

SOCIAL SECURITY BENEFITS ACT 1976
SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Audrey Neville Sharpe (Mrs)

Social Security Appeal Tribunal: Barnstaple

Case No: 3210100

[ORAL HEARING]

1. This is an appeal by the claimant against the decision of the Barnstaple social security appeal tribunal dated 1 November 1989 to the effect that supplementary benefit amounting to £18,233.28 had been overpaid to her in the period 29 April 1968 to 19 October 1986 and was recoverable from her because of her misrepresentations that she was not in receipt of a retirement pension in that period.

2. I part heard this appeal in July 1992 when the claimant was represented by Mr M. Rowland of Counsel and the adjudication officer by Mr N. Butt of the Solicitor's Office Departments of Health and Social Security. That hearing was adjourned pending the outcome in the Court of Appeal of Jones and Sharpless (CIS/359/90). Since the delivery of the judgments in those cases the parties have had the opportunity of making further written submissions and the hearing was eventually resumed. Then the claimant was represented by Ms B. Harris of Counsel and the adjudication officer by Ms J. Smith of the Solicitor's Office, Departments of Health and Social Security.

3. It is not in issue that the claimant throughout the period in question had been in receipt of supplementary benefit and was also in receipt of her retirement pension. Nor is it in issue that she had on more than one occasion maintained that she was not in receipt of a retirement pension. It is also accepted that the tribunal's decision is erroneous in law because they did not adequately deal with the question whether the overpayments of supplementary benefit occurred in consequence of the claimant's misrepresentations. I therefore set aside the tribunal's decision as being erroneous in law and, as all the material facts have long been established as accurately as they are ever likely to be, I see no point in remitting this case for rehearing; I will give my decision in substitution for that of the tribunal.

4. At the resumed hearing, having had the opportunity to consider Jones and Sharpless Ms Harris conceded that the overpayments had occurred in consequence of the claimant's misrepresentations in the period 29 April 1968 to 21 March 1983. Accordingly she agreed that the overpayments in respect of that period were recoverable from the claimant. I have no reason to take a different view. I accept Ms Harris' concession and hold that the amount overpaid in respect of that period is recoverable from the claimant.

5. What however is in issue is whether the amount overpaid between 22 March 1983 and 19 October 1986 is also recoverable. That issue arises in this way. On 22 March 1983 the local office made a telephone enquiry of the long term benefits branch as to whether there had been a claim for an over 80 pension. There is a record of this telephone conversation as follows -

"Talked to Long term at first to find out if claimant has made a claim for an over 80 pension.

I was told that in 1968 she was receiving R.P. then at 90 shillings and 9 shillings increments and it was believed that she is still receiving a Pension which if it had not been stopped at all, would be in the region of £37 a week. Long-term have sent for details regarding R.P. On checking through casepaper, Claimant had declared £19 R.P. in 1979 on N.H.S claim No deductions have been made in assessments for R.P."

So it is plain that then the local office was put on notice that the claimant was in receipt of her retirement pension in 1968 and was believed still to be in receipt of such pension. "Long-term" had sent for details. However, instead of making an immediate inquiry of the Department's pensions branch, who could no doubt have confirmed immediately the accuracy of "long-term's" information, the local office sent round their visiting officer to the claimant and asked her whether she was getting a retirement pension. She, for reasons that have not been made known, denied it. The visiting officer's record of the interview is as follows -

"25.3.83. Pre Notified Effective Visit. Claimant seen. Review statement taken. Little or no change in circumstances whatsoever. It appears that this was a false alarm in this case as claimant told me she has never claimed or received retirement pension. Her only income is Supplementary Pension.

Unless therefore, claimant is a blatant liar, it is apparent that there is no title to Retirement Pension and no doubt our enquiries of Central Pension Branch, Newcastle, will confirm this. Urgent O.B. required as O.B. expired this week. No further action."

And, although the visiting officer made it plain that enquiries of the pensions branch should be made or continued, nothing further was done by the local office or indeed by "long-term" until 3 October 1986 when the local office was notified as follows -

"The claimant is getting quarterly remittances of RP direct from C/B; she is 83

This is a colossal overpayment to be calculated

Can you please arrange

- (a) for future remittances to be halted pending investigation
- (b) the office to be provided with details of all payments made over the years to the woman
- (c) the address/page of the remittances"

About two weeks later it appears that payments were suspended and on 28 November 1986 an adjudication officer made his overpayment and recovery decision. In these circumstances Ms Harris submits that from 22 March 1983 the overpayments were not in consequence of any misrepresentation; the local office knew that retirement pension had been in payment and, even though that had been denied by the claimant at the interview, the visiting officer plainly did not regard that denial as conclusive and had taken for granted that the true position would be ascertained by the local office from the Central Pensions Branch.

6. Ms Smith submitted that whatever the local office knew on 22 March 1983 was in effect cancelled by the investigation three days later. She said that in making the visit to the claimant the local office had fulfilled any obligation there was to clarify the situation that had arisen on the phone call; the failure to confirm the position with the Central Pensions Branch should not detract from the fact that the "duty had been satisfied".

7. It is not in question that if the relevant part of the Department knew the true position then they cannot rely on any failure to disclose or any misrepresentation; if they knew the facts the overpayment would not be in consequence of the claimant's conduct. Ms Smith said the local office had carried out their duty. I am not sure it is a matter of duty. The plain fact is that they were put on notice of the receipt of retirement pension and could have suspended payments while they made enquiries from those within the Department who would most certainly know the position. Instead, they asked the claimant and then made no further enquiries notwithstanding that the visiting office had, it seems to me, made it clear that the claimant's denial was not the end of the matter. In those circumstances I hold that the overpayments from 22 March 1983 were not made in consequence of the claimant's misrepresentation. The local office had been told the position by "long-term" and failed thereafter to take the appropriate action. Accordingly, recovery in this case is limited to the period 29 April 1968 to 21 March 1983. The amount will have to be calculated and, if agreement is not reached on the calculation, the case can come

back to me on that matter on the application of either party.

(Signed) R A Sanders
Commissioner

Date: 29 July 1994