

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1 I allow the appeal.

2 The claimant and appellant is appealing, with my permission, against the decision of the Birkenhead appeal tribunal on 10 January 2002 under reference U 06 062 2001 01379.

3 For the reasons below, the decision of the tribunal is erroneous in law. I set it aside. I refer the appeal to a new tribunal be reheard in accordance with this decision (Child Support, Pensions and Social Security Act 2000, Schedule 7, paragraph 8(5) and (6)).

4 I deal with the grounds on which I set aside the tribunal decision briefly as both the claimant and the Council (Wirral Metropolitan Borough Council) are in agreement that the decision of the tribunal must be set aside. This is because Commissioners decision CH 3776 2001, with which I respectfully agree, makes it clear that the tribunal has to consider the recovery of any overpayment not as a whole but by reference to all relevant changes of circumstances (including when any official errors occurred).

5 However, the parties do not agree with the approach to be taken once that decision is set aside. I therefore refer the matter to a new tribunal so that it may consider not only the submissions of the parties but also the relevant factual issues. It should look at the submission for the Council about the decisions that should have been taken by the previous tribunal together with the full submission now received from the representative to the claimant. It should ensure that it is properly made aware of the terms of any decisions of the Council that it is considering.

6 I was asked by the representative for an oral hearing before the Commissioner. I have not granted this as the matter must go to a new tribunal for oral hearing to deal with factual issues. That tribunal will need to consider the relevant facts carefully in the light of the submissions made by the parties. The tribunal should have in mind the decision of the Commissioner in CH 3776 2001. I do not consider that any other direction is necessary in this case.

David Williams
Commissioner

27 November 2002

[Signed on the original on the date shown]