

JGM1/HJD

Commissioner's File: CIS/38/1989

SOCIAL SECURITY ACTS 1975 - 1988

APPEAL TO THE COMMISSIONER FROM DECISION OF SOCIAL
SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

ORAL HEARING

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

1. My decision is that the decision of the social security appeal tribunal dated 6 December 1988 is erroneous in law and is set aside. The decision which I give in its place is that the amount of £19.84 for telephone rental charges included in a councillor's allowance paid to the claimant on 16 September 1988 is to be taken into account as earnings when calculating the claimant's entitlement to income support.

2. This is an appeal by an adjudication officer with leave on a question of law against the above-mentioned tribunal decision. The appeal was dealt with at an oral hearing held before me in Leeds at which the adjudication officer was represented by Mr R Otto of the Chief Adjudication Officer's Office. The claimant appeared on his own behalf.

3. The claimant is and has for a number of years been a Councillor with a Borough Council in England. At the material time he was aged 62 and in receipt of income support. He objected to an allowance received by him of £19.84 (being 100% of the rental charges and VAT for the telephone in his home) being taken into account in the calculation of his income support. An adjudication officer issued a decision on 26 September 1988 affirming that that allowance fell to be taken into account and the claimant appealed to a social security appeal tribunal.

4. The relevant provisions of the Income Support (General) Regulations 1987 have been referred to in the submission of the adjudication officer to the tribunal. In brief however, regulation 29(1) of the General Regulations provides, materially, for earnings derived from employment as an employed earner to be taken into account for income support purposes. It is not in dispute that the claimant's elected office as a Councillor comes within the definition of employed earners' employment. Under the provisions of regulation 35 of the General Regulations "earnings" means any remuneration or profit derived from the employment as an employed earner and includes:-

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remitting this case for a further hearing by another tribunal and it is appropriate that I exercise the power under section 101(5) of the Social Security Act 1975 and give the decision which a tribunal should have given. In effect I restore the decision of the adjudication officer.

8. At the suggestion of the adjudication officer's representative at the hearing a further submission was made by the adjudication officer after the appeal in which consideration was given to the possible effect of a future restriction of the rental allowance to reflect the proportion of official use of the telephone. The claimant has received a copy of that submission. It does not of course affect my conclusion in this case and I do not propose to comment upon it.

9. The appeal of the adjudication officer is allowed.

(signed) J G Mitchell
Commissioner
Date: 30 October 1989