

MJG/SH/5

Commissioner's File: CIS/264/1989

IDENTIFIABLE DECISION  
NOT TO BE SENT OUT OF  
THE DEPARTMENT

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:

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 6 June 1989 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 relation to the claim for income support dated 3 March 1989 by the claimant, the proceeds of sale, £26,000, of the claimant's own property Number 29, K- Avenue, are not to be regarded as capital of the claimant: Social Security Act 1975, section 101 (as amended).

2. This is an appeal, with the leave of the tribunal chairman, against the unanimous decision of the social security appeal tribunal dated 6 June 1989, which dismissed the claimant's appeal against the decision of the local adjudication officer issued on 6 April 1989 in the following terms,

"[The claimant] is not entitled to income support from 3.3.89. This is because she is treated as possessing capital which exceeds the prescribed amount of £6,000."

The claimant died on 27 July 1990 and her daughter has continued with her appeal as her Appointee.

3. In this case I have the benefit of a record of the tribunal's decision (on Form AT3), completed in exemplary detail with detailed findings of fact. I will not therefore reiterate all the facts here. Suffice to say that a claim on 3 March 1989 for income support was made by the claimant as she was about to become resident from 6 March 1989 in a Nursing Home (where a fee of £220 a week was payable). The claim was rejected on the

ground that the claimant should be regarded, under regulation 51 of the Income Support (General) Regulations 1987, as still possessing the sum of £26,000, the proceeds of sale in 1985 of the claimant's own property and which she had at that time given to her son (then living with her). The son used the £26,000 to buy another property, a bungalow, in which he and his wife and the claimant lived until such time as she was admitted into a nursing home. The claimant had been receiving supplementary benefit until the date in 1985 when she sold her own property and went to live with her son and daughter-in-law but no further claim for benefit was made until 1 November 1988 (as to this see below).

4. The son has explained that he had expended some of his own money on his mother's own property before she sold it, including sums expended on repayment of mortgage instalments and capital and on essential repairs and redecoration. At the time in 1985 of the sale by the claimant of her own property she made a written declaration that she was giving the £26,000 to her son "Of my own free will, and [I] fully appreciate the implications of the action I am taking." That apparently was to protect the son against any possible claims by other members of the family.

5. The adjudication officer now concerned, in a written submission dated 16 January 1990, submits that the tribunal erred in law in failing to give adequate reasons in its record of decision, as required by regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. In particular he submits that the tribunal erred in law,

"In holding that they were not required to determine the amount of capital of which she had deprived herself but had assumed that it must have exceeded £6,000. However they heard evidence that the claimant's son had advanced his mother sums of money for the purchase and maintenance of the fabric of the previous home but have given no reason for rejecting the inference that he had by his actions established a proportionate beneficial interest in the proceeds of its sale. Nor did they give adequate reasons for concluding that the gift of the sum was other than to prevent any other member of her family making claim upon that sum. I submit that they have placed undue emphasis on the alleged statement by the claimant's son to the effect that his current home was purchased in his name 'in case mother had to go into a Home'; concluding that this was irrefutable evidence that the claimant also had such intentions at the time of the gift. I submit that the tribunal erred in law in failing to explain why the gift of the sum was made with the significant operative purpose of securing entitlement to income support some 4 years later (R(SB) 40/85, paragraph 10)."

6. The adjudication officer also appends to his submission a copy of paragraphs of the Adjudication Officer's Guide which were referred to by the tribunal in their reasons for decision. Paragraph 30326 of that guide reads as follows,

"The timing of the disposal of an asset is an important consideration. In R(SB) 40/85 the Commissioner said that it might be assumed to be common knowledge that for a means-tested benefit there must be some limit to the amount of capital above which the benefit was not payable. Nevertheless, with or without that knowledge it is still possible for a claimant to have deprived himself for the purpose of securing income support. Where a person makes a claim for income support soon after disposing of capital the timing of the claim may be an indication that securing or increasing entitlement to income support is at least a secondary and significant motive. However, if the deprivation took place at a time well before a claim was made for income support, it is less likely that the action will have been for the purpose of obtaining income support."

7. That statement is of course only guidance to adjudication officers and does not bind the statutory adjudicating authorities, such as the tribunal or the Commissioner. Nevertheless I consider that passage accurately summarises the law as laid down in R(SB) 38/85 and 40/85. I accept the adjudication officer's submissions as being correct and I must therefore set the tribunal's decision aside.

8. Applying the law to the facts of the present case, it appears to me clear in this case that when, some four years before, the claimant had made a gift of the £26,000 (or so much of it as did not represent a return to the son of his own expenditure) to her son, the claimant cannot be said at that time to have done so in any sense for the purpose of securing entitlement to benefit (at that time supplementary benefit). I have noted the decision of a Commissioner to the effect that there can be acts of deprivation prior to the coming into effect of the income support scheme (on a decision on file CIS/259/1990) but I consider that that case is distinguishable on its facts from those of the present case. In the present case I have no doubt perusing all the documentation in this file on this appeal that the claimant's son and daughter-in-law acted with complete bona fides and that the £26,000 was transferred to them in order to secure the purchase of a bungalow in which the claimant could live with them. Moreover undoubtedly some of the £26,000 was to reimburse the son for his own expenditure on the claimant's previous house.

9. Although therefore the adjudication officer now concerned asks me in his written submission to remit the case to a new tribunal for rehearing, I consider this is a proper case where I can exercise my own jurisdiction (under the amendments made by the Social Security Act 1986 to section 101 of the Social Security Act 1975) and myself give the decision which the tribunal should have given, since I have (thanks to the careful record of decision on Form AT3 by the tribunal) all the evidential materials which I need for that purpose.

10. My decision relates only to the matter adjudicated on by the social security appeal tribunal which was dealing with an appeal against a decision of the local adjudication officer (issued on 6 April 1989), which was concerned only with the claim made on 3 March 1989. There had been an earlier claim, dated 1 November 1988, by the claimant for income support which had been rejected on the same ground but was not the subject of appeal to a tribunal. Consequently I do not consider that I have any jurisdiction to deal with that, but the local adjudication officer may wish to consider whether in the light of my decision he ought to review the earlier decision of an adjudication officer refusing income support to the claimant in respect of the claim on 1 November 1988. I must however leave that to the local adjudication officer.

(Signed) M J Goodman  
Commissioner

(Date) 17 July 1991