

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 dated 18 September 1989 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant appeals against the tribunal's decision confirming the decision of an adjudication officer to the effect that income support amounting to £148.40 had been overpaid to the claimant and was recoverable from him because in the adjudication officer's view he had failed to disclose the material fact of his receipt of reduced earnings allowance.

3. The basic circumstances are fully set out in the papers and I do not need to recite them again here. That is because it is plain that in several respects the tribunal's decision is erroneous in law. The first is that there is nothing to indicate that they had considered whether in all the circumstances disclosure was reasonably to have been expected: see R(SB)21/82. The second, which is perhaps just another aspect of the first, is that they do not seem to have dealt with the submissions on behalf of the claimant to the effect that there was no point in his "disclosing" the receipt of reduced earnings allowance to the "issuing office" as instructed by the order book because that was the same office as that which paid the income support: see CSB/677/1986. The third is that there is nothing to indicate that the tribunal concerned themselves with the calculation of the overpayment and satisfied themselves that it was correct. The tribunal's decision is, as I have said, erroneous in law in those respects and I accordingly allow this appeal.

4. Notwithstanding the submissions on behalf of the claimant I remit the case to another tribunal because in these overpayment cases facts are all important and must be carefully ascertained and I cannot be sure that I have all the facts. So far as the claimant's reliance on CSB/677/86 is concerned, I would say that that case may be different in that the specimen order book at page T57 refers not to telling the "issuing office" but "us"

about any changes. Now I do not know whether that form or order book was in use at the material time or to whom "us" refers. Better evidence on all this will be needed by the new tribunal to enable them to decide whether or not the case is distinguishable from CSB/677/86. In the end, as I have indicated, it all comes down to whether in the circumstances disclosure was reasonably to have been expected. If the claimant's case at least in part is that the income support people already knew of the receipt of reduced earnings allowance then it would have to be said that the overpayment was not in consequence of any failure to disclose: see section 53(1) of the Social Security Act 1986.

(Signed) R A Sanders
Commissioner

(Date) 29 January 1992