

Commissioner's File: CIS/085/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This appeal by the claimant fails. I hold that the decision of the social security appeal tribunal ("the appeal tribunal") dated 28 June 1989 was not erroneous in law.

2. The claimant with leave granted by the appeal tribunal chairman, appeals from the majority decision of that tribunal, affirming the decision of an adjudication officer, that income support (as the benefit in question became from 11 April 1988) amounting to £800.70 had been overpaid to the claimant and was recoverable from her on the authority of the Commissioner's decision reported as R(SB) 54/83 based on the provisions of section 20 of the Supplementary Benefits Act 1976.

3. The salient facts of the case are not in dispute. The claimant was awarded supplementary benefit on the footing of information she gave in form A1 which she signed on 14 March 1988. I observe in passing that the appeal tribunal slipped into error when the majority in giving their reasons referred to that form as "the A1 of March 1989", but the tribunal had earlier found properly as a fact that the relevant form was "the A1 of March 88" and nothing turns on this slip. Despite the fact that both paragraphs 8(e) and 8(f) of the form expressly sought details of any maintenance payments, she failed to disclose that she was in receipt of maintenance at the rate of £20 per week. It was subsequently determined by an adjudication officer on review, and is accepted by the claimant, that the overpayment covered the period from 2 March 1988 to 1 February 1989 and amounted to £800.70.

4. The claimant's ground of appeal is that the appeal tribunal erred in law by not considering the claimant's particular circumstances, especially her knowledge of the regulations and

what could reasonably be expected of her, as distinct from what could be expected of people in general. For that proposition, the claimant relies on the decision of the Commissioner reported as R(A) 2/83, a case concerned with entitlement to attendance allowance and not at all with overpayment.

5. The adjudication officer now concerned with the case in his submissions dated 10 May 1990 contends that the appeal tribunal applied the correct test as laid down in the unreported decision of the Commissioner in CSB/957/87, namely was the disclosure of the material fact reasonably to be expected in all the circumstances. He submits that the appeal tribunal was entitled on the evidence in the case to find that it was.

6. I have no hesitation in accepting that submission in its entirety. Ever since the reported decision of the Commissioner in R(SD) 54/83, the test which the appeal tribunal applied in this case has been accepted as the correct test for the purposes of section 20 of the Supplementary Benefits Act 1976 and now for the purposes of section 53 of the Social Security Act 1986 which governs this case.

7. I am unable to discern any sound basis for criticism of the way the appeal tribunal applied that test. It is apparent from the reasons given by the majority of members that their approach to the central issue in the case was a subjective one in the sense that in addressing it they bore in mind the particular circumstances and difficulties of the claimant. The fact of the matter is that there was no dispute that the claimant did not disclose in form 1A the fact that she was in receipt of maintenance. Having regard to the specific questions regarding maintenance in paragraph 8 of the form there was clearly, in my view, ample evidence on which the appeal tribunal could find, as they did find, that disclosure by the claimant that she was in receipt of maintenance was reasonably to be expected in all the circumstances. The decision was correct.

8. Accordingly, this appeal fails and the decision of the appeal tribunal is affirmed.

(Signed) A.W.E. Wheeler
Commissioner

(Date) 21 March 1992