

JBM/SH/10

Commissioner's File: CIS/062/1990

SOCIAL SECURITY ACT 1986

**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 Durham social security appeal tribunal dated 25 October 1989 is erroneous in point of law. Accordingly I set it aside. I give the decision myself which the appeal tribunal should have given namely that the claimant's home cannot be treated as a hostel and he therefore cannot be treated as a boarder.

2. This is an appeal by the adjudication officer to the Commissioner with the leave of the tribunal chairman 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 of the written submission to the appeal tribunal of the adjudication officer first involved in these appeals. In respect of those matters and of the submission dated 13 February 1990 the claimant has had the opportunity to comment and I have his comments through his representatives to me dated 27 July 1990. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are the Income Support (General) Regulations 1987 regulation 20 and the Social Security (Adjudication) Regulations 1986, regulation 25(2)(b). I need only add that a copy of the helpful decision of the Commissioner being Decision CSB/244/1988 has been usefully added to the case papers. I need only add further that the relevant provisions of regulation 20(2)(a) have been set out in paragraph 4 of the submission dated 13 February 1990 of the adjudication officer now involved in these appeals.

5. In my judgment the appeal tribunal erred in point of law in that the reasoning set out on the face of their record is not a

satisfactory explanation and is not supported under regulation 20(2)(a) of the General Regulations. Further they have breached regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. In accordance with the relevant statutory provisions for the claimant's home to be treated as a hostel it must satisfy the meaning set out in regulation 20(2)(a). It must be residential accommodation which is "otherwise than in separate or self-contained premises". In the present case it is clear from the evidence that the claimant and his wife do live in premises which are separate and self-contained and that both premises have been provided for their sole use. Such premises are excluded from hostel status. Circumstances arising out of MENCAP'S needs are not relevant to the claimant's present circumstances and would not have fallen for consideration by the appeal tribunal. I need only in regard to this aspect of the case refer to the decision of the Commissioner in Decision CSB/244/88 and to paragraphs 12 to 14 thereof. As a question of fact MENCAP designated the accommodation for the sole use of the claimant and his wife whatever the original intention might have been, and the premises were therefore at the material time "separate and self-contained".

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision on the facts before me and in accordance with my jurisdiction I give the decision which is set out in paragraph 1 of this decision. I would add that I have given careful consideration to the claimant's representative's observations to me dated 27 July 1990 but for the reasons above set out in paragraph 5 hereof my decision is as set out in paragraph 1 hereof.

7. Accordingly the adjudication officer's appeal is allowed.

(Signed) J.B. Morcom
Commissioner

(Date) 7 February 1992