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Commissioner's File: CIS/299/1992

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

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal ("the appeal tribunal") dated 1 November 1991 as that decision is erroneous in point of law and is set aside. I remit the case to a differently constituted social security appeal tribunal for rehearing and redetermination in accordance with the directions in this decision.

2. This appeal to the Commissioner was the subject of an oral hearing before me on 9 December 1992, at which the claimant was present. He was represented by Mr Jack Roberts and the adjudication officer by Mr Pollard of the Office of the Chief Adjudication Officer. I am grateful to them for their assistance.

3. The appeal concerns a claim for housing costs as an element of income support and is against the unanimous decision of the appeal tribunal who dismissed the claimant's appeal from a decision of the local adjudication officer issued on 8 July 1991 in terms that -

"The claimant's applicable amount for income support includes an amount for housing costs of £26.29 per week. Entitlement has been restricted from 24 June 1991 because

- (1) The outgoings on the home are higher than the outgoings of suitable alternative accommodation.

(2) The housing costs are regarded as excessive.

4. It is common ground that the claimant, now aged 73, and his wife previously lived in a six bedroomed house at 16 Victoria Avenue, Rhyl. This house was much too big for them and they put it on the market. A prospective buyer came forward to whom they agreed to sell the house, subject to contract, for £109,000. At that point they purchased a bungalow known as Moranedd, Llanfair Road, Abergelle at auction on 30 July 1990 for £100,000. Thereafter, the sale of their house at Rhyl fell through. They eventually sold it for £92,000, but in the meantime had required a bridging loan to complete the purchase of Moranedd and, at the end of the day, had to borrow £42,000 from a building society by way of a mortgage on Moranedd to complete the purchase. The claimant and his wife had been in receipt of supplementary benefit or income support since 1984, so he applied for housing costs in respect of his new mortgage. On 26 June 1991, he was turned down by the local adjudication officer on the ground that he was not residing at Moranedd. Thereafter, the adjudication officer reviewed this decision and concluded that Moranedd could be treated as the dwelling occupied by the claimant and his wife as their home from 24 June 1991, but went on to decide that a restriction on the £42,000 mortgage was applicable. The restriction was arrived at, not by reference to the interest payable on a £42,000 mortgage, but by reference to the interest payable on a £13,500 mortgage on the footing that suitable alternative accommodation was available in the area at a cost of £71,500 and that from that sum there fell to be deducted a sum of £58,000, as representing the adjudication officers estimate of the claimant's equity in Moranedd. This decision was affirmed by the appeal tribunal on the 1st November 1991.

5. The restriction in question was imposed under the provisions of paragraph 10 of Schedule 3 to the Income Support (General) Regulations 1987, as in force at the material time. Sub-paragraph 3 of that paragraph provides, so far as relevant, that where the amounts to be met under paragraph 7 to 9 of the Schedule are excessive, they shall be subject to restriction in accordance with sub-paragraphs (4) to (6). Sub-paragraph (4) provides that the amounts to be met shall be regarded as excessive and shall be restricted and the excess not allowed, if and to the extent that -

- (a) the dwelling occupied as the home, excluding any part which is let or is normally occupied by persons in board and lodging accommodation, is larger than is required by the claimant and his family and any non-dependents having regard, in particular, to suitable alternative accommodation occupied by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than in other areas in which suitable alternative accommodation exists; or

- (c) the outgoings of the dwelling occupied as the home in respect of which the amounts to be met under paragraphs 7 to 10 are higher than the outgoings of suitable alternative accommodation in the area.

Sub paragraph (4) is subject to sub-paragraphs (5) and (6) which provide that where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation no restrictions shall be made or where the claimant was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made during the first 6 months of any period of entitlement to income support nor during the next 6 months if and so long as the claimant uses his best endeavour to obtain cheaper accommodation.

The "relevant factors" referred to in sub-paragraph (5) are set out in sub-paragraph (7) and are:

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any child or young person who is a member of his family."

6. In affirming the decision of the local adjudication officer, the appeal tribunal gave their unanimous decision in the following terms -

"The outgoings of Moranedd insofar as they related to mortgage payments on the £42,000 mortgage were higher than the outgoings of suitable alternative accommodation since the evidence was available that alternative accommodation suitable for Mr & Mrs Daffern's needs was available in the Abergele area at a price not exceeding £71,500. They had an equity in Moranedd of at least £58,000 which would leave them a borrowing requirement of £13,500. A restriction to the housing costs was therefore referable to the interest required to service such a loan with effect from 24-6-91."

7. While it is clear that the appeal tribunal took considerable pains with this case, I have no hesitation in accepting the submissions of Mr Roberts on behalf of the claimant, in which Mr Pollard for the adjudication officer now concerned concurred, that the appeal tribunal's decision erred in law by not making sufficient findings of fact and giving adequate reasons for their decision as required by regulation 25(2) of the Social Security (Adjudication) Regulations 1986. In particular -

- (a) there was no proper consideration by the appeal tribunal of the eligible housing costs to be carried into the computation of the claimants' income support under paragraphs 7 and 8 of Schedule 3;
- (b) there was no consideration whatever given by the appeal tribunal to the implications of the Council grant of £17,000, which the claimant had received, as a relevant factor under paragraph 10(7) of Schedule 3 or at all, especially having regard to the terms under which the grant was repayable;
- (c) there was no explanation given by the appeal tribunal (or by the local adjudication officer before them) as to how the date of 24 June 1991 was selected as the date from which the claimant's restricted entitlement to housing costs in respect of Moranedd should run.

8. This last mentioned matter is related to a point raised by the adjudication officer now concerned in paragraph 4 of his submissions to me dated 10 June 1992 in which he contends that while the claimant was residing in the caravan in the grounds of Moranedd and not in the bungalow itself, he was not eligible for any housing costs in respect of Moranedd. This submission was renewed by Mr Pollard at the hearing.

9. Following discussions, both parties agreed that it would be helpful if I could dispose of this important question myself. This I agreed to do and proceeded to hear the evidence of the claimant's wife on the point.

10. In the light of her evidence, I am satisfied, and find as a fact, that both Moranedd and the caravan constitute one dwelling. Her evidence was that the caravan into which they had first moved at Moranedd had already been there for some years, was alongside the bungalow itself, that the telephone in the caravan was an extension of the telephone in the bungalow and that from the outset, while renovations were being carried out to the bungalow, they had been storing household effects in at least one room in the bungalow.

11. On the facts which I have found, I am led to the inescapable conclusion that the caravan was within the curtilage of, the bungalow and was, in a real and practical sense, part of the entity which, together with the bungalow, constituted for this couple "the dwelling occupied as the home" within the meaning of that expression as defined in regulation 2(1) of the Income Support (General) Regulations 1987. That definition, so far as relevant, reads -

"dwelling occupied as the home" means the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his home including any premises not so occupied which is impracticable or unreasonable to sell separately, ...".

I should perhaps stress that, on my view of this matter, the issue whether any part of the premises could be sold separately does not, of course, arise.

12. For the reasons I have given, this appeal succeeds and the decision of the appeal tribunal is set aside. The case is remitted to a differently constituted social security appeal tribunal for rehearing and redetermination in accordance with the principles of law set out in this decision. In particular, I direct the fresh appeal tribunal to approach this case from the premiss that, at all times material to this case, the caravan and the bungalow occupied by the claimant and his wife constituted one dwelling. I further direct that a copy of the written submissions of the adjudication officer dated 10 June 1992 should be before the fresh tribunal.

13. Finally, I draw attention to the fact, that I held an expedited hearing of this case because of the urgency of the matter to the claimant, as apparently the building society concerned have threatened to exercise their powers of sale of the property and to evict the claimant and his wife. Accordingly, I request that the rehearing before the fresh tribunal should take place at the earliest possible time.

(Signed) A.W.E. Wheeler
Commissioner

(Date) 22nd December 1992