

CPAG

RAS/1/LM

Commissioner's file: CIS/071/90

**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 4 December 1989 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The issue for the tribunal was whether or not the claimant had, in relation to the relevant period, failed to disclose his receipt of reduced earnings allowance and whether as a consequence the sum of £498.34 was recoverable from him. The tribunal dismissed the appeal.

3. There is no doubt that the tribunal's decision is erroneous in law. Firstly, although by the time the case got to the tribunal it was on the basis of non-disclosure they appear, from their findings of fact, to have dealt with it on the basis of misrepresentation. Secondly, they did not make any findings as to the amount said to be recoverable and came to no conclusion with regard to that matter. Furthermore, the mere recitation of supposedly relevant provisions does not satisfy the requirement to give reasons. I allow this appeal. The case must be reheard.

4. Unless the adjudication officer makes, in advance of the rehearing, a submission on the basis of misrepresentation the case must be dealt with on the basis of non-disclosure. And the test is whether in all the circumstances disclosure was reasonably to have been expected. If the tribunal decide that overpaid benefit is recoverable they must satisfy themselves as to the calculation and determine the amount.

(Signed) R A Sanders  
Commissioner

Date: 3 March 1992