

ques of infirmity by reason of physical or mental disability.

whether anti-social behaviour comes within this classification is a matter of degree.

Commissioner's File: CIS/13/1989

Region: Midlands

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

19 JUN 1989

1. My decision is that the decision of the Nottingham social security appeal tribunal dated 22 September 1988 is not erroneous in point of law.
2. This is an appeal to the Commissioner with the leave of the chairman against the unanimous decision of the appeal tribunal confirming the decision of the adjudication officer issued on 31 March 1988 and set out in box 1 of Form AT2. The request for an oral hearing was granted and accordingly on 22 May 1989 I held an oral hearing of this case together with CSB/049/89 in respect of which I give a separate judgment. The claimant was not present. The claimant was represented by Mr J Hannam of the Nottinghamshire County Council. The adjudication officer was represented by Mr R Buckley of the Chief Adjudication Officer's Office. To both of them I am indebted.
3. The facts and history of the case are dealt with partly by reference in paragraph 2 of the submission dated 16 February 1989 of the adjudication officer now concerned on which the claimant and the claimant's representatives have had the opportunity to comment and have in fact so commented. No useful purpose would be served by my setting out these matters afresh here.
4. The relevant statutory provisions are referred to in paragraph 3 of the submission dated 16 February 1989 of the adjudication officer now concerned and the provisions of paragraphs 7 and 8(b) of Schedule 5 to the Income Support (General) Regulations and the effect of regulation 9(7) of, and Case B of Schedule 2 to, the Supplementary Benefit (Requirements) Regulations making similar provisions thereto are set out and referred to in paragraph 5 of the said submission dated 16 February 1989. Nothing is to be gained by my setting out either of those references or provisions afresh here save to state that the question before the appeal tribunal was whether or not the claimant is "infirm by reason of physical or mental disability". It is not in dispute that the claimant is living in a hostel and falls to be treated as a boarder.
5. Mr Hannam in his able address to me put forward at the oral hearing (in addition to referring me to the material contained in the case papers) all the possible arguments in favour of the claimant and referred me to the unfortunate background history of the claimant. As he acknowledged he encapsulated the submission he made before me very

clearly in the words "the appeal tribunal got it completely wrong - given the evidence it was impossible for the tribunal to arrive at the conclusion at which they arrived." In the light of the view I take of the case I do not propose to set out Mr Buckley's submissions before me at the oral hearing. I heard evidence de/bene/esse from Mr J Marriott Deputy Director of the Macedon Trust. I would say at once that having heard Mr Marriott's evidence as to the functions of the Macedon Trust, the Macedon Trust performs a splendid service. I accept without question the evidence given before me at the oral hearing by Mr Marriott. As Mr Marriott stated the evidence he gave before me he had given to the appeal tribunal apart from a matter which had occurred since the date of the appeal tribunal. No useful purpose would be served by my setting out in detail the evidence given before me by Mr Marriott.

6. In my judgment the decision of the appeal tribunal is not erroneous in point of law. The purpose of the Macedon Trust is to provide care for people who are vulnerable and who need care to rehabilitate them. The amounts received by the persons resident in such a hostel are the normal amounts for people living in hostels. To satisfy the conditions for extra money a claimant must be "infirm by reason of physical or mental disability" Mr Marriott's evidence was before the tribunal and the appeal tribunal had taken notice of the emotional and other difficulties of the claimant but at the end of the day had to decide whether what was very largely anti-social behaviour resulted in infirmity. It is a question of degree. The tribunal have discretion in that area. A discretion which they exercised in my view properly. The decision was not unreasonable in the light of the evidence before them. To succeed in a contention that a decision was perverse imposes a high burden on the claimant. With the exception of the last sentence in paragraph 10 of the submission dated 16 February 1989 Mr Buckley adhered to the submission of the adjudication officer dated 16 February 1989. With that exception in my judgment the submission was rightly made. Once the Commissioner had decided that there is no error of law that is an end of the matter and the Commissioner is not required to review the facts (provided that sufficient facts have been found by the appeal tribunal) "to reach the same decision as that given by the tribunal.". The appeal tribunal are the arbiters of fact and they on the evidence before them have arrived at a decision which I have no jurisdiction to set aside.

7. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. As I said at the conclusion of the oral hearing I have no dispensing power to override the relevant statutory provisions.

8. Accordingly the claimant's appeal is dismissed.

(Signed) J.B. Morcom
Commissioner

Date: 7 June 1989