DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. The appeal is dismissed.

2. This is an appeal from the decision of an appeal tribunal dated 15.9.04 with the leave of the chairman.

3. The claimant became incapable of work and, as such prescribed person, claimed income support on 17.11.2000, which was awarded from and including 10.11.2000. It later transpired that the claimant had, in fact, been working in a cleaning services firm from 8.12.00, and that work was not exempt since she had undertaken it before seeking medical advice on therapeutic work.

4. On 5.9.02 – this is the date given by the tribunal of 3.2.04 (34) – the DMA made a decision that the claimant was not entitled to income support and the sum of £372.24 from 27.12.2000 to 16.3.2001 was recoverable. However, on appeal on 3.2.04, the tribunal revised the decision of 5.9.02, and decided that there had not been a valid supersession of the decision of 17.11.00 and “the overpayment for the period 27.12.00-16.3.01 is not recoverable”.

5. The DM then, almost immediately on 11.2.04 (35/6), having noted that there had been a change of circumstances since 17.11.2000, decided that there was a recoverable overpayment for the period 27.12.00-16.3.01 amounting to £372.24, which was recoverable. On 26.5.04 (38/9), the DM reconsidered that decision and revised it to correct certain small matters not relevant to this decision. That, all else being equal, was a valid supersession.

6. The claimant appealed to a fresh tribunal who, on 15.9.04, heard and dismissed her appeal. From that decision, she appeals with the leave of the chairman to the Commissioner.

7. The grounds of appeal (78) are that the earlier decision to be superseded was the tribunal decision of 3.2.04, which was a decision that the overpayment was not recoverable. Under section 17(1) SSA 1998, a tribunal’s decision is final, subject to supervision but, under reg (2)6(c)(i) Appeals and Decisions Regulations 1999 SI 991 a supersession of a decision of a tribunal can only be made if the original decision was “made in ignorance of or was based upon a mistake as to some material fact.”. The rep in this case argues that the mistake was, if anything, an error of law which is excluded from . The reason for that, however, is perfectly plain, since there is an elaborate procedure for appeals on questions of law. Ergo, the rep submits the DM could not have superseded the tribunal decision of 3.2.04 and that is fatal to the decision of the tribunal dated 15.9.04.

8. This somewhat ingenious argument is, in my view, plainly wrong. The tribunal decision of 3.2.04 was nothing more than a decision that there had been no supersession. The earlier award therefore continued. It was not, in my view – and evidently in the view of the Commissioner in para 26 CSIS/332/02 - a decision that the overpayment could not be recoverable for all time. All that the decision of 3.2.04 affected was that the overpayment was not then recoverable, based as it was on an apparently invalid supersession – but that is entirely without prejudice to any future overpayment claim based on a valid supersession.

9. The appeal is therefore dismissed.

(signed on the original) J M Henty
Commissioner
7 March 2005