

Commissioner's File: CIS/21/1989

Region: Wales & South Western

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that the decision of the Bridgend social security appeal tribunal dated 11 October 1988 is erroneous in point of law because they breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. Accordingly I set it aside and give my own decision which is to confirm the revised decision of the adjudication officer issued on 8 August 1988 namely that the claimant is not entitled to Income Support from 11 April 1988 because his income exceeds his weekly applicable amount.
2. This is an appeal by the claimant to the Commissioner with the leave of the Commissioner against the unanimous decision of the appeal tribunal confirming the revised decision of the adjudication officer issued on 8 August 1988 and set out in box 1 of Form AT2. The claimant requested an oral hearing which request was granted. Accordingly on 21 July 1989 I held an oral hearing at Cardiff Crown Court. The claimant was present and represented himself. Mr P Stevens of the Chief Adjudication Officer's Office represented the adjudication officer. To both of them I am indebted.
3. The facts of the case are dealt with in the Summary of Facts of the adjudication officer first concerned in these appeals and in paragraphs 1 and 2 of the submission dated 27 April 1988 of the submission of the adjudication officer now concerned on which the claimant has had the opportunity to comment and has in fact so commented both in writing and at the oral hearing. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant law is adequately set out in the submission of the adjudication officer first involved in these appeals. Nothing is to be gained by my rehearsing that law here.
5. The claimant addressed me at the oral hearing and referred to his original written submissions. The claimant informed me that an official at his local Department office had told him that the Department had paid all the interest on the loan to him. The claimant submitted that the Department owed him £13.56 for interest. Mr Stevens in his helpful address adhered to the submissions of the adjudication officer now concerned dated 27 April 1988 with the deletion of the bracketed figures in the sixth line from the end of paragraph 6 of that submission.

6. In my judgment the decision of the appeal tribunal is erroneous in point of law in that they have breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in that the record of the tribunal proceedings provides no guidance to the claimant as to why his appeal failed. I have a measure of sympathy with the tribunal in that they attempted to state their reasons in a simple form. It is extremely difficult to state in simple form and at the same time accurately the position. I summarised the position at the oral hearing by saying that the claimant has had a larger eligible interest spread over a shorter period which should have been a smaller eligible interest spread over a longer period and accordingly his income support has been extinguished. Stated in more technical grounds the instant case turns on the calculation of the amount of eligible interest due on a loan. Under paragraph 1(b) of Schedule 3 to the Income Support (General) Regulations 1987 interest on the loan was an admissible housing cost. The claimant obtained a loan for the purpose of repairing his central heating system. The loan was £100, and the terms for repayment, including a sum in respect of interest, were £1 a week over a period of 125 weeks. The adjudication officer conceded that the local office misconstrued the interest as £25 every year and a calculation for income support was made on this assumption. Following the claimant's writing to the local office the loan interest was adjusted to the correct amount. The miscalculation however meant that the eligible interest on the loan was paid to the claimant at the weekly rate of 49p a week. As a result of the erroneous calculation two things occurred first the eligible loan interest was paid before the 125 weeks had elapsed and secondly when the erroneous calculation was reviewed and the correct amount of eligible interest included in the calculation the entitlement to income support of 17p a week was extinguished. In my judgment Mr Stevens' oral submission at the hearing of his adherence with the exception of the deletion of the figures in brackets in paragraph 6 of that submission (which are incorrect), was rightly made.

7. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. As there are sufficient facts found by the appeal tribunal I give the decision in paragraph 1 of this decision. I have no dispensing powers to override or vary the application of the relevant statutory provisions - that is a matter for Parliament and not the Commissioner.

8. Accordingly the claimant's appeal is allowed though for him it is but a pyrrhic victory.

(Signed) J.B. Morcom
Commissioner

Date: 16 August 1989