

DGR/SH/15

Commissioner's File: CIS/127/1990

**SOCIAL SECURITY ACT 1986**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. For the reasons set out below, the decision of the social security appeal tribunal given on 21 November 1989 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 21 November 1989.

3. On 26 September 1988 the claimant, whose husband had sadly died on that day, applied for income support. Prior to his death, the claimant's husband had claimed both for her and himself. At the time of her claim, the claimant declared that she was receiving retirement pension of £17.50 per week, and her entitlement to income support was calculated on that basis. However, on 16 November 1988 her retirement pension was increased to take account of her widow's pension, and arrears of £200 in respect of the inclusive period from 29 September 1988 to 16 November 1988 were paid to her.

4. The adjudication officer decided that income support, to the extent of £185.85, would not have been paid to the claimant if her widow's pension, which fell within the term "prescribed income" within Part IV of the Income Support (General) Regulations 1987, had been paid at the prescribed time. Accordingly, the sum of £185.85 was recoverable under section 27(1) of the Social Security Act 1986.

5. In due course, the claimant appealed to the tribunal on the basis that she had never been at fault. She had done everything that was required of her, and not anticipating that any repayment would be required had made no provision for such an eventuality. She could not survive if her income were reduced to make good the

overpayment. As regards the strict legal issue, as to whether or not the Secretary of State was entitled to recover under section 27, this does not appear to have ever been in dispute. The adjudication officer in his submissions to the tribunal had made the position perfectly clear, and the claimant did not challenge this. She relied on her plea of hardship and her innocence of any wrongdoing. The tribunal addressed their minds to this issue, and rightly concluded that it could not affect their decision. They gave as the reasons for their decision the following:-

"The appeal fails because the Tribunal has no jurisdiction to consider any factor such as whether the overpayment has occurred because of the claimant's fault. The Tribunal recommend that the Secretary of State look into the case with sympathy in the light of the facts stated in block 1."

The reference to "block 1, is clearly a reference to the tribunal's findings of fact which read as follows:-

"Overpayment £185.85 has occurred in this case but at no fault of [the claimant]. The Secretary of State is however entitled to recover the said overpaid amount."

6. I see nothing wrong with the tribunal's decision. They considered the only matter in dispute, and they found, as they were obliged to do, against the claimant. I do not think that in the circumstances it was necessary for the tribunal to explain step by step how the relevant statutory provisions operated. That was set out in the adjudication officer's submission, and was not the subject matter of dispute. However, had I thought otherwise, I would not have remitted the matter to a new tribunal for rehearing. I would merely have substituted my own decision incorporating therein with approval the submissions of the adjudication officer to the tribunal.

7. For completeness, I should say that the claimant's representative has raised the question as to whether or not the payment of the initial award of pension and the payment of income support could be regarded as an interim payment calling for a prior notice to be given if recovery was in contemplation. However, the adjudication officer now concerned has in his submissions dated 1 November 1991 dealt with that issue, and has shown that the relevant payments were not interim payments, and accordingly the statutory provisions relevant thereto have no application. I accept his submissions.

8. Accordingly I have no option but to dismiss this appeal. Doubtless the Secretary of State will at least consider the tribunal's recommendation.

(Signed) D.G. Rice  
Commissioner

(Date) 1 May 1992