 10. - You must report and return the order book(s) to your local social security office without cashing any further orders if:-
>
> (a) you begin to live with someone as man and wife, marry, remarry, become reconciled or resume residing with your spouse ..."

16. In the light of those facts, did the claimant exercise due care and diligence throughout the period in question?

I must emphasise first, that I am dealing only with the period 6 February 1984 to 20 May 1984 and, secondly, that the only question that I have to determine is whether or not the claimant exercised that standard of care and diligence "which it is expected will be exercised". There has been no suggestion that she was dishonest or acting in bad faith. I have no doubt, as in fact she stated in her letters, that she considered that as she was not living with her husband and was not being maintained by him and was continuing to bring up her son without any support from her new husband, she was entitled to continue to receive the one-parent benefit - that in fact the "marriage" had altered nothing so far as her financial position was concerned.

It is not disputed that she informed the local office of her marriage shortly after her return to England. It is clear, however, from her evidence that she did not make any specific reference to the child benefit or the one-parent increase. I imagine that since the same local office was dealing with her supplementary benefit as well as the child benefit, and indeed the payment of supplementary benefit had taken into account the child benefit and the one-parent increase, she may well have thought that once she had informed them of the fact of the marriage, that information would suffice for that office to deal with both categories of benefit. She did not, however, return the order book as required by the instructions (at page 23 of the file) nor, apparently, did she ask whether she should return it or whether she could retain it and continue to cash further orders. Then in her letter dated 11 April 1984, having dealt with the point about the wages, she goes on - "While we are at this" - and then says that she would also like to be clear about the child allowance book; and having explained that she had remarried but that she was still bringing up her son alone and that she did not know when her husband would be allowed to enter the country, she concludes - "So, could you tell me how I stand in this matter because I want to be clear on all these matters as I don't wish to be in any more confusion, or I might get something else

wrong." That letter was written to the local office; it specifically raised the question of her entitlement to the one-parent increase of benefit; it was that office, so far as she was concerned, that dealt with that benefit; indeed, on the evidence, she had no reason at that time to know that child benefit was dealt with at Washington. Nevertheless, having clearly raised the point, the claimant still did not return the order book but continued to cash orders (as I understand it) until she finally returned the book with the letter dated 24 May 1984. Section 119(2) enables a claimant to avoid repayment only where he, or she, has throughout used due care and diligence "to avoid overpayment". Although she had raised the matter in her letter dated 11 April 1984, the claimant did not in fact take steps to avoid overpayment at that date but continued to cash the orders until she returned the book on 24 May. In those circumstances, and on that evidence, I am bound to conclude that I am not satisfied that in obtaining and receiving the one-parent increase of benefit she used throughout the period 6 February 1984 to 20 May 1984 "due care and diligence to avoid overpayment".

17. Repayment

It follows, therefore, in my judgment that the claimant is required to repay the sum of £60.75. It is perhaps an ironic reflection that if the claimant had in fact specifically raised the question in July or August 1983 and especially if she had returned the order book at that time, the matter would have been investigated and it may be that she would then have made clear her intention not to reside with her husband at any time in the future. In other words, she may have made her intention clear at a much earlier date. However, that is pure speculation and my decision must be based on the evidence as placed before me.

18. I was asked by Mr Luba to record the date when, it is conceded, the separation did become permanent. I had recorded in my note that Mr Qureshi conceded that the separation was likely to be permanent as from 10 January 1985. That was the date at the head of form CH15 and was, I think, placed there by the person who completed the inquiry part of the form. The claimant completed, signed and dated the form on 15 January 1985. That was the date that she made her intention clear. That, in my judgment, is the date when the separation became permanent.

19. For those reasons I allow this appeal. My decision is as set out in paragraph 1.

(Signed) A.T. Hoolahan

Commissioner

Date: 29 February 1988