

CPAL

MJG/SH/7

Commissioner's File: CIS/081/1990

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 3 August 1989, as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to an entirely differently constituted social security appeal tribunal. Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a man born on 10 August 1921. The appeal is against the unanimous decision of a social security appeal tribunal dated 3 August 1989 which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 16 March 1989, which in effect stopped payment of the claimant's income support on the ground that the claimant and Mrs P C were living together as an unmarried couple. As Mrs P C had income from full-time working, their joint income was such as to exceed the limit for income support purposes. The result presumably has been that the claimant has not received income support since that date, i.e. 16 March 1989.

3. The claimant appealed to the social security appeal tribunal which, it is clear from its careful and detailed written record of decision on Form AT3, took considerable care with the case. It ultimately decided to dismiss the claimant's appeal.

4. I have decided that the tribunal erred in law for the reasons set out below. As I consider that this is not a case where it is appropriate for me to give a decision myself, I think it better not to set out the detailed findings and fact and reasons for decision of the original tribunal. The new tribunal should approach the matter with entirely fresh minds and without

regard to what was decided earlier.

5. Suffice, however, to say that I accept the concurring submissions of the claimant's representative dated 10 October 1989 and of the adjudication officer now concerned dated 21 March 1990 that the original tribunal did not fully comply with regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 to make findings of fact on all material issues and to give detailed reasons for their decision. In particular there are problems concerned with the joint purchase with Mrs C of a maisonette in September 1987 and the arrangements that were made then. There is also the question of whether or not the tribunal dealt with each of the criteria outlined in reported Commissioner's Decision R(SB) 17/81. These are matters among others which the new tribunal will need to investigate.

6. I should add that I have arrived at this conclusion only after careful consideration because it seems to me that there is a limit in this type of case to the extent to which a social security appeal tribunal can be expected to give detailed reasons. In this case the social security appeal tribunal's reasons and findings of fact were in fact very detailed. Nevertheless just on balance I consider that their decision must be set aside as being erroneous in law, particularly as some of their comments and their reasons for decision may not be fully borne out by the evidence. My having allowed this appeal does not of course imply any opinion by me as to whether or not in substance the appeal should succeed, i.e. whether in fact the claimant and Mrs P C are or have been living together as an unmarried couple. That is entirely a question of fact for the new tribunal.

(Signed) M.J. Goodman
Commissioner

(Date) 13 February 1992