

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

MJG/SH/42

Commissioner's File: CIS/025/1989

Region: Midlands

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name.

Social Security Appeal Tribunal:

Case No.:

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 29 July 1988 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given, namely that in the computation of the claimant's resources for income support purposes there should be taken into account as income the sum of £21.60 per month received by him from the Ideal Benefit Society but from that sum should be deducted the sum of £5 per month being the monthly equivalent of his annual £60 payment due to the Ideal Benefit Society; Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a man born on 20 June 1927. The appeal is against the unanimous decision of the social security appeal tribunal dated 29 July 1988 which dismissed the claimant's appeal from a decision of the local adjudication officer, to the effect that the £21.60 monthly received by the claimant from the Ideal Benefit Society (for full facts see below) had to be taken into account in full as income for income support purposes.

3. At the claimant's request the appeal was the subject of an oral hearing before me on 18 September 1989 at which the claimant was present and addressed me. The adjudication officer was represented by Mr N Butt of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to the claimant and to Mr Butt for their assistance to me at the hearing.

4. The relevant facts are briefly these. The claimant has unfortunately been disabled from working for some time (some four to five years) by arthritis and prior to the introduction of the Income Support Scheme on 11 April 1988 he was in receipt of supplementary benefit. On the transition to income support the adjudication officer treated as income to be taken into account in full the sum of £21.60 a month received by the claimant from the Ideal Benefit Society. There is no documentary evidence before the Commissioner as to the scheme under which the Benefit Society pays these payments. But I accept the claimant's evidence that he had been subscribing to what in effect seems to be a

private sickness benefit scheme with the Ideal Benefit Society for some 33 years and that that Society was in effect a kind of mutual assurance society. The claimant has for some four to five years been receiving 'sickness benefit' from the Ideal Benefit Society of £21.60 per month but he still has to keep up his 'annual subscription' to the Society of £60 per annum (i.e. £5 per month) as otherwise he would be expelled from the Society and would cease to be entitled to sickness benefit payments.

5. The claimant's contention was that the £21.60 monthly payment from the Ideal Benefit Society should not have been taken into account as income at all for income support purposes or alternatively, if (which he did not admit) it should be taken into account, that there should be a deduction of £5 per month representing the annual subscription to the Society of £60 per annum. The claimant contended that the whole of the £21.60 per month was exempt from being considered as income by regulation 48(4) of the Income Support (General) Regulations 1987 [S.I. 1987 No. 1967], which reads as follows,

"Income treated as capital

48. (1)-(3) ...

(4) except any income derived from capital disregarded under paragraphs 1, 2, 4, 6, 12 or 25 to 28 of Schedule 10, any income derived from capital shall be treated as capital but only from the date it is normally due to be credited to the claimant's account." (my underlining).

6. The claimant's argument (rejected by the original social security appeal tribunal) seems to have been that, as he paid the £60 per annum himself out of his own monies, the income he received from the Benefit Society had to be treated as "any income derived from capital" and should have been treated as capital therefore not income. The wording of regulation 48(4) is extremely wide in its language taken in isolation and I understood from Mr Butt that there was as yet no Commissioner's decision on what it means. As far as I am aware there was no corresponding regulation under the supplementary benefit scheme. The exceptions to the rule that income derived from capital shall be treated as capital set out in sub-paragraph 4 (of regulation 48) do not relate to this type of case at all but basically relate to income from various types of dwellings (see paragraphs 1, 2, 4, 6, 12, and 25 to 28 of Schedule 10 to the 1987 Regulations).

7. The only other regulation of the 1987 Regulations that appears to have some relevance is regulation 53 which provides as follows,

"Calculation of tariff income from capital

53. (1) Where the claimant's capital calculated in accordance with this Part exceeds £3,000 it shall be treated as equivalent to a weekly income of £1 for each complete £250 in excess of £3,000 but not exceeding £6,000.

(2) Notwithstanding paragraph (1), where any part of the excess is not a complete £250 that part shall be treated as equivalent to a weekly income of £1.

(3) For the purposes of paragraph (1), capital includes any income treated as capital under regulations 48 and 60 (income treated as capital and liable relative payment treated as capital)."

8. What appears therefore to be contemplated by the 1987 Regulations is that if a claimant's capital exceeds £3,000, he must be regarded as having a 'notional' tariff income of the amount stated in the regulation. His actual income from capital however is

apparently not to be treated as income at all, but as capital under regulation 48(4). The problem of course is what is meant by the expression "any income derived from capital" in regulation 48(4). There is no definition of that phrase anywhere in the regulations. I note however that under paragraph 17 of Schedule 9 to the Regulations there is a disregard of income under certain annuities which have to fulfil detailed requirements. But it could well be argued that income received under a purchased annuity was a classic example of "income derived from capital". Presumably it is thought that an express disregard of this is needed and that otherwise the annuity would not be covered by regulation 48(4).

9. However, two matters appear to me clear. The first is that the expression "income derived from capital" must include the normal case where a claimant receives dividends or interest from eg. stocks and shares, building society accounts, deposit accounts with banks etc. He may be regarded as having a tariff income under regulation 53, but the actual income clearly has to be treated as capital (regulation 48(4)).

10. The next question is whether on the facts of this case the claimant can successfully contend that the £21.60 received from the Ideal Benefit Society comes under the head of "Income derived from capital". The claimant argued that he paid the £60 per annum to secure the sickness benefit from the Ideal Benefit Society out of his own savings and that savings must ex hypothesi be regarded as capital. The social security appeal tribunal investigated this line of argument and in fact found as a fact that the claimant must have been paying the £60 per annum out of his income from supplementary benefit and severe disablement allowance. However, I have come to the conclusion that it does not really matter whether the claimant paid the £60 per annum out of his savings or out of current income because in my view neither could cause the payments from the Ideal Benefit Society to be "income derived from capital". The word "capital" in regulation 48(4) must refer to a capital asset of the claimant such as stocks and shares, building society account etc. The claimant did not by paying the £60 per annum acquire any capital share for example in the Ideal Benefit Society. It was more akin to payment by him of an annual insurance premium. Although certain insurance monies are disregarded (see the 1987 Regulations schedule 9, paragraph 29) there is no disregard for 'sickness benefit' payable under a private insurance scheme.

11. Nevertheless, I have come to the conclusion that the tribunal erred in law in not deducting from the £21.60 benefit paid to the claimant monthly by the Ideal Benefit Society the monthly equivalent of the £60 per annum subscription or premium paid by him to the Society i.e. £5 per month. The position here is that regulation 40(1) of the 1987 Regulations provides that subject to exceptions (which do not apply here) "the income of a claimant .. to be taken into account shall .. be his gross income" (my underlining). The claimant was not allowed by the social security appeal tribunal to deduct the £60 per annum from the £21.60 monthly payments by the Benefit Society on the ground that the use of the word "gross" in the regulation meant that such sum was not deductible. However in reported Commissioner's Decision R(FIS) 4/85 (subsequently affirmed by the Court of Appeal in the case of Chief Adjudication Officer v. Hogg, reported as Appendix to R(FIS)(4/85), the learned Commissioner accepted a submission that, despite the use of the expression "gross" in relation to income for family income supplement purposes, "in the present context gross means before the deduction of tax but after deduction of the expenses that are allowable in

arriving at the taxable sum" (paragraph 12 of R(FIS)4/85). In the present case, the claimant would not be able to receive the £21.60 monthly sickness benefit unless he expended the sum of £60 per annum in payment of subscription or premium to the Ideal Benefit Society. The payment of the £60 per annum was a condition precedent to obtaining the £21.60 per month. Consequently its equivalent of £5 per month is in my view deductible from the £21.60 monthly sickness benefit, leaving a net figure of £16.60 monthly to be taken into account as income for income support purposes.

(Signed) M.J. Goodman
Commissioner

Date: 1 November 1989