

CDA.

JBM/SH/13

Commissioner's File: CSB/245/1990

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 Leicester and District social security appeal tribunal dated 14 September 1989 is not erroneous in point of law.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman 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 on the face of the appeal tribunal record. In respect of those matters and of the submission dated 20 November 1990 of the adjudication officer now involved in these appeals the claimant has through his legal representatives had the opportunity to comment and I have their observations to me dated 14 December 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 20 November 1990. 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. It is clear from the face of the appeal tribunal record that the appeal tribunal have gone into the matter in considerable detail and with care. On the face of their record I can see no grounds which would enable me to set aside the decision of the appeal tribunal. Grounds on which my jurisdiction is based are dealt with by the Commissioner R(I) 14/75. The grounds of appeal are given in the application for leave dated 28 July 1990 and are to an extent expanded in the claimant's legal representative's letter dated

11 December 1989 - these grounds are:-

- " 1. There was a breach of natural justice in that the Chairman of the tribunal produced from his pocket, during the hearing, a newspaper cutting of the case of Duggan v. Chief Adjudication Officer. The tribunal clearly based its decision on this case and the appellant and his representatives had no opportunity to fully consider [sic] this case or argue its implications in the context.
2. [The claimant] believes that his own case is distinguishable from that of Duggan v. The Chief Adjudication Officer."

The report of the case of Duggan is of course in no way "new evidence". It was up to the claimant's legal representative to ask for an adjournment (which in my judgment well might not have been granted) to consider that case. As to the second ground of appeal I see no grounds for distinguishing the instant case from Duggan and in my judgment paragraph 6 of the submission dated 20 November 1990 of the adjudication officer now involved in these appeals is rightly made.

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 dismissed.

(Signed) J.B. Morcom
Commissioner

(Date) 3 April 1992