

Commissioner's File: CIS/362/1990

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 23 April 1990 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 the tribunal chairman, against the decision of the social security appeal tribunal of 23 April 1990.

3. The question for determination by the tribunal was whether there had been an overpayment of income support in the sum of £88.60 covering the period from 26 April 1989 to 23 May 1989, and if so, whether the same was recoverable from the claimant pursuant to section 53 of the Social Security Act 1986. In the event, the tribunal upholding the decision of the adjudicating officer, decided these matters adversely to the claimant.

4. The tribunal made the following findings of fact:-

" 1. Appellant, 53, divorced. Not fully literate. Forgetful. Relies heavily on daughter Melanie date of birth 20.9.72. In receipt of supp ben/income support since 1975.

2. On 24.11.88 completed BI stating she worked 12 hours a week and her only other income was family allowance. On 28.2.89 stated she would receive child benefit until her daughter left school in June.

3. On 1.3.89 Melanie obtained part-time employment.

4. On 3.3.89 appellant and her daughter visited DSS offices and discussed matters with a clerk. They did not disclose daughter's part-time employment."

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

"Tribunal found as a fact that appellant's daughter had visited DSS offices only once in the week finishing 4.3.89 and that was when in the company of her mother on 3.3.89 there was an interview with DSS clerk. Tribunal found that appellant knew of a material fact that ought to be disclosed i.e. Melanie's part-time employment and that she failed to disclose it. As a result of that failure to disclose, overpayment occurred and it is recoverable from the appellant. Overpayment is correctly calculated in the papers with AT3."

5. Clearly, the crucial issue was whether or not the claimant had disclosed her daughter's receipt of part-time earnings. The tribunal appear to have considered that the matter that should have been disclosed was the daughter's part-time employment. Strictly speaking, it was not the daughter's part-time employment which was the matter calling for disclosure, but rather her part-time earnings. However nothing of substance turns on the point. For if there was a disclosure of part-time employment, the Department would clearly have been alerted to the existence of part-time earnings. In the event, the tribunal did not accept that there had been such a disclosure. Unfortunately, they did not explain why they did not accept the claimant's evidence. It may be that they simply disbelieved her, in which event they should have unequivocally said so. Moreover, they failed to explain the reason why the claimant and her daughter bothered to call at the DSS offices if it was not to disclose the fact that the daughter was taking up part-time employment. In short, the claimant has been left in the dark as to why her version of events was not accepted.

6. Further, the overpayment as set out in the schedule was miscalculated. In this connection, I accept all that the adjudication officer now concerned has stated in paragraphs 5 and 6 of his submissions dated 5 September 1990.

7. It follows that I have to set aside the tribunal's decision as being erroneous in point of law, and to direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

8. However, there is a further technical difficulty that has arisen in this case. As this appeal involves a recovery pursuant to section 53 of the Social Security Act 1986 for failure to disclose a material fact, sub-section 4 had to be complied with. This called for a review and revision of the original award. The decision set out in box 1 of Form AT2, stated to have been issued on 31 January 1990, makes no reference to any review and revision. However, a notice bearing the date 1 February 1990, which seems to have accompanied a letter to the claimant dated

31 January 1990, purports to give a more elaborate decision on the part of the adjudication officer, and in that version there is an express review and revision. It will be for the new tribunal to determine whether the adjudication officer did review and revise the original award. In the event that they come to the conclusion that he did not, it will, in accordance with my decision on Commissioner's file CSB/1272/89, be open to them to rectify this omission by reliance on section 102(1) of the Social Security Act 1975.

9. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 3 February 1992