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*These were - See enclosed Claims -  
done with Peter's Committee from  
Commissioner's view were relevant*

JBM/SH/1W/DC

Commissioner's File: CS/5007/95

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A  
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Disability Appeal Tribunal: Sheffield

Case No: 1/45/93/69142

1. My decision is that the decision of the Sheffield social security appeal tribunal dated 18 February 1995 is erroneous in point of law. Accordingly I set it aside and give the decision that the appeal tribunal themselves should have given namely that the claimant is entitled to invalidity benefit from and including 15 July 1993, regulation 3(3)(ii) of the Unemployment Sickness and Invalidity Benefit Regulations is satisfied and incapacity can be deemed. Only that part of the net profits of the business which has stemmed from the claimant's contribution is to be treated as earnings.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the decision of the appeal tribunal.

3. The facts of the case are referred to at paragraph 3 of the submission of the adjudication officer now involved in these appeals dated 3 November 1995. In respect of those matters and of the entirety of that submission the claimant has had the opportunity to comment and I have through his representatives their observations dated 29 November 1995. No useful purpose is to be served by my setting out these matters afresh here save as I do in this decision.

4. The relevant statutory provisions are referred to in box 2 of the written submission of the adjudication officer involved in these appeals and contained at page T28 of the case papers. Nothing is to be gained by my setting out those references afresh here.

5. In my judgement the decision of the appeal tribunal is erroneous in point of law. They have in error attributed the whole net profit of the business to the work the claimant undertook and had good cause for doing so. The earnings referred to in regulation 3(3)(ii) are earnings from the work the claimant has undertaken and had good cause for doing. There is a requirement to estimate the claimant's earnings by reference to his contribution to the profits of the business. Only that part of the net profits of the business which has stemmed from the claimant's contributions should be treated as earnings. On the evidence before me those earnings are less than the earnings limit and accordingly regulation 3(3)(ii) is fully satisfied and incapacity can be deemed. I need only refer to decisions R(S) 11/56 and R(P) 7/51. On the facts as referred to on the face of the record of the appeal tribunal the claimant's earnings are less than the earnings limit.

The claimant's representative in their observations dated 29 November 1995 refer me to "the further point in paragraph 4 of the grounds of appeal". I do not need to pursue this issue in the light of the decision I give here. However to my mind there is merit in those observations.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are fully before me I give the decision that the appeal tribunal themselves should have given.

7. Accordingly both on the technical and substantive issues the claimant's appeal succeeds.

(Signed)

J. B. Morcom  
Commissioner

(Date)

01 SEP 1996