

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 social security appeal tribunal is erroneous in point of law and accordingly I set it aside; I refer the case to a new social security appeal tribunal for determination.

2. This is a claimant's appeal against the decision of the Birkenhead social security appeal tribunal given on 3 October 1989 which upheld a decision of the adjudication officer refusing to review an earlier decision.

3. I have before me written argument prepared on behalf of the claimant by Mr G. Constantine, a welfare benefit adviser of the Social Services Centre at Birkenhead, and a submission made on behalf of the adjudication officer which supports the appeal.

4. The claimant's case before the tribunal was that there were grounds to review the earlier assessment which he submitted had been incorrectly made by the adjudication officer as a result of the failure of the officials to make further enquiries and he relied on regulation 72 of the Social Security (Adjudication) Regulations. Unfortunately the members of the tribunal have failed to find the necessary material facts and to give adequate reasons for their decision. The adjudication officer now concerned has carefully analysed the failure which has arisen and I consider there is no merit in my repeating what he has said in different words. This is a clear case where the decision must be set aside and the matter referred to a differently constituted tribunal for rehearing. That new tribunal may derive some assistance from the remarks made by the adjudication officer in his submission to the Commissioner dated 16 March 1990. In

addition I draw the attention of the members of the tribunal to CSB/1331/1989 and CSB/2/90 where guidance is given to what would constitute a "mistake" within regulation 72.

(Signed) J J Skinner
Commissioner

Date: 11 February 1992