

Commissioner's File: CSB/318/1990

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 Gloucester social security appeal tribunal dated 7 December 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 tribunal chairman against the unanimous decision of the appeal tribunal.

3. The facts of the case are dealt with in box 5 of the submission of the adjudication officer first involved in these appeals in writing to the appeal tribunal. In respect of those matters and of the submission dated 12 February 1991 of the adjudication officer now involved in these appeals the claimant through her representatives has had the opportunity to comment and I have their observations to me dated 18 March 1991 which are "No further comments". No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are section 53 of the Social Security Act 1986 and regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986.

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 appeal tribunal failed to give any reasons why they found as fact that it was reasonable to expect the claimant to disclose her receipt of statutory sick pay. In this regard I need only refer to paragraph 14 of R(SB) 11/82. In my judgment the submission dated 12 February 1991 is rightly made and there is no merit in my pursuing those matters further here.

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. No doubt every effort will be made to secure an early rehearing of this case with a view to obtaining finality in respect of the issues involved - this is of course a supplementary benefit case.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner

(Date) 6 March 1992