

JBM/SH/11

Commissioner's File: CSB/1238/1989

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 Liverpool social security appeal tribunal dated 6 June 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 Commissioner against the unanimous decision of the appeal tribunal confirming 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 submission of the adjudication officer in writing to the appeal tribunal. In respect of those matters and of the submissions dated 21 February 1990 and 15 October 1991 of the adjudication officers then and now involved in these appeals the claimant through his legal representatives 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 2 of the submission dated 21 February 1990 of the adjudication officer then concerned in these appeals. Nothing is to be gained by my setting out those references afresh here.

5. 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. The claimant is left guessing as to what facts were accepted and what were not accepted. I accept paragraph 2 of the submission dated 15 October 1991. In my judgment the submission of the adjudication officer now concerned in resiling from the submission earlier made dated 21 February 1990 is rightly made.

6. 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, the new tribunal should make full findings of fact as to whether the claimant satisfies any of the provisions of regulation 6 of the Conditions of Entitlement Regulations either directly or by analogy and, if so, when those conditions were first satisfied.

Every effort should be made to secure an early rehearing of this appeal with a view to bringing finality to all the issues involved in this supplementary benefit case.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 10 March 1992