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DGR/SH/14

Commissioner's File: CIS/374/1990

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 26 March 1990 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the overpayment of income support in respect of the inclusive period from 13 December 1988 to 6 February 1989 amounting to £228.24 is not recoverable from the claimant.

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 26 March 1990.

3. On 8 February 1988 and 19 February 1988 the claimant, who was then in receipt of supplementary benefit, had disclosed that she worked 24 hours a week. That number of hours of work did not preclude her from entitlement to benefit. For under the supplementary benefit legislation (see section 6(1) of the Supplementary Benefits Act 1976 and regulation 9 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981) normally it was not until a claimant worked for 30 hours or more a week that he became disqualified. However, when supplementary benefit was replaced by income support, the maximum number of hours a claimant could work before losing entitlement was reduced from 30 to 24. Accordingly, so long as the claimant in the present case continued to work 24 hours a day she rendered herself ineligible for income support.

4. In view of the disclosure made in February 1988, the local office knew, or ought to have known, that the claimant was working 24 hours a week, and that she was in consequence not entitled to income support. There was no obligation on the claimant to repeat the disclosure, and in so far as the claimant

received income support to which she was not entitled, this was brought about through administrative incompetence, and not through any failure on the part of the claimant to make disclosure.

5. However, when the claimant came to complete form AII, at the invitation of the Department, she failed to state in the appropriate part of the form the number of hours that she worked. Moreover, this omission was quite transparent. There was a box for her to fill in the number of hours worked, and she had clearly left this blank. On no footing could it be said that the claimant had been guilty of any misrepresentation. All that she had done was to fail to complete the form fully, and this was quite clear to the local office. Accordingly, as far as they were concerned there was nothing to indicate that the claimant was working any different number of hours from that already disclosed.

6. Consequently, the claimant was guilty neither of a failure to disclose nor of a misrepresentation. It follows that the overpayment was not recoverable under section 53 of the Social Security Act 1986.

7. Accordingly the tribunal erred in point of law in deciding that the overpayment was recoverable, and I must necessarily set aside their decision. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision.

8. My decision is as set out in paragraph 1.

(Signed) D.G. Rice  
Commissioner

(Date) 1 April 1992