

C.P.A.G.

GR/SH/14

Commissioner's File: CIS/019/1990

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 22 May 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 a Commissioner, against the decision of the social security appeal tribunal of 22 May 1989.

3. The question for determination by the tribunal was whether income support had been overpaid in respect of the inclusive period from 21 November 1988 to 24 January 1989, and, if so, whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986. In the event, the tribunal, upholding the decision of the adjudication officer, decided that there had been an overpayment amounting to £86.45, and that this was recoverable from the claimant by reason of his failure to disclose the material fact that, throughout the relevant period, his wife was engaged in employment for not less than 24 hours per week.

4. In his submissions to the tribunal, the adjudication officer contended that the claimant had stated in his claim form B1 that his wife only worked 21¹/₂ hours per week, and that when he "signed on" fortnightly at the unemployment benefit office, and received his income support, he declared on form UB25 that there had been no change in the circumstances of himself or his dependants. As a result, there had, then, according to the adjudication officer, been a clear misrepresentation. For, during the relevant period, the claimant's wife had been working for not less than 24 hours per week, a fact which disentitled the

claimant to any income support, and as a result of his misrepresentation he had received benefit to which he was never entitled. However, the adjudication officer failed to produce the original form BI or the relevant forms UB25 where the claimant stated that there had been no change in the circumstances of his wife or his dependants. Further, if, for some reason these documents had disappeared, the adjudication officer did not produce secondary evidence as to their contents. Accordingly, it is perhaps not surprising that the tribunal did not determine this matter on the basis of misrepresentation, but relied on a failure to disclose, the alternative grounds for recovering overpayments under section 53.

5. However, as regards failure to disclose, the claimant put forward a defence that, at the relevant time, he was unaware that his wife had increased her hours of working. By implication the tribunal did not accept this explanation, but unfortunately they failed to explain why. Of course, it could have been that, having seen and heard the claimant, they simply did not believe him. If that was the case, then they should have unequivocally so stated. It follows that the claimant has been left in the dark as to why his explanation was not accepted. If he did not know that his wife had increased her hours of work, then it could be said that disclosure of the material fact of an increase in his wife's hours of work was something not reasonably to be expected of him and hence he was not liable for a failure to disclose.

6. Accordingly, I must set aside the tribunal's decision as being erroneous in point of law, and direct that the matter be reheard by a differently constituted tribunal. The new tribunal should consider the matter first from the standpoint of misrepresentation. They should call for the claimant's original claim form and the forms UB25 where, according to the original adjudication officer, the claimant stated that there had been no change in the circumstances of himself or his dependants. If such documents cannot be found, then the tribunal should invite the adjudication officer to produce secondary evidence. If the new tribunal are satisfied that there has been a misrepresentation resulting in the overpayment, then this sum will be recoverable. If the new tribunal are not satisfied that there was a misrepresentation, then they must go on to consider the matter from the standpoint of failure to disclose. They will have to consider the claimant's contention that he never knew of the increase in his wife's hours. The new tribunal will have to consider whether, if that contention is made, they believe the claimant, and they must state unequivocally whether they do or do not believe him. If the tribunal are satisfied, either on the grounds of misrepresentation or failure to disclose, that there has been an overpayment which is recoverable, they must state what that sum is, and if they accept the computation appearing in the schedule prepared by the adjudication officer showing the amount of overpayment as being £86.45, they must so state.

7. Accordingly I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 1 April 1992