

DGR/SH/13

Commissioner's File: CIS/396/1990

**SOCIAL SECURITY ACT 1986**  
**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A**  
**QUESTION OF LAW**  
**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. For the reasons set out below, the decision of the social security appeal tribunal given on 6 October 1989 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant brought with the leave of the Chief Commissioner, against the decision of the social security appeal tribunal of 6 October 1989.

3. The question for determination by the tribunal was whether, pursuant to a review of the original award of supplementary benefit, there had been an overpayment of supplementary benefit /income support, and if so, whether the same was recoverable from the claimant under regulation 53 of the Social Security Act 1986, by reason of her failure to disclose the material fact that she was living with a man as his wife. In the event, the tribunal, upholding in substance the decision of the adjudication officer, decided that there had been an overpayment, that the original figure should be reduced to £16,502.88 and that the same was recoverable from the claimant.

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

- " 1 Facts stated in box 5 accepted.
- 2 Mr K and [the claimant] were members of the same household.
- 3 That relationship was a stable one.
- 4 There was a degree of financial support from each party to the other

5. [The claimant] volunteered the fact of a sexual relationship.
- 6 There was no public acknowledgment of the relationship, it was not widely disclosed.
- 7 [The claimant] did the laundry for Mr K.
- 8 Car expenses were shared.
- 9 Some joint social life between them.
- 10 [The claimant's] desire for independence did not alter the fact that within the meaning of the Regulations the parties lived together as husband and wife.
- 11 This is a material fact, not disclosed as it should have been, and expenditure was incurred. This amounted to (net) £16,500.18.
- 12 This amount is recoverable from [the claimant].

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

"Net figure sought is £16,500.18 as arrears of £2.70 have been withheld. [The claimant] did not dispute any of the stated facts but sought to explain the relationship between herself and Mr K.

Under the regulations and decided cases including R(SB) 7/81 and R(SB) 35/85, the Tribunal accepted that Mr K and [the claimant] were indeed living together as man and wife. That being so [the claimant] did not dispute the repayment, or the amount. Section 53(1) Social Security Act 1986."

I see nothing wrong with the tribunal's decision.

5. On the evidence, the tribunal were entitled, and in my judgment obliged, to conclude that Mr K and the claimant were living together as man and wife. I consider that the tribunal have made all appropriate findings, have explained them with an admirable lucidity, and reached the only conclusion they could. However, the adjudication officer now concerned supports the appeal on a somewhat surprising ground. He contends as follows:-

" 5. However, having decided that the claimant and Mr K were living together as husband and wife, the question which arises is whether the overpayment has arisen in circumstances which would entitle the Secretary of State to seek redress by way of recovery . . . . It is my submission that the tribunal have failed to address this question. I submit that it is obligatory upon the tribunal to record in their decision more than a bare conclusion. They must show the reasons for their determination and of their findings on material questions of fact."

I find this submission puzzling. For in their finding of fact, number 11 the tribunal expressly stated, with reference to their conclusion that the parties were living together as husband and wife:-

"This is a material fact, not disclosed as it should have been, and expenditure was incurred. This amounted to (net £16,500.18.)"

In other words, the tribunal categorically found that the relationship was a material fact, which manifestly it was, that it had not been disclosed as it should have been, again a conclusion fully justified, and that expenditure was incurred, which it clearly was. Moreover the amount does not appear to have been in dispute. I do not see how the tribunal could have made the position clearer.

6. Accordingly, I do not see in what respect it could be said that the tribunal erred in point of law, and I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 3 February 1992