



DR/HJD

Commissioner's File: CIS/321/1990

SOCIAL SECURITY ACTS 1975 - 1990

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No: -----

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 30 March 1989 is not erroneous in law.

2. The claimant is a single man. He was in receipt of supplementary benefit from 1982 and subsequently income support from April 1988. On 20 May 1988 the claimant sold his home in England for £18,750. After repaying the outstanding mortgage of £6,582.98 he was left with a balance of £12,167.02. He then had in mind purchasing premises in which to live in various places in England and Wales. Eventually he made an offer for a plot of ground in Wales. He paid a deposit of £840 for this plot of ground which was acknowledged by the vendor's solicitors in a letter dated 11 October 1988. In a letter dated 25 October 1988 the said solicitors stated that in view of the time it had taken to proceed to exchange contracts the owner of the said plot no longer wished to proceed with the transaction and that the said sum of £840 was being returned to the claimant. At or about the beginning of November 1988 the claimant went to Inverness and made enquiries regarding the purchase of a plot of ground at Muir of Ord. In a letter dated 7 December 1988 solicitors acting on behalf of a client offered to feu to the claimant a plot of ground at a location in Muir of Ord for the price of £10,950. Negotiations in this connection continued, but the claimant never accepted the said offer and finally about the middle of February 1989 this transaction fell through. Finally in a letter dated 23 March 1989 the claimant's solicitors intimated that a plot of ground in Banffshire had been reserved for the claimant at the price of £6,500. The transaction relating to this plot of ground in Banffshire was finally completed at the end of June 1989.

3. Under section 22(6) of the Social Security Act 1986 it is provided that no person is to be entitled to an income related benefit if his capital or a prescribed part of it exceeds the prescribed amount. Under regulation 45 of the Income Support (General) Regulations 1987 it is provided that for the purposes of said section 22(6) of the Act as it applied to income support the prescribed amount is £6,000. Regulation 46 of the said

regulations provides that, subject to certain capital resources being disregarded under the provisions of Schedule 10, the amount of a claimant's capital resources to be taken into account is the whole of his capital resources calculated in accordance with provisions contained in the said regulations. As already stated the items of capital to be disregarded are contained in said Schedule 10. Paragraphs 1 and 3 of that Schedule provide as follows:-

"1. The dwelling occupied as the home but, notwithstanding regulation 23 (calculation of income and capital of members of claimant's family and of a polygamous marriage), only one dwelling shall be disregarded under this paragraph.

3. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase."

The former equivalent statutory provision relating to supplementary benefit was contained in regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 (as amended) which provided as follows:

"(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances;"

4. At the end of the 26 weeks period of disregard the local adjudication officer decided that the claimant was no longer entitled to income support having regard to the provisions of paragraph 3 of said Schedule 10. In a decision dated 11 January 1989 the said adjudication officer refused to review his decision disallowing income support. The claimant appealed against that decision to a social security appeal tribunal but in a decision dated 30 March 1989 a tribunal sitting in Aberystwyth, Wales disallowed the claimant's appeal.

5. The claimant applied for leave to appeal to a Commissioner against the tribunal's said decision, and that application was granted by the chairman. The papers relating to the appeal were received in the Edinburgh office of the Commissioners at the end of February 1991, and a hearing took place before me on 30 April 1991.

6. The claimant considers that it is unfair that he should have been denied income support from 20 November 1988 onwards. He considers that it was not his fault that the purchase of the said

plot in Wales fell through, and he considers that he should have been allowed a further period of 26 weeks after the failure of the negotiations relating to the said plot in Wales to obtain other premises for his occupation. He also considers that he should also have been given a further period of 26 weeks after the failure of the Muir of Ord negotiations. Also, in the course of lengthy written submissions in connection with the case the claimant put forward various reasons for his failure to obtain a home within the period of 26 weeks after he sold his existing home such as the property boom which he states existed at the time in question. He also referred to paragraph 27 of said Schedule 10, but in my view that provision does not have any relevance to the present case.

7. This case turns on the meaning to be given to the terms of paragraph 3 of Schedule 10 quoted above. If the provisions of said paragraph 3 had been the same as regulation 6(1)(b) of the 1981 Resources Regulations mentioned above, then it would in my view have been the duty of the local adjudication officer to decide whether the circumstances warranted a longer period of disregard being given to the claimant from 20 November 1988 onwards. In my view, however, the disregard provisions contained in paragraph 3 of Schedule 10 are much more strict. Paragraph 3 gives a claimant a period of 26 weeks to obtain premises for his occupation within these 26 weeks or such longer period as is reasonable in the circumstances to enable him to complete the purchase of these premises. The present claimant never reached the stage of being found entitled to an extension of the period of 26 weeks. The negotiations in relation to the plot of ground in Wales had broken down before the expiry of the 26 weeks period. The claimant had made enquiries about a plot of ground in Muir of Ord at or about the beginning of November 1988, but he was not offered that plot until after the expiry of said 26 weeks period, and he never accepted that offer. The negotiations relating to the plot of ground in Banffshire did not commence until after the termination of the 26 weeks period. I have reached the conclusion that the local adjudication officer and the social security appeal tribunal reached a correct decision when they decided that the claimant was not entitled to income support from 20 November 1988. Having reached that conclusion it is unnecessary for me to deal with the question whether a plot of ground with or without a caravan on it can be regarded as premises within the meaning of said paragraph 3.

8. I understood from the claimant at the hearing before me that he has now received income support from a date in March or April 1989. I have, however, no precise information regarding why such an award was made.

9. The claimant's appeal is disallowed.

(signed) Douglas Reith
Commissioner
Date: 17 May 1991