

overpayment - claimant's SS/IS adjusted for award of his retirement pension but not for award of wife's. DSS knew of award of rp through internal procedure. Was overpayment consequence of alleged non-disclosure of wife's rp?

DGR/SH/11

Commissioner's File: CIS/309/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Malcolm Cross

Social Security Appeal Tribunal: Stanley

Case No: 147:01105

1. My decision is that the decision of the social security appeal tribunal given on 24 August 1989 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
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 24 August 1989.
3. The question for determination by the tribunal was whether an overpayment of supplementary benefit amounting to £242.69 in respect of the inclusive period from 12 January 1987 to 11 April 1988, an overpayment of housing benefit in the sum of £1,711.05 in respect of the same period, and an overpayment of income support amounting to £181.26 in respect of the inclusive period from 12 April 1988 to 2 January 1989 were recoverable from the claimant pursuant to section 53 of the Social Security Act 1986 by reason of his failure to disclose the material fact that his wife was from the relevant date in receipt of retirement pension. In the event, the tribunal, upholding the decision of the adjudication officer, decided these matters adversely to the claimant, except that, at the invitation of the adjudication officer, they reduced the overpayment of housing benefit to £1,142.09.
4. As regards housing benefit, the tribunal clearly erred in point of law. They simply exceeded their jurisdiction. Although section 53 applies to recoverability of supplementary benefit/income support, it has no relevance to the recovery of housing benefit. Indeed, the adjudicating authorities have no

authority to deal with matters involving housing benefit. Accordingly, in assuming a jurisdiction the tribunal did not have, they erred in point of law.

5. On 9 January 1987, the claimant, who had been in receipt of supplementary benefit for himself and his wife, followed by income support, from 25 February 1982, attained the age of 65. Accordingly, he was awarded retirement pension from 12 January 1987, and his supplementary benefit entitlement was adjusted accordingly. Unfortunately, the supplementary benefit office did not take into account the fact that his wife was also in receipt of retirement pension from that date. Accordingly, an overpayment arose of supplementary benefit and income support to the extent set out in paragraph 3. When the matter came to light the adjudication officer sought to recover these overpayments, pursuant to section 53 of the Social Security Act 1986, on the ground that the claimant had failed to disclose the material fact that his wife was from the relevant date in receipt of retirement pension. The adjudication officer adopted this course notwithstanding the claimant's contention that his wife - he himself was deaf - had informed the local office that she was in receipt of retirement pension both at the date when she first received it, and subsequently when it was uprated.

6. The tribunal were prepared to accept that, when her husband attained the age of 65 - she herself was a year older - she did telephone the Department, and asked if her husband's benefit would thereby be affected. However, they were not prepared to accept that she pointed out that she herself was also in receipt of pension from 12 January 1987. They reached this conclusion, because the claimant's witness to the telephone call stated that she did not raise the question of her own pension. In taking this approach, the adjudication officer now concerned contends that the tribunal erred in point of law. He says as follows:-

" 7. In my submission the tribunal, having accepted the call was made, were required to say why they preferred the evidence of the friend, who was not a party to the conversation which took place, rather than that of the claimant's wife who actually made the call."

I reject that submission. Manifestly, the witness was quite impartial, and she could perfectly well have heard whether or not the claimant's wife in the conversation actually raised the question of her own retirement pension. The witness stated that she did not, and in those circumstances I see no reason why the tribunal did not prefer her evidence to that of the claimant's wife. Moreover, they saw and heard the claimant's wife and the witness and were able to form a view as to which of them was more likely to be accurate. Perhaps, it would have been helpful if the tribunal had spelt out the reason for their preference, but in my judgment it was perfectly obvious, and I do not regard the tribunal as having erred in point of law on this particular point.

7. However, there was a further allegation that the claimant's wife telephoned the Department at each subsequent increase in her pension to query her husband's entitlement. Presumably, the tribunal did not believe that such telephone calls ever took place, but if that was their view, they should have said so categorically, so as not to have left the claimant in the dark on a material issue. Accordingly, their failure to make a specific finding on this particular issue is erroneous in point of law.

8. More important, I find it puzzling why, if there was a failure on the part of the claimant to disclose his wife's retirement pension, this omission resulted in an overpayment. Apparently, by virtue of internal procedures, the Supplementary Benefit Office were aware of the award of retirement pension to the claimant, and adjusted his entitlement to supplementary benefit accordingly. If they knew about the payment of the pension to the claimant, why did they not know about the award of pension to his wife? This is even more surprising when it is borne in mind that the pension of the claimant's wife was reliant upon her husband's contributions. Moreover, as the tribunal themselves rightly discerned, the claimant was not receiving the maximum pension for a married man, suggesting that his wife was in receipt of a pension. In those circumstances, it is somewhat startling to find that the supplementary benefit office computed the claimant's pension without regard to the pension that was in payment to his wife. There may be an explanation, but the tribunal should have dealt with this, and if they intended to find that there had been an overpayment recoverable for failure to disclose, they should have explained how it was that the non-disclosure was the cause of the overpayment. On that ground also the tribunal erred in point of law.

9. It follows from what has been said above that I must set aside the tribunal's decision, and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

10. I allow this appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 3 January 1992