

MASTER

Failure to give adequate reasons.

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Commissioner's File: CSB/0926/1986

C A O File: AO 2836/SB/86

Region: North Western

SUPPLEMENTARY BENEFITS ACT 1976

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER**

Name:

Social Security Appeal Tribunal: Rochdale

Case No: 43/08

1. My decision is that the decision of the Rochdale social security appeal tribunal dated 19 June 1986 is erroneous in point of law. Accordingly I set it aside and remit the case for hearing to a differently constituted appeal tribunal.
2. This is an appeal to the Commissioner by the claimant with the leave of the tribunal chairman confirming the decision of the adjudication officer issued on 10 January 1986 and set out in Box 1 of Form AT2.
3. The facts and history of the case are dealt with partly by reference in paragraphs 1 to 6 inclusive of the submission dated 1 September 1986 of the adjudication officer now concerned on which the claimant has had the opportunity to comment. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to in paragraph 8 of the submission dated 1 September 1986. Nothing is to be gained by my setting out these references afresh here.
5. In my judgment the tribunal erred in point of law in that the claimant is left in the dark as to why his appeal failed and accordingly regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 has been breached. The evidence of the claimant was that the springs of his three seater settee were broken and that the settee was too low for his wife who suffers from severe arthritis, epilepsy and sciatica. Further the claimant's wife is in receipt of Attendance Allowance and Mobility Allowance. An accident while the claimant's house was being modernised gave rise to the need for lounge curtains. The curtains and other items became saturated. They were previously in poor condition due to rain blowing in through gaps in the window frames. A visiting officer who visited the claimant's home on 7 January 1986 reported that the claimant had curtains which fitted the lounge and were in his opinion satisfactory. The visiting officer also reported that the three seater settee was in a satisfactory condition, the cover was in a reasonable condition and the springs were not broken. Accordingly the adjudication officer's decision was that there was no need and disallowed both claims which decision of the adjudication officer was upheld by the appeal tribunal. I need only refer to the decision of the Commissioner R(SB)33/85 at paragraph 15 cited by the claimant's representative in his appeal to me. The

tribunal erred in law in that they failed to give any reasons for preferring the submission of the visiting officer to the claimant's evidence. It is incumbent upon the adjudication officer to support his statements by evidence and I need only refer in this connection to paragraphs 4 and 5 of the unreported decision CSB/694/1985 (to be reported as R(SB)9/86). The appeal tribunal failed to make findings of fact as to whether the curtains and the settee were at the date of claim in reasonable condition having regard to the individual needs of the assessment unit. In regard to the settee the tribunal should have considered the claimant's evidence concerning his wife's health and the fact that the present settee is too low for her. In accordance with paragraph 5 of R(SB)1/84 of the decision of the Commissioner the approach should be broadly on a subjective rather than an objective basis. Had the appeal tribunal made a finding of fact that the settee was not in a reasonable state of repair it would then have been the duty of the appeal tribunal to make further findings of fact as to the number of easy chairs possessed by the assessment unit at the date of claim. At paragraph 14 of the unreported decision of a Tribunal of Commissioners in decision CSB/1440/1985 the tribunal held that a three seater settee was equivalent to three easy chairs. However at paragraph 11 of the Tribunal decision it was held that what constituted a sufficient number of easy chairs has to be assessed on a purely numerical basis of one easy chair for each member of the assessment unit. Further if the tribunal had had evidence which they accepted before them that the claimant's wife had been supplied with a suitable easy chair, the appeal tribunal should have considered whether in the light of that fact there was at the date of claim a need for the item in terms of regulation 3(2)(a) of the Single Payments Regulations. The appeal tribunal should have considered the dictum of the Tribunal of Commissioners at paragraph 21 of R(SB)26/83 concerning the satisfaction of a need following the single payment and in that connection should have held that it could be extended to include cases where the need is satisfied in the period between the dates of first and final adjudication. On that basis the appeal tribunal should have considered the extent of the claimant's knowledge of the services available to the disabled in the locality as relevant to the question whether those services could be regarded as an adequate means of satisfying the claimant's requirements at the time of claim.

6. In accordance with my jurisdiction set out in regulation 27 of the Social Security (Adjudication) Regulations 1984 my decision is as set out in paragraph 1 of this decision. I direct that the tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred above. Further they shall consider carefully the exact wording of the relevant regulations and make and record their findings on all the material facts and give reasons for their decision.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B.Morcom
Commissioner

Date: 11th March 1987