

**RE: M Z (A CHILD)**

**SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998**

**DISABILITY LIVING ALLOWANCE**

Application by the claimant for leave to appeal  
and appeal to a Social Security Commissioner  
on a question of law from a Tribunal's decision  
dated 5 September 2018

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a claimant's application for leave to appeal from the decision of an appeal tribunal sitting at Newry.
2. For the reasons I give below, I grant leave to appeal. I allow the appeal. I make findings of fact and decide the appeal under Article 15(8)(a) of the Social Security (NI) Order 1998.
3. I decide that the sum of £22,492.35, which consists of DLA that has been overpaid to the appointee by the Department for Work and Pensions, is not recoverable from her under section 71 of the Social Security Administration Act 1992 or Section 69 of the Social Security Administration (NI) Act 1992.

**REASONS**

**Background**

4. The appellant is a child and is represented in these proceedings by the appointee, his mother, a Lithuanian national. Through the appointee, he claimed and was awarded disability living allowance (DLA) by the Department for Social Development, now known as the Department for Communities, (the Department) from 4 January 2012 to 22 December

2015. The appellant has Downs Syndrome and the level of his disability is not in dispute.

5. The appellant had moved from Great Britain to Northern Ireland in late 2011. He had been in receipt of an award of DLA from the Department for Work and Pensions (DWP) in Great Britain. In the period following the award of DLA by the Department in Northern Ireland, the Great Britain award continued in payment.
6. On 18 August 2016 the DWP made a decision that DLA amounting to £22,492.35 had been overpaid to the appellant for the period from 4 January 2012 to 22 December 2015 and that it was recoverable from both the appellant and the appointee. The DWP decision was made on the basis that the appointee had failed to disclose that she was paid DLA by the Department in Northern Ireland. The appointee sought a reconsideration. On 14 February 2017 the DWP reconsidered its decision but did not change it. The appointee appealed.
7. The appeal from the DWP decision was considered by a tribunal in consisting of a legally qualified member (LQM), a medically qualified member and a disability qualified member. The tribunal refused a postponement request. It proceeded to determine the appeal in a hearing on 5 September 2018 in the appointee's absence. The tribunal disallowed the appeal. The appointee then requested a statement of reasons for the tribunal's decision and this was issued on 5 September 2018. The appointee applied to the LQM for leave to appeal from the decision of the appeal tribunal but leave to appeal was refused by a determination issued on 8 May 2019. On 23 May 2019 the appointee applied to a Social Security Commissioner for leave to appeal.

### **Grounds**

8. The appointee, represented by Patterson Rocks Solicitors, submits that the tribunal has erred in law on the basis that:
  - (i) as all evidence relating to an award in Great Britain had been lost, it was unjust and unlawful to determine the appeal on the basis of no evidence;
  - (ii) the tribunal proceeded in the absence of the appointee despite a postponement application on the basis that there had been three previous postponements; however, the appointee was not responsible for the previous postponements;
  - (iii) the appointee required a Lithuanian interpreter and had been unable to present her case.
9. The Department was invited to make observations on the appellant's grounds. Mr Clements of Decision Making Services (DMS) responded on behalf of the Department. Mr Clements submitted that the tribunal had

erred in law and indicated that the Department supported the application on grounds he set out.

10. In light of the fact that each of the parties submitted that the tribunal had erred in law, I granted leave to appeal.

### **The tribunal's decision**

11. The LQM has prepared a statement of reasons for the tribunal's decision. From this I can see that the tribunal had documentary material before it consisting of the Department's submission, with various documents scheduled to it. It recorded having a postponement request from the appointee and referred to previous LQM directions. The appointee, a Lithuanian national, was not present or represented. The Department was represented by Mr McKavanagh. The tribunal noted that there had been three previous postponements. The postponement was requested on the basis that the appellant was seeking a new lawyer. The tribunal noted that one of the three previous postponements had been requested by the appointee on the basis that her solicitor was not available in April 2018. It observed that "she had had sufficient time to engage new solicitors if that was indeed the case".
12. The tribunal identified the issue in the appeal as whether the appointee had been overpaid DLA, on the basis that she had moved from Great Britain to Northern Ireland when receiving DLA from the Department for Work and Pensions, and had subsequently been awarded DLA in Northern Ireland. It reviewed various documents in the papers before it. It decided that the appointee had concealed the fact of the award of DLA in Great Britain. It found that she should have notified the Department in Northern Ireland that she had an existing award in Great Britain.
13. The tribunal observed that many documents relating to the Great Britain claim were now missing. It found that the appointee had been overpaid DLA amounting to £22,492.35 and that this was recoverable from the appointee because she had failed to disclose and/or misrepresented the material fact that she was paid DLA from both Great Britain and Northern Ireland at the same time.

### **Relevant legislation**

14. Disability living allowance in Great Britain was established by section 71 of the Social Security Contributions and Benefits Act 1992 (the 1992 Act). This provides:
  - (1) Disability living allowance shall consist of a care component and a mobility component.
  - (2) A person's entitlement to a disability living allowance may be an entitlement to either component or to both of them.

(3) A person may be awarded either component for a fixed period or for an indefinite period, but if his award of a disability living allowance consists of both components, he may not be awarded the components for different fixed periods.

(4) The weekly rate of a person's disability living allowance for a week for which he has only been awarded one component is the appropriate weekly rate for that component as determined in accordance with this Act or regulations under it.

(5) The weekly rate of a person's disability living allowance for a week for which he has been awarded both components is the aggregate of the appropriate weekly rates for the two components as so determined.

(6) A person shall not be entitled to a disability living allowance unless he satisfies prescribed conditions as to residence and presence in Great Britain.

15. The Social Security (Disability Living Allowance) Regulations 1991 (the DLA Regulations) then made further provision at regulation 2 for conditions as to residence and presence in Great Britain. During part of the material time these provided a condition of being ordinarily resident in Great Britain, being present in Great Britain and having been present in Great Britain for 26 weeks in the 52 weeks immediately preceding the day of entitlement. These were amended from 8 April 2013 to provide a condition of being habitually resident in the UK, Republic of Ireland, Isle of Man or the Channel Islands, being present in Great Britain and having been present in Great Britain for 104 weeks in the 156 weeks immediately preceding the day of entitlement.
16. The DLA legislation applying in Northern Ireland made similar provision and was amended in similar terms, although not on the same date, having been amended I understand on 20 June 2016.
17. The legislation governing recoverability of overpaid benefit in Great Britain appears principally at section 71(1) of the 1992 Act, which provides:

**71.—(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.

...

(5A) Except where regulations otherwise provide, an amount shall not be recoverable under subsection (1) above or under regulations under subsection (4) above unless the determination in pursuance of which it was paid has been reversed or varied on an appeal or has been revised under section 9 or superseded under section 10 of the Social Security Act 1998.

18. The requirement to disclose is expanded in regulation 32 of the Social Security (Claims and Payments) Regulations 1987 (the Claims and Payments Regulations). In so far as relevant, this provides:

**32.—(1)** Except in the case of a jobseeker's allowance, every beneficiary and every person by whom, or on whose behalf, sums by way of benefit are receivable shall furnish in such manner as the Secretary of State may determine and within the period applicable under regulation 17(4) of the Decisions and Appeals Regulations such information or evidence as the Secretary of State may require for determining whether a decision on the award of benefit should be revised under section 9 of the Social Security Act 1998 or superseded under section 10 of that Act.

(1A) Every beneficiary and every person by whom, or on whose behalf, sums by way of benefit are receivable shall furnish in such manner and at such times as the Secretary of State may determine such information or evidence as the Secretary of State may require in connection with payment of the benefit claimed or awarded.

(1B) Except in the case of a jobseeker's allowance, every beneficiary and every person by whom, or on whose behalf, sums by way of benefit are receivable shall notify the Secretary of State of any change of circumstances which he might reasonably be expected to know might affect—

(a) the continuance of entitlement to benefit; or

(b) the payment of the benefit,

as soon as reasonably practicable after the change occurs by giving notice of the change to the appropriate office—

(i) in writing or by telephone (unless the Secretary of State determines in any particular case that notice must be in writing or may be given otherwise than in writing or by telephone); or

(ii) in writing if in any class of case it requires written notice (unless it determines in any particular case to accept notice given otherwise than in writing).

### **Hearing**

19. Having seen the written submissions on the appeal I indicated to the parties that I was provisionally minded to allow the appeal and to determine the issues myself rather than to remit the appeal to a newly constituted tribunal. I gave directions accordingly. I held an oral hearing of the appeal. The appointee attended the hearing, represented by Mrs Hughes of Patterson Rocks Solicitors. Mr Clements of DMS represented the Department. I am grateful to the representatives for their assistance.
20. Mr Clements clarified the position of the Department and addressed a number of issues which I put to him for comment. Mrs Hughes maintained the position advanced in written submissions and assisted in relation to issues of fact, but in the circumstances I did not need to call on her for oral submissions.

### **Assessment**

21. In my judgment the DWP, the Department and the tribunal have each been responsible for errors in this appeal. Firstly, the case involves a number of difficulties arising from the paucity of material in the DWP file including the omission of the original supersession of entitlement decision. It further involves the complication of a Departmental decision maker seeking to make up the shortcomings in the DWP file under reciprocal arrangements, leading to error. Most fundamentally, it involves a lack of any rigorous analysis of the relevant conditions of entitlement, leading to a fundamental misunderstanding of the correct basis for the missing entitlement decision and misleading all concerned about what exact obligation was on the appointee to disclose material facts, and whether she had met that obligation.
22. It may be best to start with a discussion of the legislation that manages reciprocal arrangements between the social security systems of Northern Ireland and Great Britain. This was nowhere mentioned in the submissions to the tribunal but, in order to explain aspects of the decision making in the case by the Department, I consider that it should have been.
23. Northern Ireland and Great Britain maintain entirely distinct systems of social security, based on virtually identical legislation but with entitlement and adjudication rules that have exclusive territorial jurisdiction. However, the boundaries are elided to some extent by reciprocal arrangements. These are implemented through legislation, and the provisions in force at the relevant time were the Social Security (Great Britain Reciprocal Arrangements) Regulations (NI) 2016 (the Reciprocal Arrangements Regulations). By regulation 2 of the Reciprocal

Arrangements Regulations a Memorandum of Reciprocal Arrangements has effect as they relate to Northern Ireland. In addition a list of legislative provisions - which include the Social Security Contributions and Benefits (NI) Act 1992 – and subordinate legislation made under them are made subject to adaptations required for giving effect to the provisions of the Memorandum of Reciprocal Arrangements.

24. It appears to me that three paragraphs of the Memorandum have particular relevance. These are:

“2. (1) For the purposes of all the provisions of the systems of social security established by the legislation –

(a) acts, omissions and events and in particular residence, presence, ...

having effect for all or any of those purposes in one territory shall have corresponding effect for all or any of those purposes in the other territory.

...

3. Where the determining authority has made a decision relating to a claim for benefit arising under or in connection with the legislation, including a decision as revised or superseded,

(a) the decision may be revised or superseded;  
and

(b) any appeal from the decision may be determined

under and to the extent permitted by the legislation of the territory in which the claimant is, as if the decision had been made in that territory, notwithstanding that the decision was made in the other territory.

4. The provisions of Articles 2 and 3 of this Memorandum shall not confer a right to double benefit.”

25. It appears to me that these provisions (read alongside the definition of “determining authority” in paragraph 1 of the Memorandum) enabled two untypical things to occur in terms of the adjudication of this case. Firstly, it enabled the Department to make a decision in relation to a matter which was otherwise within the sole jurisdiction of the Secretary of State for Work and Pensions in Great Britain. Secondly, it enabled a Northern Ireland appeal tribunal to determine an appeal that would normally fall within the jurisdiction of the First-tier Tribunal in Great Britain.

26. It further appears to me that these provisions may have had some effect on the question of whether the basic conditions of entitlement to DLA were satisfied in terms of residence and presence conditions. However, I will return to that issue below.
27. The first relevant effect of the provisions of the Memorandum is that it gave jurisdiction to the tribunal to determine the appeal. Whereas the decision under appeal was a decision of the DWP, the second effect was to enable the tribunal to apply the legislation applying in Northern Ireland to the case. The appellant appealed to the relevant office in Great Britain on 20 March 2017 and the appeal was forwarded to the Appeals Service in Northern Ireland on 28 March 2017.
28. The appellant had appealed the overpayment decision of the DWP. However, in the course of preparing the appeal submission, it must have become evident to the Department in Northern Ireland that there was no entitlement decision on the file. By a decision made on 12 September 2017 a decision maker in Northern Ireland issued a decision to the effect that the appellant was not entitled to DLA in Great Britain from and including 28 December 2011. The reasons for this decision indicate that “we have disallowed the award which was made in Great Britain on 1/4/11 when you lived in England. This is because you made a new claim when you moved to Northern Ireland meaning that you had two DLA awards at the same time”.
29. The significance of the entitlement decision is of course that there cannot be an overpayment of a benefit – let alone a recoverable overpayment – if the decision awarding entitlement to that benefit has not been revised or superseded so as to remove entitlement. This is a common sense proposition, but also a statutory requirement as section 71(5A) above makes clear.
30. Mr Clements for the Department concedes that the tribunal’s decision was given in error of law. This is because it accepted the Department’s decision on entitlement satisfied section 71(5A). He submits that the decision did not satisfy section 71(5A). In short, while there was no copy of the original DWP decision retained on the DWP files, he submits that if there had been such a decision then it would be a final decision under the Great Britain equivalent of Article 17 of the Social Security (NI) Order 1998 (namely, section 17 of the Social Security Act 1998). In the absence of a decision on file, he submitted that it might be open to a tribunal to reconstruct such a decision from the best evidence available (citing CG/3049/2002). However, because any original decision was a final decision, it was not lawfully possible for a decision maker to remake that decision. It was *res judicata*.
31. Furthermore, in the particular circumstances of the case, the Departmental decision maker purported to make a new decision. Mr Clements pointed out that the purported entitlement decision post-dated the overpayment decision. He submitted that by section 71(5A) the



entitlement decision must pre-date or be made at the same time as the overpayment decision. Therefore, the tribunal could not lawfully have made the decision that it did.

32. I consider that there is merit in Mr Clements' submission. Under the terms of the Memorandum discussed above, the Departmental decision maker had a power to make any decision that the DWP could make. However, the DWP would equally have been in error had it sought to remake the entitlement decision in these circumstances. It seems to me that the tribunal has erred in law on that technical basis and that the Departmental decision of 12 September 2017 is of no legal effect.
33. However, it appears to me that the tribunal has been further misled into error by the terms of the Department's purported decision.
34. The conditions of entitlement to DLA are provided in legislation. In the purported entitlement decision the Department finds that the appellant was not entitled to the DLA award in Great Britain as "you had two DLA awards at the same time". In point of fact, there is nothing in the conditions of entitlement to DLA that expressly precludes entitlement to DLA in Great Britain on the basis that the claimant also has a DLA award in Northern Ireland.
35. Unfortunately, the tribunal adopted this theme. It says:

"In this case the claimant was of the firm opinion that the Appellant clearly knew, when submitting the claim for Disability Living Allowance in Northern Ireland that she was in receipt of the equivalent benefit in GB. This was a clear change of circumstances which should have been notified to the Department for Work and Pensions in England and was clearly not. At its height, all she did was to notify the Department for Work and Pensions in England of her move to Northern Ireland. There was no indication that she had told the Department for Work and Pensions of her intention to claim Disability Living Allowance in Northern Ireland and furthermore there is no indication whatsoever in her claim form for Disability Living Allowance in Northern Ireland that she had mentioned her previous award in GB".

36. In cases where the Department relies on failure to disclose, it is normal to include a specimen copy of the instructions given to the claimant on receipt of an award of benefit. These typically set out the duty of the claimant to disclose relevant changes in circumstances and give examples of the sort of circumstances that are material. No copy of the instructions issued in Great Britain was included in the papers before the tribunal, but I would find it surprising if they advised a claimant in direct terms that they should report a claim for DLA in Northern Ireland.

37. The tribunal has further referred to the failure of the appellant to state in her DLA claim form in Northern Ireland that she had been receiving DLA in Great Britain. However, the tribunal was adjudicating on the question of whether the appointee had failed to disclose a material fact to the DWP. As indicated by Baroness Hale at paragraph 61-62 of *Kerr v. Department for Social Development* [2004] UKHL 23, the process of benefits adjudication is inquisitorial rather than adversarial. In determining entitlement to benefit, both the claimant and the Department must play their part. The Department is the one which knows what questions it needs to ask and what information it needs to have in order to determine whether the conditions of entitlement have been met. The claimant is the one who generally speaking can and must supply that information. It does not appear to me that the Department in Northern Ireland has asked the appellant anything about a DLA award in Great Britain in its claim form. Nor would I expect it to, since that award *per se* would not affect entitlement to DLA in Northern Ireland.
38. More generally, there was no question that the appellant had an entitlement to an award of DLA from the Department in Northern Ireland. The issue of DLA entitlement in Great Britain had no bearing on that. Anything that she might have said on the claim form, even if she had referred to a Great Britain DLA award, would not have amounted to a disclosure to the DWP. Equally, anything not stated on a Northern Ireland claim form could not amount to a failure to disclose to the DWP.
39. It appears to me that the Department and the tribunal each addressed the wrong issue. This is not to say that a claimant is entitled to claim simultaneous awards of DLA in the two different territories. As can be seen from the respective versions of section 71(6) of the 1992 Act, the way that the legislation prevents this is simply to make DLA entitlement in Great Britain conditional on residence and presence in Great Britain, and DLA entitlement in Northern Ireland conditional on residence and presence in Northern Ireland. As it is not possible to reside and be present in two places at once, double payment of DLA is prevented.
40. Any entitlement decision, properly framed, should be addressed to the question of whether the appellant was resident and present in Great Britain in the terms of section 71(6) of the 1992 Act and regulation 2 of the DLA Regulations. The relevant change of circumstances that would bring DLA entitlement in Great Britain to an end would be leaving Great Britain. Once the DWP was aware that the appellant was no longer resident and present in Great Britain, entitlement should have been superseded on that basis.
41. As indicated above, some provisions in the Memorandum appear to have some relevance to the substance of the issues arising in this appeal. By paragraph 2, for the purposes of all the provisions of the systems of social security established by the legislation acts, residence and presence having effect for all or any of those purposes in one territory shall have corresponding effect for all or any of those purposes in the

other territory. This raises an arguable prospect of residence and presence in Northern Ireland satisfying the residence and presence conditions in Great Britain. However, by paragraph 4 those provisions “shall not confer a right to double benefit”. I have not heard argument on this point, but it does not appear to me that the Memorandum takes matters any further.

42. Turning again to the obligations that were on the appointee to provide information under regulation 32 of the Claims and Payments Regulations, no copy of the instructions which the DWP would have issued to inform her of the matters she must notify to the DWP was before the tribunal. As the fact of leaving Great Britain was a relevant change of circumstances affecting entitlement, I expect that it would have been one of the matters that claimants were told to report. However, the Department diverted the tribunal into the question of whether the appointee had told the DWP that she had claimed DLA in Northern Ireland. In order to elevate this to a failure to disclose, the Departmental submission to the tribunal would need to have evidenced that the applicant was instructed to notify the DWP that she had claimed DLA in Northern Ireland. If the Department could not demonstrate that this instruction was given, no failure to disclose could be demonstrated under regulation 32(1) or (1A).
43. Under regulation 32(1B) a claimant can be expected to report changes of circumstances which she might reasonably be expected to know might affect the continuance of entitlement to benefit. The simple fact of being awarded DLA in Northern Ireland does not *per se* affect entitlement to benefit in Great Britain, for the reasons given above. In order to fail to disclose under regulation 32(1B), I consider that (i) there must be a change of circumstances which affects continuance of entitlement to benefit; and (ii) the claimant might reasonably be expected to know that the change might affect continuance of entitlement; and (iii) the claimant has not disclosed that change of circumstances. In this case, the DWP accepted that the appointee had reported the fact of leaving Great Britain, which was the actual change of circumstances which affected entitlement to benefit. I consider that the tribunal erred by addressing the question of the failure of the appointee to notify the DWP that the Department had awarded DLA in Northern Ireland, as this was a matter that could not fall within the scope of regulation 32(1B).
44. Due to the refusal of her postponement request, the appellant was not given the opportunity to offer oral evidence to the tribunal. Nevertheless, her evidence in a letter dated 8 April 2016 was that she had notified the DWP of the change of circumstances that she had moved to Northern Ireland. Normally in cases such as this there would be a factual dispute between the Department and the appellant as to whether disclosure of a relevant change of circumstances was made. In this case, however, the DWP states in its reconsideration decision: “In your reconsideration request you told us that you notified us of your change of address and

that you had moved to Northern Ireland. It is accepted that you did notify us of this”.

45. It would be difficult for the DWP to deny that disclosure had been made, on the evidence contained in the papers before the tribunal. The appointee was able to provide copies of letters dated 7 December 2011, 20 March 2012, 25 April 2012 and 5 December 2012 sent to the appointee at her address in Northern Ireland by the DWP itself. It is notable that at least one of these pre-dated the overpayment, which ran from 4 January 2012 to 22 December 2015. Combined with evidence from the appointee that she had notified the DWP of her change of address to Northern Ireland, the letters from the DWP give rise to compelling evidence that she did what she said she had done.
46. For the Department, before the tribunal, it had been argued that the DWP knew the appointee’s address not from her notifying it, but from a different benefit claim she had made being placed on a Departmental computer system, and therefore that she had not disclosed the material fact to the people administering DLA for the DWP. However, even if this submission is correct, which is debateable, it does not affect matters. The people administering DLA for the DWP were writing to the appointee in Northern Ireland. The appointee therefore knew that the DWP knew where she was currently living. There cannot be a failure to disclose something to a person who, to the knowledge of the prospective discloser, already knows it.
47. I consider that the tribunal has addressed itself to the wrong question of law and has erred accordingly. I set aside the decision of the appeal tribunal.

### **Disposal**

48. I consider that it is appropriate that I should make findings of fact and determine the appeal myself.
49. No copy of the original DWP decision on entitlement has been retained. I note the following entries in a screen print from the DWP computer system at Tab A to the “Further Submission” to the tribunal dated 22 January 2018:

“...

22.03.2016      CUSTOMER      NOW      LIVES      IN  
NORTHERN IRELAND, M. Parsons 2507

...

31.03.2016      \*\*CRT LETTER ISSD TO CX ADVISING  
NOT ELIGIBLE TO RECEIVE DLA

BOTH IN THE UK AND N IRELAND... ”

50. It therefore appears to me that an entitlement decision was issued on 31 March 2016. While it appears to be expressed in the terms that I have criticised above, I accept that this decision most likely complied with the requirements of section 71(5A) of the Social Security Administration Act 1992. This decision is not appealed.
51. The appeal is brought against the DWP decision of 18 August 2016 to the effect that the appellant had been overpaid DLA amounting to £22,492.35 from 4 January 2012 to 22 December 2015. This sum was submitted as having been paid on the basis of a misrepresentation or failure to disclose a material fact and that it was therefore recoverable.
52. It appears to me that the issue is whether the appellant failed to disclose to the DWP the material fact that she was leaving Great Britain to live in Northern Ireland. Her evidence was that she had made disclosure. I observe that she is in possession of four letters addressed to her in relation to her DLA claim by the DWP dated 7 December 2011, 20 March 2012, 25 April 2012 and 5 December 2012. Mr Clements points out that all of these are addressed to the appointee and not the appellant. However, the second of the letters is clearly marked for the minor appellant and indicates that the DWP was aware that this was his address as opposed to simply that of the appointee. I do not accept his submission that the letters do not necessarily indicate that the DWP knew that the appellant was no longer resident and present in Great Britain. As the letter of 7 December 2011 predated the commencement date for the period for which DLA was overpaid, it appears to me that throughout the period of overpayment the DWP was aware that the appointee and the appellant were not resident or present in Great Britain. Furthermore, in its reconsideration letter the DWP's decision maker on 14 February 2017 accepted that the appointee had told the DWP of her change of address.
53. The appellant was not entitled to DLA from 4 January 2012 to 22 December 2015 as he no longer satisfied the condition of entitlement that he was resident and present in Great Britain. Therefore the appointee has been overpaid DLA by the DWP in the sum of £22,492.35.
54. However, I am satisfied that the appointee disclosed the material fact to the DWP that she and the appellant were no longer resident and present in Great Britain. The overpayment has arisen by reason of the failure of the DWP to act on that information.
55. As she has not failed to disclose any material fact, I am satisfied that the overpaid benefit is not recoverable from the appointee or the appellant under section 71 of the Social Security Administration Act 1992.

(signed): O Stockman

Commissioner

20 May 2020