

CAC

JBM/SH/12

Commissioner's File: CSB/081/1990

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A  
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Manchester social security appeal tribunal dated 9 August 1989 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the unanimous decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 30 April 1990 the claimant through his representatives has had the opportunity to comment and I have their observations to me dated 21 May 1990. No useful purpose would be served by my setting out these matters afresh here.

4. In my judgment the decision of the appeal tribunal is erroneous in point of law in that they have breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in the manner indicated in paragraph 3 of the submission dated 30 April 1990. Further they have erred in their award of the long-term scale rates from 20 July 1987. In this regard I adopt as part of my judgment paragraph 4 of the submission dated 30 April 1990 of the adjudication officer now involved in these appeals. There is no merit in my setting out in other words what has there already been adequately dealt with.

5. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay

particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. Specifically they should:-

- (1) identify the decision or decisions of which review is sought;
- (2) establish the grounds for that review in accordance with section 104 in section 104(1A) of the Social Security Act 1975, bearing in mind that the burden of proof for establishing those grounds is upon the person contending that an existing award should be cancelled or varied on review;
- (3) if grounds for review exist, consider the substantive provisions and make sufficient findings of fact and provide adequate reasons in support of a determination as to whether, and if so from when, a revised decision should take effect;
- (4) depending upon what is decided under sub-paragraph (3) above, determine whether regulation 69 of the Social Security (Adjudication) Regulations 1986 applies, so as to limit the arrears of supplementary benefit payable.

Further the appeal tribunal to whom I remit this case should decide whether the provisions of regulation 72(1) are satisfied, by which the limitations on the payability of arrears prescribed by regulation 69 are circumvented. They should take into account in considering that provision the following:-

- (a) the burden of proof is upon the claimant to demonstrate that regulation 72(1) applies;
- (b) for the purposes of regulation 72(1)(a), a mistake or an omission on the part of an official needs to be identified;
- (c) there must be no material contribution to that mistake or omission on the part of the claimant. Where there is it is fatal to the claim;
- (d) whether for the purposes of regulation 72(1)(b), the grounds for review are ignorance of, or a mistake as to a material fact, and whether
  - (i) the evidence or fact in question was not before the adjudication officer when he made his decision;
  - (ii) had it been so it would have materially affected the decision given;

- (iii) the claimant and anyone acting for him could not reasonably have produced that evidence at the time of the decision; and
- (iv) the evidence or fact, now produced, has been produced as soon as reasonably practicable

this is of course a supplementary benefit case - no doubt every effort will be made to secure an early rehearing of this case with a view to bringing finality to all the issues involved.

6. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner

(Date) 3 April 1992