

JBM/SH/25

Commissioner's File: CIS/323/1993

SOCIAL SECURITY ACT 1986

SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Alison Foster

Social Security Appeal Tribunal: Manchester

Case No: 614 27434

1. My decision is that the decision of the Manchester social security appeal tribunal dated 25 February 1993 is erroneous in point of law. Accordingly I set it aside and give the decision that they themselves should have given namely that the claimant is not entitled to income support from 5 October 1992, because she is a student during her period of study.

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 in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with by the adjudication officer first involved in these appeals in his written submission to the appeal tribunal. In respect of those matters of the submission dated 17 May 1993 and of the submission dated 21 August 1993 of the adjudication officer now involved in these appeals the claimant through her representatives has had the opportunity to comment and I have their observations dated 14 September 1993 which are "No Further Comment." save as I do in this paragraph of my decision no useful purpose is to be served by my setting out these matters afresh here.

4. The relevant law (both statutory and otherwise) is adequately set out in the submissions of the adjudication officers who have been involved in these appeals. Nothing is to be gained by my rehearsing that law here. I would however add that a decision of the Commissioner being Decision CIS/050/1990 has been helpfully added at pages 24 and following of the case

papers as also has a decision of the Northern Ireland Chief Commissioner at pages 32 and following together with a decision of the Deputy Commissioner at pages 48 and following of the case papers. Nothing is to be gained by my rehearsing the law dealt with in those decisions here afresh.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law as there is an error of law ex facie on the face of their record in that they failed to apply the legislation correctly in reaching their conclusion that the claimant had been dismissed from her course. I have considered very carefully the arguments put forward on behalf of the claimant by her representatives together with the documentation contained in the case papers. I have also considered the full and careful submissions made by the adjudication officer now involved in these appeals and dated as aforesaid. I do not think that it is necessary for me to recite the careful arguments put forward by both sides. I allow the appeal on the technical issue referred to immediately at the commencement of this paragraph namely of an error of law ex facie on the face of the record. However to my mind the submissions of the adjudication officer now involved in these appeals dated as aforesaid are rightly made on the issue of substance. No useful purpose is to be served by my setting out afresh what is there adequately dealt with.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. The facts are fully before me. I am empowered to give the decision myself which I do as set out in paragraph 1 of this decision.

7. Accordingly the adjudication officers appeal succeeds,

(Signed) J.B.Morcom
Commissioner

(Date) 16 June 1994