

C786

DGR/SH/15

Commissioner's File: CIS/354/1990

SOCIAL SECURITY ACT 1986

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 social security appeal tribunal given on 30 March 1989 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision that the tribunal should have given, I further decide that from 11 April 1988 the claimant is not entitled to housing costs in respect of house insurance or water rates.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 30 March 1989.

3. The question for determination by the tribunal was whether water charges and building insurance premiums should be treated as service charges or analogous to service charges within paragraph 1 of schedule 3 to the Income Support (General) Regulations 1987 so as to be taken into account in determining the claimant's weekly applicable amount pursuant to regulation 17(e). In the event, the tribunal, upholding the decision of the adjudication officer, decided that water charges and building insurance premiums were not to be treated as such service charges.

4. Unfortunately, the tribunal, although they reached the right conclusion, did not, in my judgment, give an adequate explanation as to how they arrived at their conclusion. Accordingly I must set aside their decision as being erroneous in point of law. However it is unnecessary for me to remit the matter to the new tribunal for rehearing. I can conveniently substitute my own decision. The position is governed by R(IS) 4/91 where the Tribunal of Commissioners held that a charge imposed on a claimant would need to satisfy two tests if it was to be admitted as a housing cost. The first was that under the terms on which

the claimant held the property he was obliged to accept the determination of a third party as to the payment of the charge, and the second that the said payment was connected with the adequacy of the accommodation. On the basis of the evidence available in the present instance, neither condition was satisfied. It follows that the water and insurance charges could not be taken into account for the purposes of computing the claimant's entitlement to income support.

5. My decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 1 May 1992