

Commissioner's File: CIS/001/1990

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 31 August 1989 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of the then Chief Commissioner, against the decision of the social security appeal tribunal of 31 August 1989.

3. On 4 May 1989 the adjudication officer decided that the claimant had been overpaid income support in the sum of £60.75 for the inclusive period from 6 September 1988 to 10 October 1988. The ground on which he reached his conclusion was that the claimant had failed to disclose the material fact that her daughter Sarah had left school and started a Youth Training Scheme on 12 September 1988. It will be noted that in his decision the adjudication officer did not seek recovery, still less did he review and revise the original award pursuant to sub-section 4 of section 53 of the Social Security Act 1986. Indeed it is difficult to see what was the point of the decision unless recovery was also sought. The best that could be hoped for was that the claimant, having been acquainted with the full extent of the overpayment, might be willing voluntarily to make repayment.

4. However, the tribunal proceeded on the basis that what was the subject matter of appeal before them was a decision calling for recovery. In proceeding under this misapprehension the tribunal clearly erred in point of law. They were not entitled to hold that the sum of £60.75 was recoverable from the claimant.

5. Moreover, in reaching the conclusion that there had been an overpayment of £60.75 the tribunal failed to apply correctly the provisions of regulations 29 and 31 of the Income Support (General Regulations) 1987. Regulation 29 has to be read in conjunction with regulation 31. Regulation 31, in so far as it is applicable to the present appeal, reads as follows:-

" 31. - (1) a payment of income to which regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid -

(a)

(b) on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) ..."

6. In the present instance, the claimant's daughter received her first payment in respect of her YTS course on 14 October 1988. Although this payment was in respect of a period commencing on 12 September 1988 (the date the daughter started her YTS course), it did not fall to be taken into account, in computing her mother's income support, until the first day of the claimant's benefit week which included 14 October 1988 (assuming that was the date on which the daughter's payment was due to be paid). The tribunal ought to have made a specific finding as to what was the "due date" of the daughter's payment and then made a calculation of the extent of the claimant's entitlement on that basis. Manifestly, it was not correct to attribute the daughter's payment to the period commencing 12 September 1988. Accordingly, in misapplying regulations 29 and 31 the tribunal erred on that ground also.

7. It follows from what has been said above that I must set aside the tribunal's decision as being erroneous in point of law, and direct that the appeal be reheard by a differently constituted tribunal. However, I am not sure that this manoeuvre is likely to achieve a great deal. All that the new tribunal can do is to calculate correctly the overpayment if any, but they will not be entitled to call for recovery, as this was never a matter that had been adjudicated upon by the adjudication officer. Perhaps the best course would be for the tribunal to determine the full extent, if any, of the overpayment, and if there is an overpayment, for the adjudication officer to seek recovery of such overpayment pursuant to section 53 of the Adjudication Regulations, reviewing and revising the original award in accordance with sub-section 4 thereof.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 2 March 1992