

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the tribunal is not erroneous in point of law. I therefore dismiss the appeal.
2. This is an appeal from a decision of the tribunal dismissing the claimant's appeal against a decision that he was not entitled to housing benefit or council tax benefit in respect of a claim made in June 2001. The claim was withdrawn in the course of a fraud investigation by the respondent housing authority, but it has since become apparent that the claimant might have been entitled to benefit if he had not taken that action. The appeal therefore raises the question of whether, in those circumstances, an award can be made on the claim notwithstanding its withdrawal. I held an oral hearing of the appeal on 19 October 2005 which the claimant attended, but which the authority did not attend in view of the very small amount of benefit involved in the case.
3. On 30 May 2001 the appellant made a claim for housing benefit and council tax benefit stating, as was the case, that he was the tenant of a private landlord and was in receipt of income support. The claim was incomplete and was resubmitted on 7 June 2001, together with a covering note in which the claimant stated that he was not claiming "rent" (i.e. housing) benefit. On receipt of the completed claim form, the authority decided to investigate why the claimant was not claiming housing benefit, as a tenant of rented accommodation, and whether he was in possession of the proceeds of sale of his former home.
4. On 5 July 2001 an investigation officer paid the claimant an unannounced visit. The report of the visit, which the claimant accepted before me as being substantially accurate, although incomplete in some respects, contains the following:

"I explained the reason for my visit, which was to establish how he managed to pay his rent, and have the family got capital from the sale of the previous property...(The claimant), when asked about how he managed to pay his rent, did not answer directly just said he managed with the help of his wife and continued by saying "if you want me to claim Housing Benefit I will." I again requested "how he pays the rent" but he did not answer. I asked him if he had capital left from the sale of a previous property. He denied owning a property and said "that was my wife's, she sold the property." I asked if there was capital. He said that's got nothing to do with me, it's not relevant-the claim for Council Tax is in my name." I explained we needed details of family income but he refused to answer any questions about his wife and forbade me from contacting her stating that I should cancel his claim. I asked if he had any other bank accounts other than the one declared-he said "no" and I asked if his wife had bank accounts-he said I don't know." (The claimant) told me he claimed Income Support with incapacity and that he needed to go to a hospital appointment and he refused to answer any further questions and said I should return to my office and "cancel his claim" as all the information provided on his claim form was all he intended to notify."

Later that day the claimant wrote the following letter to the investigating officer:

"Further to our meeting today to avoid any further traumatic feelings between myself and wife please do not process my application for Council Tax benefit. Please send me the amounts owing pref by instalments please."

5. The housing authority informed the Benefits Agency of the results of the interview, and in consequence decisions were made that the claimant was not entitled to income support after the sale of the house, and was liable to repay income support overpaid from that date until payment of income support ceased on 9 July 2001. However, the claimant appealed against those decisions and on 9 December 2003 a tribunal chaired by the panel member who also dealt with this appeal held that the capital resulting from the sale of the house was exempt capital under paragraph 2 of Schedule 10 of the Income Support (General) Regulations 1987. In relation to the overpayment decision, the tribunal held that the claimant had not failed to disclose the change in his circumstances resulting from his move to rented accommodation. Accordingly, the tribunal allowed the appeal against both income support supersession and overpayment decisions.

6. On 19 February 2004 the claimant telephoned the authority to advise them about the result of the appeal, asserting that the letter withdrawing the claim for council tax benefit had been written under duress. However, nothing further was heard from the claimant until 3 August 2004, when he sent the authority a copy of the tribunal's decision notice. On 20 September 2004, in reply to an inquiry by the authority, the claimant wrote a letter enclosing a copy of his tenancy agreement at the time of the June 2001 claim, stating that he would be claiming "all benefits that I am or was entitled to for the period concerned." On 6 October 2004 the authority informed the claimant that no benefit could be awarded in view of the withdrawal of the June 2001 claim and on 10 October 2004 the claimant wrote stating that he wished to appeal against that decision. In response to a further letter from the authority dated 22 October 2004, the claimant returned a completed appeal form on 2 November 2004.

7. On 22 February 2005 the tribunal dismissed the appeal. The tribunal considered whether the claimant could be awarded benefit backdated by 12 months before the date of any of the communications received from the claimant commencing in February 2004, but as the tribunal correctly held, no claim was ever made by the claimant for any such period. In relation to the June 2001 claim, the tribunal held that, by withdrawing that claim, the claimant prevented it from being reconsidered after the outcome of his income support claim became known. I gave leave to appeal on 30 June 2005 because I considered it arguable that the tribunal ought to have considered whether the withdrawal of the claim following the investigation interview should be treated as a genuine expression of the claimant's intention to do so.

8. Regulation 74 of the Housing Benefit (General) Regulations 1987 provides:

"(1) A person who has made a claim may amend it any time before a decision has been made on it, by a notice in writing delivered or sent to the designated office and any claim so amended shall be treated as if it had been amended in the first instance.

(2) A person who has made a claim may withdraw it at any time before a decision has been made on it, by notice to the designated office and any such notice of withdrawal shall have effect when it is received."

The effect of the covering letter sent by the claimant with his re-submitted claim form was therefore to amend the claim, so as to claim only council tax benefit. Regulation 64 of the Council Tax Benefit (General) Regulations 1992 is in the same terms as regulation 74 of the 1987 Regulations, and the letter sent by the claimant on the day of his interview with the investigating officer seems to me to indicate an unambiguous and unequivocal intention by the claimant to withdraw the remaining council tax claim. Subject to the question of duress, I

am therefore satisfied that the letter constituted a notice of withdrawal of the council tax benefit claim for the purposes of regulation 64(2) of the 1992 Regulations.

9. Although in some cases it will be possible to make a fresh claim which can be backdated to cover the period of a claim which has been withdrawn, I have no doubt that the consequence of any genuine and effective withdrawal of the June 2001 claim was to prevent any award from being made on the claim after the withdrawal took effect. In *R v Hampstead and St Pancras Rent Tribunal ex parte Goodman* [1951] 1 KB 541 it was held that the effect of the withdrawal of an application to a rent tribunal to determine a fair rent was to deprive the tribunal of jurisdiction to proceed with the application, notwithstanding mandatory provisions requiring the tribunal to consider the application. Applying that authority, the Court of Appeal held in *Boal Quay Wharfingers Limited v Kings Lynn Conservancy Board* [1971 3 All ER 597] that where an application to a licensing authority for a licence to employ registered dock workers had been withdrawn, there was no power to determine the application. After referring to *R v Hampstead and St Pancras Rent Tribunal*, Salmon LJ held (at page 604):

“That I think is an authority for the view I have expressed. But quite independently of authority it seems to me to follow on principle that in the absence of a statutory prohibition, once one has made an application one can always withdraw it; and once one has withdrawn the application it ceases to exist.”

In *Rydqvist v Secretary of State for Work and Pensions* [2002] 1 WLR 3343 the Court of Appeal held that a tribunal has no jurisdiction to hear an appeal which has been withdrawn and it is no doubt for that reason that regulation 26(3) of the Social Security Commissioners (Procedure) Regulations 1999 confers power on a Commissioner to permit the reinstatement of a withdrawn application, appeal or reference. However, in the absence of any provision permitting the reinstatement of a claim for housing benefit or council tax benefit which has been withdrawn, I consider that the claim ceases to exist once the withdrawal takes effect.

10. I nevertheless gave leave to appeal in this case in the light of *CJSA/3979/1999*, which was concerned with the withdrawal of a claim for benefit which was already in payment, under regulation 5 of the Social Security (Claims and Payments) Regulations. Mr Commissioner Mesher held that where there has been the apparently unequivocal withdrawal of a claim for benefit, consideration should be given to whether there was any factor which deprived what was on its face a withdrawal of the claim of its apparent effect. The Commissioner continued (at para. 26):

“Such a conclusion should not be reached lightly. The sort of factors which I have in mind would include the withdrawal of the claim by fraud, misrepresentation of fact or law, or duress. I have not had any submissions on this point and it would be wrong for me to lay down any precise or exhaustive rules. The factors mentioned above are only examples and other factors may be relevant in other circumstances (eg most obviously in cases where claimants are vulnerable for some reason or not fully capable of dealing with their affairs). The essence, in my judgment, is that an ostensible withdrawal of a claim should not be given effect where it would be wrong for it to be treated as a genuine expression of the claimant’s intention at the time. Nothing I say below should be taken as detracting from that central principle or from the need to consider each case on its own circumstances.”

In *CJSA/1589/2005*, where an issue of duress also arose, Mr Commissioner Jacobs directed the tribunal rehearing the case to consider the case in accordance with *CJSA/3979/2005*; “the only issue being whether the surrender of benefit was freely made.”

11. I have come to the conclusion that there is no reason in this case not to treat the letter by the claimant withdrawing his claim for council tax benefit as a genuine expression of his intention to do so at the time the letter was sent. The statutory adjudication authorities do not possess anything in the nature of an equitable jurisdiction to relieve claimants from the consequences of actions which turn out not to be in their best interests. Although different considerations may apply in the case of claimants who are not fully able to manage their affairs or to understand the consequences of their actions, a claimant who is not subject to any such disability would normally have to establish that the withdrawal of a claim was induced by some factor such as threatening or overbearing behaviour, deception or similar improper conduct in order to show that notice of withdrawal of a claim was not a genuine expression of the claimant’s intention at the time when the notice was given. It will be normally be open to a claimant to seek advice before withdrawing a claim, and as Mr Commissioner Mesher indicated, cases in which a finding can be made that a claimant has not given genuine consent to a withdrawal of a claim will be exceptional.

12. The evidence given by the claimant to the tribunal was that the investigating officer had suggested that he should withdraw his application to show good faith, and that he withdrew the claim on the officer’s advice. At the hearing before me, the claimant stated that he had in fact consulted a Citizens’ Advice Bureau in April or May 2001 and thought that the capital from the sale of his wife’s house was exempt capital, although the claimant stated that he did in fact declare the capital on the telephone. The claimant told me that the investigating officer said that the application was fraudulent and that he was going to report the claimant to the Benefits Agency, and that the claimant then asked if it would help if he withdrew the claim. The claimant said that he wrote the letter withdrawing the claim there and then because he believed that there was a risk that he and his wife would split up if he did not do so.

13. I have come to the conclusion that neither the evidence before the tribunal nor for that matter the rather fuller account of the investigation interview given by the claimant before me raise any issue of duress. The claimant had in fact received advice shortly before the interview and had no doubt made a conscious decision not to declare the capital resulting from the sale of the house on the housing and council tax benefit claim form. The record of the interview shows that the claimant simply refused to cooperate with the investigating officer when asked questions about his income and capital. The interview record suggests that the idea of withdrawing the claim actually originated with the claimant, which corresponds with what the claimant told me at the oral hearing. However, there has been no suggestion that the claimant told the investigating officer that he believed that the proceeds of sale of the house was exempt capital, so that as far as the investigating officer was concerned that money was simply undeclared capital. Even if the suggestion that the claimant should withdraw the claim did originate with the investigating officer, in those circumstances there was nothing improper about that suggestion.

14. I am therefore satisfied that there is no basis for any suggestion of impropriety in the conduct of the investigation interview, or any other basis for holding that the letter withdrawing the council tax benefit claim was not a genuine expression of the claimant’s intention. Although the claimant made an allegation of duress in the telephone call of 19

February 2004, there was therefore no evidence before the tribunal to substantiate that allegation. Despite my grant of leave to consider the issue, I am therefore satisfied that the tribunal did not have to consider the issue of duress and that, accordingly, the tribunal's decision is not erroneous in law.

15. For those reasons, I dismiss the appeal.

(signed on the original)

E A L Bano
Commissioner

14 December 2005