

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 Hull social security appeal tribunal dated 22 February 1989 is erroneous in point of law. Accordingly I set it aside. I give the decision that the appeal tribunal themselves should have given namely that the claimant is not entitled to a single payment for a smoke detector.

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 reversing the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in box 5 on Form AT2 on the linked file being CSB/319/90. In respect of those matters and of the submission dated 3 April 1991 the claimant has had the opportunity to comment and I have the observations to me dated 9 April 1991. 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 3 April 1991 of the adjudication officer now involved in these appeals. Nothing is to be gained by my setting out those references afresh here save to state that this is yet another case in which regulation 10A of the Supplementary Benefit (Single Payments) Regulations 1981 features.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law in that they gave consideration to regulation 30 of the Single Payments Regulations 1981 contrary to the decision of a Tribunal of Commissioners being Decision R(SB) 1/89. The decision of that Tribunal of Commissioners stated the law as it always existed. They decided that it was

incumbent upon them to follow the decision of the Court of Appeal in Northern Ireland in the Carleton case. The claim in the instant case falls for determination by reference to regulation 10A. It is not in dispute that the claimant is unable to satisfy regulation 10A.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are fully before me and I give the decision that the appeal tribunal should themselves have given. Further the claimant succeeds on a technicality it is but for him a pyrrhic victory as he fails on the issue of substance.

7. Accordingly the claimant's succeeds on the issue of technicality but fails on the issue of substance.

(Signed) J.B. Morcom
Commissioner

(Date) 6 April 1992