

Following a claim ~~of~~ of proving req. for entitlement
NOT satisfied rests on AO

VGHH/1/LM

Commissioner's File: CS/054/91

SOCIAL SECURITY ACTS 1975 TO 1990

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Terence Kay

Appeal Tribunal: Liverpool

Case No: 606/25786

1. My decision is that the decision of the social security appeal tribunal dated 5 June 1990 is erroneous in point of law.
2. I remit the case for rehearing by a social security appeal tribunal which should be entirely differently constituted.
3. The attention of the tribunal is drawn to regulation 17(4) of the Social Security (Claims and Payments) Regulations 1987 which provides:

"(4) In any case where benefit is awarded in respect of days subsequent to the date of claim the award shall be subject to the condition that the claimant satisfied the requirements for entitlement; and where those requirements are not satisfied the award shall be reviewed."

The tribunal should make specific findings as to the days subsequent to the date of claim in respect of which there has been an award. As regards all such days, the onus of proving that the requirements for entitlement are not satisfied, and from what date this is so, rests on the adjudication officer.

4. The hearing before the new SSAT will be a complete rehearing. A copy of the document headed "adjudication officer's submission to the Commissioner" should be before them and they should ensure that they make findings on the points raised in that submission and on all other relevant points raised by or on behalf of the claimant or the adjudication officer. The record of their decision should comply with regulation 25(2) of the Adjudication Regulations 1986.

5. This decision is made with the consent of the parties and, accordingly, without a record of the reasons (regulation 22(2) of the Social Security Commissioners Procedure Regulations 1987).

(Signed) V G H Hallett
Commissioner

Date: 17 February 1992