

C.P.A.L.T.

JJS/1/MB/LM

Commissioner's File: CIS/218/90

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 is erroneous in point of law because, although they reached the correct conclusion, it was not adequately explained to the claimant. Accordingly I set it aside and, with fresh appraisal of her case, I give my own decision which is to the same effect as their decision, namely that in respect of the period covered by the adjudication officer's decision issued on 15 June 1989 she is entitled to income support of £26.37 per week. The adjudication officer should have regard to what I have said in paragraph 7, namely that there can be no question of recovering the overpayment resulting from the earlier error by the adjudication officer then concerned.

2. This is a claimant's appeal against the decision of the Bristol Social Security Appeal Tribunal given on 25 October 1989 which decided that the adjudication officer had correctly assessed the claimant for income support at £26.37.

3. The claimant is a widow who lives alone in owner-occupied accommodation. She was in receipt of supplementary benefit followed by income support. Prior to 11 April 1988 she was in receipt of a supplementary allowance. She has a retirement pension and an occupational pension.

4. In May 1989 the claimant took out a £14,000 loan for repairs and improvements on her home. The loan is with the National and Provincial Building Society and was secured on the home. The monthly repayment gross interest was £157.50. The claimant had to pay a monthly insurance premium of £9.58 due to the increase in the value of the property. The adjudication officer determined on 15 June 1989 that the interest payable on the loan was an eligible housing cost and that the claimant's benefit should be increased accordingly. However he allowed nothing to the claimant in respect of the insurance on the building. The claimant appealed to the tribunal. She stated that her difficulty arose because of the building insurance. She had been persuaded by a local organisation to have the improvements done to her house, had been assured it would not cost her any

additional money. She then found that, while the interest on the loan was paid as part of her eligible housing cost, she had to paid £9.58 a month in respect of the insurance as opposed to £5 a month which she had previously been paying. Because of the reduction in her income support she was having difficulty in meeting her expenses. The members of the tribunal found that the claimant had been correctly assessed for income support. They gave as their reason for so holding that her entitlement to income support had been reduced because house insurance was no longer included, as it had been under the supplementary benefit rules.

5. Insofar as the insurance is concerned it is manifest that the tribunal were correct in law. Paragraph 1 of schedule 3 to the Income Support (General) Regulations 1987 deals with eligible housing costs and insurance on buildings is not an item included. CIS/17/1988 is authority for the proposition that insurance on such buildings does not constitute a "service charge" and therefore would not fall within paragraph 1.

6. The adjudication officer now concerned supports the appeal on the ground that the members of the tribunal did not adequately deal with the question of how the claimant's transitional additions had been eroded. In answer to a Direction from the Nominated Officer dated 13 September 1991 he has prepared a detailed analysis concerning the application of the Income Support (Transitional) Regulations and he has calculated the figures relevant thereto. It would appear from that analysis that there were errors made by the adjudication officer but that such errors favoured the claimant. This arose from a misunderstanding as to the claimant's answers on the forms. He submits that whatever the true position it is certain that any entitlement to a transitional addition would have ended by 18 April 1989 at the latest. The claimant has had an opportunity of commenting on that submission. She says that she does not understand it but she does not challenge any of the figures. Regulation 25 of the Social Security (Adjudication) Regulations provides that every tribunal chairman should record a statement of the reasons for the determination and of the findings on material questions of fact. In the instant case the tribunal chairman failed to comply with the statutory requirement insofar as the issue of the transitional addition was concerned. I am prepared to accept the submission of the adjudication officer that as a result of that the decision was erroneous in law and with some reluctance I set it aside. I explain for the benefit of the claimant that from the week beginning 14 April 1988 (the claimant's first benefit week) there was no entitlement to a normal income support as assessed under the Income Support (General) Regulations. This was because the claimant's total income exceeded her applicable amount of £44.05. But she was getting more income support than she would have been entitled to under these normal rules because she was receiving transitional protection. She was paid a transitional addition amount to £6.97. I refer her to paragraph 5 of the submission which she has received from the adjudication officer now concerned for the calculation of the figures. I further explain to her that the

transitional protection does not go up each year but that income support does; consequently the transitional provision is eroded by the increases in income support. In the case of the claimant her entitlement to transitional addition ended by the uprating of income support in April 1989.

7. Because of the underestimate made by the original adjudication officer there has been overpayment to the claimant. However that overpayment resulted from mistakes made by the original adjudication officer and consequently there can be no question of a recovery of overpayment by the Secretary of State. I bear in mind that such overpayment related to a time prior to the period at issue before the tribunal and that prior to that period the entitlement to transitional addition was entirely eroded. I find that the calculations in respect of the period before the tribunal were correctly made and in respect of that period the members of the tribunal came to the correct conclusion. However they did not explain it. Their failure was an error of law. I have endeavoured in this decision to explain to the claimant why the entitlement to income support during the relevant period in 1989 was £26.37 per week.

(Signed) J J Skinner
Commissioner

Date: 30 March 1992