



# Social Security Administration Act 1992

## 1992 CHAPTER 5

### PART III

#### OVERPAYMENTS AND ADJUSTMENTS OF BENEFIT

##### *Misrepresentation etc.*

#### **71 Overpayments - general**

- (1) Where it is determined that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure—
  - (a) a payment has been made in respect of a benefit to which this section applies; or
  - (b) any sum recoverable by or on behalf of the Secretary of State in connection with any such payment has not been recovered,the Secretary of State shall be entitled to recover the amount of any payment which he would not have made or any sum which he would have received but for the misrepresentation or failure to disclose.
- (2) Where any such determination as is referred to in subsection (1) above is made on an appeal or review, there shall also be determined in the course of the appeal or review the question whether any, and if so what, amount is recoverable under that subsection by the Secretary of State.
- (3) An amount recoverable under subsection (1) above is in all cases recoverable from the person who misrepresented the fact or failed to disclose it.
- (4) In relation to cases where payments of benefit to which this section applies have been credited to a bank account or other account under arrangements made with the agreement of the beneficiary or a person acting for him, circumstances may be prescribed in which the Secretary of State is to be entitled to recover any amount paid in excess of entitlement; but any such regulations shall not apply in relation to any payment unless before he agreed to the arrangements such notice of the effect of the

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*Status: This is the original version (as it was originally enacted).*

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regulations as may be prescribed was given in such manner as may be prescribed to the beneficiary or to a person acting for him.

- (5) Except where regulations otherwise provide, an amount shall not be recoverable under subsection (1) above or regulations under subsection (4) above unless—
- (a) the determination in pursuance of which it was paid has been reversed or varied on an appeal or revised on a review; and
  - (b) it has been determined on the appeal or review that the amount is so recoverable.
- (6) Regulations may provide—
- (a) that amounts recoverable under subsection (1) above or regulations under subsection (4) above shall be calculated or estimated in such manner and on such basis as may be prescribed;
  - (b) for treating any amount paid to any person under an award which it is subsequently determined was not payable—
    - (i) as properly paid; or
    - (ii) as paid on account of a payment which it is determined should be or should have been made,
 and for reducing or withholding any arrears payable by virtue of the subsequent determination;
  - (c) for treating any amount paid to one person in respect of another as properly paid for any period for which it is not payable in cases where in consequence of a subsequent determination—
    - (i) the other person is himself entitled to a payment for that period; or
    - (ii) a third person is entitled in priority to the payee to a payment for that period in respect of the other person,
 and for reducing or withholding any arrears payable for that period by virtue of the subsequent determination.
- (7) Circumstances may be prescribed in which a payment on account by virtue of section 5(1)(r) above may be recovered to the extent that it exceeds entitlement.
- (8) Where any amount paid is recoverable under—
- (a) subsection (1) above;
  - (b) regulations under subsection (4) or (7) above; or
  - (c) section 74 below,
- it may, without prejudice to any other method of recovery, be recovered by deduction from prescribed benefits.
- (9) Where any amount paid in respect of a married or unmarried couple is recoverable as mentioned in subsection (8) above, it may, without prejudice to any other method of recovery, be recovered, in such circumstances as may be prescribed, by deduction from prescribed benefits payable to either of them.
- (10) Any amount recoverable under the provisions mentioned in subsection (8) above—
- (a) if the person from whom it is recoverable resides in England and Wales and the county court so orders, shall be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court; and
  - (b) if he resides in Scotland, shall be enforced in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

- (11) This section applies to the following benefits—
- (a) benefits as defined in section 122 of the Contributions and Benefits Act;
  - (b) subject to section 72 below, income support;
  - (c) family credit;
  - (d) disability working allowance;
  - (e) any social fund payments such as are mentioned in section 138(1)(a) or (2) of the Contributions and Benefits Act; and
  - (f) child benefit.

## **72 Special provision as to recovery of income support**

- (1) Where—
- (a) a direction under section 125(1) of the Contributions and Benefits Act is revoked; and
  - (b) it is determined by an adjudication officer that, whether fraudulently or otherwise, any person has misrepresented, or failed to disclose, any material fact and in consequence of the misrepresentation or failure a payment of income support has been made during the relevant period to the person to whom the direction related,
- an adjudication officer may determine that the Secretary of State shall be entitled to recover the amount of the payment.
- (2) In subsection (1) above “the relevant period” means—
- (a) if the revocation is under subsection (3) of section 125 of the Contributions and Benefits Act, the period beginning with the date of the change of circumstances and ending with the date of the revocation; and
  - (b) if the revocation is under subsection (4) of that section, the period during which the direction was in force.
- (3) Where a direction under section 125(1) of the Contributions and Benefits Act is revoked, the Secretary of State may certify whether there has been misrepresentation of a material fact or failure to disclose a material fact.
- (4) If he certifies that there has been such misrepresentation or failure to disclose, he may also certify—
- (a) who made the misrepresentation or failed to make the disclosure; and
  - (b) whether or not a payment of income support has been made in consequence of the misrepresentation or failure.
- (5) If he certifies that a payment has been made, he may certify the period during which income support would not have been paid but for the misrepresentation or failure to disclose.
- (6) A certificate under this section shall be conclusive for the purposes of this section as to any matter certified.
- (7) Section 71(3) and (6) to (11) above apply to income support recoverable under subsection (1) above as they apply to income support recoverable under section 71(1) above.
- (8) The other provisions of section 71 above do not apply to income support recoverable under subsection (1) above.