

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows. It is given under paragraph 8(4) and (5)(a) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
 - 1.1. The decision of the Swansea appeal tribunal under reference U/03/204/2001/03143, held on 1st February 2002, is erroneous in point of law.
 - 1.2. I set it aside and give the decision that the appeal tribunal should have given without making fresh or further findings of fact. I rely on the claimant's own statement of the circumstances that led her not to make a claim before the date she did.
 - 1.3. My decision is the same as that of the tribunal and of the local authority.

The appeal to the Commissioner

2. The issue in this case is whether the claimant had good cause for her delay in claiming housing benefit and council tax benefit between 25th October 1999 and 18th February 2000. The appellant is the claimant. The respondent is her local authority.
3. The case comes before me on appeal to a Commissioner against the decision of the appeal tribunal brought by the claimant with my leave.

The history of the case

4. On 18th February 2000, the claimant made a claim for housing benefit and council tax benefit. She asked for time to be extended from 25th October 1999. The reason for the delay was that the claimant's previous awards of those benefits was terminated retrospectively. This occurred as a result of a retrospective decision by the Secretary of State that the claimant's husband was not entitled to an income-based jobseeker's allowance for the inclusive period from 23rd September 1999 to 25th October 1999. This occurred because the husband had been working. He did not report this, because the additional income was helpful to the family in meeting their financial obligations.
5. The local authority decided that the claimant did not have good cause for the delay in claiming. The claimant exercised her right of appeal against that decision. She attended the hearing of her appeal, accompanied by her representative. However, the tribunal dismissed her appeal.

Good cause

6. Good cause was defined over half a century ago by the Commissioner in *C.S. 371/49, paragraph 7 (K.L.)*

“Good cause” means, in my opinion, some fact which, having regard to all the circumstances (including the claimant's state of health and the information which he had received and that which he might have obtained) would probably have caused a reasonable person of his age and experience to act (or fail to act) as the claimant did.’

7. I agree with the criticisms made of the tribunal's reasons for decision by the claimant's representative. I would put the defect in the reasons in this way. It is not possible to tell from the reasons what test the tribunal was applying. The reasons read like a general assessment of responsibility for what happened rather than an application of the legal test.

8. However, I also agree with the local authority that there is only decision that the tribunal could reach on the proper test. A reasonable person would not have condoned her husband's failure to disclose to the Secretary of State that he was working. A reasonable person would then have reported the termination of entitlement to a jobseeker's allowance to the local authority. That would have led to the termination of the awards of housing benefit and council tax benefit, which in turn would have led to the chance to make a new claim as soon as entitlement to a jobseeker's allowance was restored.

9. So, the tribunal went wrong in law in its approach to the case, but it came to the only conclusion that was properly open to it on the evidence.

Regulation 104

10. On granting leave, I referred to regulation 104 of the Housing Benefit (General) Regulations 1987. That was a mistake. That provision only arises on the calculation of an overpayment. This case is not concerned with that issue, but with the later claim. The overpayment decision was not before the tribunal.

Summary

11. I allow the appeal and set aside the tribunal's decision because its approach was wrong in law and its reasons were inadequate. However, the tribunal came to the only conclusion open to it on the evidence. A rehearing is not necessary. I substitute the decision, now remedied by a proper application and explanation of the legal test.

Signed on original

**Edward Jacobs
Commissioner
7th January 2003**

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1 I dismiss the appeal.

2 The claimant and appellant is appealing, by his appointee, and with permission of a chairman, against the decision of the Sutton appeal tribunal on 15 November 2001 under reference U 45 176 2001 02984.

3 I held an oral hearing of this appeal together with the appeal in the parallel case CH 1992 2002. Mr Ennals, representing the claimant in this case (Mr C), and Mr Stagg, counsel for Tandridge District Council, the respondents in this case, agreed at the oral hearing that my decision in CH 1992 2002 should apply equally to this case, as there were no materially different issues in the two appeals. I attach a copy of my decision in that case. As I dismiss that appeal I also, for the same reasons dismiss this appeal.

David Williams
Commissioner

08 May 2003

[Signed on the original on the date shown]