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DGR/SH/14

Commissioner's File: CIS/063/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

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1. My decision is that the decision of the social security appeal tribunal given on 20 November 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 tribunal chairman, against the decision of the social security appeal tribunal of 20 November 1989.

3. The question for determination by the tribunal was whether there had been an overpayment of supplementary benefit/income support, 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, in principle upheld the decision of the adjudication officer, but increased the amount of overpayment from £783.06 to £811.83. They decided that the latter sum was recoverable from the claimant by reason of his failure to disclose a material fact, namely the amount of his occupational pension received from time to time.

4. When in April 1981 the claimant applied for supplementary benefit he stated on Form All that he was receiving a pension from British Enkalon amounting to £25.58 per calendar month. Moreover, on 12 November 1986 he revealed that he was receiving a "company pension" of £28 per month a clear understatement and it could be said that his declaration of pension constituted a positive misrepresentation. However, on any footing he failed to make an accurate disclosure of the various increased rates of pension which he received from time to time, the tribunal confined themselves to recovery for non-disclosure.

5. On the substantive issue, I find nothing wrong with the tribunal's decision. However, they failed to explain why they considered that the amount of overpayment came to £811.83. Although the original sum stated by the adjudication to have been overpaid amounted to £783.06, this was revised by him upwards to £852.48, and a schedule was produced explaining how this figure was arrived at. Unfortunately, the tribunal have not referred to this specific schedule, and, more to the point, have not explained why they arrived at the figure they did. Accordingly, on that ground I must set aside the tribunal's decision as being erroneous in point of law.

6. I direct that the appeal be reheard by a differently constituted tribunal who will consider the matter afresh. They will determine the extent to which there has been an overpayment, and explain how they arrive at their calculation. They will then go on to consider the question of recovery under section 53, and consider the matter both from the standpoint of non-disclosure and misrepresentation.

7. Accordingly I allow this appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 1 April 1992