

Commissioner's File: CSB/234/1990

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 Brighton social security appeal tribunal dated 14 August 1989 is not erroneous in point of law.
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.
3. The facts of the case are dealt with in the findings of fact on the face of the record of the appeal tribunal. In respect of those matters and of the submission dated 16 October 1990 the claimant has through his representatives had the opportunity to comment and I have their observations to me dated 29 October 1990. 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 16 October 1990 of the submission of the adjudication officer now involved 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 not erroneous in point of law. I have considered very carefully the arguments put forward on behalf of the claimant by his representatives together with the documentation contained in the case papers. I have also considered the full and careful submission made by the adjudication officer now involved in these appeals and dated 16 October 1990. I do not think that it is necessary for me to recite the careful arguments put forward by both sides. I have to bear in mind that I can allow an appeal only if I am satisfied that the decision of the appeal tribunal

was erroneous in point of law. What is an error of law is helpfully dealt with by the Commissioner in Decision R(I) 14/75. On no other ground can I set aside a decision of the appeal tribunal. In my judgment the submission dated 16 October 1990 is rightly made - there is no breach of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 in the face of the record of the appeal tribunal they state so far as the claimant's non-attendance at hospital:-

"The tribunal considered the history of the claimant's occupation of squats during 4 or 5 months up to 22nd January 1988 and the fact that he had never been to a hospital although suffering from asthma. They also considered that his present flat was heated by an electric fire. On balance there were unable to find that a serious risk to health existed."

It is clear that the appeal tribunal took into account the fact that the claimant had never been to hospital in respect of his asthma but from the face of their record it was merely one of the grounds for arriving at the conclusion to which they came.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision.

7. Accordingly the claimant's appeal is disallowed.

(Signed) J B Morcom
Commissioner

(Date) 2 April 1992