

CPAG,

RAS/1/LM

Commissioner's File: CIS/433/90

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. It appears that by a decision dated 20 November 1989 an adjudication officer decided that the claimant was not entitled to income support from 4 October 1989. It is not entirely clear what the adjudication officer's reasons were but form B035 on which the decision was recorded might be understood to suggest that the view had been taken that the claimant was engaged in remunerative work and thus not entitled by virtue of section 20(3)(c) of the Social Security Act 1986; I say that because the comment "Because both you and your wife are joint owners with your son of a shop at 125 Bishopston Road Ely" is written opposite the box on the form dealing with remunerative work. The claimant through his solicitors asked for a review of the decision but it seems, from the current adjudication officer's submissions, that while form AT2 refers to a decision issued on 19 December 1989 a decision on review was never actually made. It was the supposed decision of 19 December 1989 which was the subject of the appeal to the tribunal. But they, as the current adjudication officer submits, were put in the position of considering a non-existent decision. It follows that I must allow this appeal and set aside the tribunal's decision as having been made without jurisdiction.

2. So one is left with the original decision and the request for a review which should now be dealt with urgently by the adjudication officer. Whatever decision is made on review will of course be subject to appeal to another tribunal.

(Signed) R A Sanders
Commissioner

Date: 3 February 1992