

C.P.A.S.

DGR/SH/13

Commissioner's File: CIS/337/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal given on 14 March 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 14 March 1989.

3. The question for determination by the tribunal was whether there had been an overpayment of income support for the inclusive period from 13 September 1988 to 24 October 1988, and if so, whether the same was recoverable from the claimant by reason of her failure to disclose the material fact that her son Saleem had claimed and been awarded income support in his own right on 13 September 1988. In the event, the tribunal upheld the decision of the adjudication officer, and dismissed the appeal. They made the following findings of fact:-

"The facts set out in box 5 of Form AT2 were accepted. In particular it was accepted that the appellant had not informed the Department of the fact that her son was claiming Income Support on his own account. Furthermore it was accepted that there appeared to be no reason why the appellant had not so informed the Department."

The tribunal gave as the reasons for their decision the following:-

"On the basis of our findings of fact in box 2 above, we decided that the appellant had failed to disclose the

material fact that her son Naseem Rasul had claimed and been awarded Income Support in his own right from 13 September 1988. (Section 53 of the Social Security Act 1986).

4. On the face of it there would appear to be nothing wrong with the tribunal's decision. Although the material fact would seem to be, not so much that the claimant's son was claiming income support on his own account, but rather the fact that he had ceased to be a dependant, I do not think that the tribunal's decision is really erroneous on that point. There are however two matters which vitiate it.

5. First of all, there is nothing to suggest that the tribunal, pursuant to paragraph 4 of section 53 actually reviewed and revised the original award of benefit, and in the absence of such review and revision there could be no question of recovery under section 53. This was an aspect of the case with which the tribunal did not deal. It was, of course, for the reasons set out in my decision CSB/1272/1989, open to the tribunal to rectify the omission in reliance on section 102(1) of the Social Security Act 1975, so as to obviate the need for the proceedings to be started all over again ab initio with all the wasted time and money involved. However, the fact that they failed to consider this aspect of the case or, if they did, to deal with the omission renders their decision erroneous in point of law.

6. A second difficulty arises out of the claimant's statement of 20 October 1988 that her son had "left school nearly three years ago". If he did, then it would appear that his education ceased before the summer of 1988, and the question arises as to whether he ceased to be a dependant prior to Monday 12 September 1988, with the result that there might be an overpayment greater than that computed by the adjudication officer. The tribunal failed to consider this aspect of the case, and on that ground also they erred in point of law.

7. It follows that I must set aside the tribunal's decision and direct that the appeal be reheard by a differently constituted tribunal. The new tribunal will decide whether or not to rectify the adjudication officer's failure to review and revise the original award. If they decide not to, then the matter must start all over again. If however, they elect to rectify the omission, they must go on to consider the actual date at which the claimant's son ceased to be a dependant, and calculate the extent of the overpayment. Finally, the new tribunal must decide whether there was failure on the part of the claimant to disclose the material fact that her son had ceased to be her dependant, and if they are so satisfied, they must determine whether such disclosure was reasonably to be expected and whether the omission gave rise to the overpayment.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 February 1992