

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is as follows. It is given under paragraph 8(4) and (5)(c) of Schedule 7 to the Child Support, Pensions and Social Security Act 2000.
- 1.1. The decision of the Liverpool appeal tribunal under reference U/06/062/2001/01090, held on 19th June 2002, is erroneous in point of law.
- 1.2. I set it aside and remit the case to a differently constituted appeal tribunal.
- 1.3. I direct that appeal tribunal to conduct a complete rehearing of the issues that arise for decision.

The issue

2. The issue in this case was whether the tribunal went wrong in law by refusing to adjourn to allow the appellant a chance to attend.
3. This issue was recently the subject of a decision of the Court of Appeal in *Carpenter v. Secretary of State for Work and Pensions* [2003] EWCA Civ 33. I have applied the reasoning in that decision.
4. The appellant argued, through his representative, that he was denied an adjournment in order to attend. He was unable to attend, because he had just started a new job and could not reasonably ask for time off work.
5. The chairman's record of proceedings and statement of the reasons for the tribunal's decision did not refer to an application for an adjournment or its refusal.
6. Before granting leave to appeal, I arranged for enquiries to be made of the chairman. She had no recollection of an application being made and no record in a judicial notebook. However, as the representative's statement was clear and detailed, I granted leave to appeal and asked the respondents to give me their recollections of whether an application was made.
7. The officer who attended on behalf of the local authority recalls a discussion with the appellant's representative about the possibility of an adjournment before the hearing and believes that an application was made.
8. The other respondent has given an account. The appellant's representative disagrees with some of what he has written. However, his account also confirms that there was some discussion about the appellant being available.
9. In those circumstances, I accept that the appellant was not available at the time of the hearing because he had just started a new job. I also accept that his representative applied to the chairman for an adjournment, which was refused.

Did the tribunal go wrong in law?

10. Yes, it did.

11. *Carpenter* decides that a refusal to adjourn may or may not be in error of law, depending on the reasons given. Some refusals speak for themselves and require no explanation. The application in this case did require an explanation. The appellant found himself in a position in which, understandably, he felt unable to ask for time off so soon after starting a new job. No reason was given. Indeed, the chairman cannot recall the application. So, she can hardly explain why she refused it. In those circumstances, I am satisfied that the tribunal did go wrong in law.

12. Just to be clear, I have not decided that the claimant was entitled to an adjournment and that a refusal would have been an error of law in any circumstances. It may be that there was a good reason why the adjournment should have been refused. It may be that further enquiry would have showed that the claimant could have made other arrangements or made them sooner. I simply do not know. My decision is based on the fact that the chairman did not give a reason in circumstances in which one, however brief, was required.

Signed on original

**Edward Jacobs
Commissioner
25th February 2003**