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DGR/SH/15

Commissioner's File: CIS/446/1990

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 8 May 1990 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 tribunal chairman, against the decision of the social security appeal tribunal of 8 May 1990.

3. The question for determination by the tribunal was whether there had been an overpayment of income support for the period from 21 February 1989 to 4 September 1989 amounting to £143.80, and if so, whether the same was recoverable from the claimant under section 27 of the Social Security Act 1986. In the event, the tribunal decided these matters adversely to the claimant. I see nothing wrong with their decision.

4. The adjudication officer now concerned has made the following very helpful submissions:-

" 4. Section 27 [of the Social Security Act 1986] allows for the recovery of excess income support paid where an income which is prescribed in regulation 7 of the [Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988] is not paid at the time it is payable. In this case the claimant's entitlement to income support during the period from 21.2.89 to 4.9.89 was properly calculated on the basis that her only income was child benefit. In the event she was also entitled to one-parent benefit for that period but she was not made aware of that fact nor did she receive any payment until 5.9.89. Had the one-parent benefit been paid from 21.2.89 her income support

in that and the subsequent weeks would have been reduced by an equivalent amount.

5. Where a determination is made under section 27 there is no question of fault on any part; if the benefit is one referred to in regulation 7 of the [Social Security (Payments on Account, Overpayments and Recovery) Regulations 1988] then the excess of income support shall, if the arrears of the new benefit have not been paid, be abated from those arrears. Otherwise section 27(4) allows the excess sum to be recovered from the claimant.

6. In my submission ... the record of the tribunal's decision is sufficient to sustain that decision. They found that the one-parent benefit was prescribed income in the terms of section 27. They also recorded the period for which the claimant's income support would have been affected and the total amount of income support which would not have been paid if the one-parent benefit had been paid on time.

7. I would also submit the tribunal have given the claimant sufficient explanation of why they did not accept the argument put forward at the hearing by her representative. This argument has been raised again in the present appeal. It is my submission that the suggestion that because the Department's internal arrangements aimed at preventing duplication of payments did not act to prevent the overpayment in the week commencing 5.9.89 there was no overpayment in the prior period, is ill-conceived."

I accept all those submissions, and consider there is no merit in my saying in different words all that has been there set out so admirably.

5. For completeness, I should mention that the claimant's representative has made a further submission which contains the following remarkable statement:-

"The argument is that the overpayment would have been paid even if the prescribed income had not been late."

6. Manifestly, the overpayment would never have arisen if the prescribed income had been paid timeously. Accordingly, there is nothing in this submission on behalf of the claimant.

7. This appeal is quite hopeless, and it is accordingly dismissed.

(Signed) D G Rice
Commissioner

(Date) 1 May 1992