

JBM/SH/11

Commissioner's File: CIS/077/1990

**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 Birmingham social security appeal tribunal dated 9 November 1989 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant with the Commissioner's leave against the majority decision of the appeal tribunal.

3. The facts and history of the case are dealt with in box 5 of the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission dated 9 April 1990 of the adjudication officer now involved in these appeals the claimant through his representatives has had the opportunity to comment and I have their observations to me dated 26 April 1990. No useful purpose would be served by my setting out these matters afresh here.

4. The relevant statutory provisions are section 53 of the Social Security Act 1986 and regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law. In the light of the helpful submission made by the adjudication officer now involved in these appeals dated 9 April 1990 and of the observations in regard thereto by the claimant's representative dated 26 April 1990 I can take the matter quite shortly. In my judgment the submission dated 9 April 1990 is rightly made. There is no merit in my saying in other words what has been adequately state by the adjudication officer now involved in these appeals. I adopt as a summary of the submission that the majority decision of the

appeal tribunal is erroneous in point of law in that they have failed both to make material findings of fact and to give adequate reasons for their decision and accordingly regulation 25(2)(b) of the 1986 Adjudication Regulations has been breached.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the new tribunal to whom I remit this case in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision.

7. Accordingly the claimant's appeal is allowed.

(Signed) J.B. Morcom  
Commissioner

(Date) 10 February 1992