

C.A.S. lb

WMW/GM

Commissioner's File: CIS/407/92

SOCIAL SECURITY ADMINISTRATION ACT 1992

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:

[ORAL HEARING]

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

RECEIVED
16 DEC 1992
C. A. S.

1. This adjudication officer's appeal succeeds. I hold the decision of the Chester Social Security Appeal Tribunal dated 27 November 1991 to be erroneous in point of law. For that reason I set it aside. Because I consider it appropriate so to do, I give myself the decision which the tribunal should have given in exercise of the powers conferred by what is now section 23(7)(a)(i) of the Social Security Administration Act 1992.

2. That decision is to refuse the appeal from the decision of an adjudication officer issued on 12 August 1991. That means that that last mentioned decision remains in effect. It was in these terms:-

"The claimant is not entitled to income support from 6.8.91 because her capital resources exceed the prescribed amount."

3. This case came before me by way of an oral hearing at Liverpool. The adjudication officer was the appellant. He was represented by David Cornwell, Solicitor, of the Office of the Regional Solicitor for the Department of Social Security. The claimant was represented by Mr Richard Atkinson, a senior welfare benefits adviser with the Metropolitan Burgh of Wirral. I am grateful to both for their assistance.

4. The facts in this case are in small compass. The claimant and her sister-in-law Mrs Pospiech both occupied a house belonging to the claimant. The claimant and her husband for many years shared their home with the said Mrs Pospiech, who is the sister of Mr Jones, now unfortunately deceased. In August 1991 the claimant moved to live permanently in a nursing home and income support was claimed by Mrs Pospiech as her appointee. The adjudication officer refused the application under section 22(6) of the Social Security Act 1986, as then in force, because the claimant's capital exceeded the prescribed amount set out in regulation 45 of the Income Support (General) Regulations 1987 as, again, then in force. That capital was her home.

5. The whole case revolved around paragraph 4 of Schedule 10 to the General Regulations which provided that the value of any premises, for the purposes of this case, -

"... occupied in whole or in part by -

- (a) a ... relative of a single claimant or any member of the family as his [or her] home where that person is aged 60 or over..."

Mrs Pospiech who remained in the house was undoubtedly over the age of 60. The question was whether she was a relative of the claimant. That was because in terms of regulation 46(2) there was to be disregarded from the calculation of a claimant's capital any capital specified in said Schedule 10.

6. "Relative" is defined by General Regulation 2 as including "close relative" as well as other relationships which do not apply to this case and "close relative" is defined as -

"... a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons..."

Thus the question came to be whether Mrs Pospiech was within that category of persons so as to be regarded as a close relative of the claimant.

7. The tribunal found in favour of the claimant. Amongst others they made the following finding of fact -

"2. When Mr Jones was alive it is clear that Mrs Jones was a close relative of Mrs Pospiech. The reverse must logically apply therefore Mrs Pospiech was a close relative of Mrs Jones."

and their reasons were -

"The value of Mrs Jones interest in the property at ... can be disregarded in accordance with Schedule 10 to the General Regulations, because Mrs Pospiech is a close relative of Mrs Jones as defined in I S (General) Regulations 2(1)(b) being the sister of Mrs Jones spouse."

8. Mr Cornwell focused his appeal upon the last part of finding of fact no. 2 quoted above and the reasons. It might be logical to suppose that if Mrs Jones was a close relative of Mrs Pospiech the reverse must logically apply. But that depended, in the event, not upon logic but upon the express terms of the Regulations. Indeed the matter was focused in the reasons for decision. The tribunal concluded, clearly, that Mrs Pospiech was a close relative of Mrs Jones. That was erroneous in law according to Mr Cornwell.

9. Mr Atkinson argued persuasively to the contrary effect. He pointed to the express terms of regulation 2(1) in favour of the proposition that one could link one person to another as a "close relative" in either direction. That was in effect to say that if A was a close relative of B that was enough even if B might not be a close relative of A. He supported that contention by reference to the extent to which the definition provides for complementary relationships - that is running in either direction as in the case of a parent and a son or a daughter. And indeed it was noteworthy that at least in the case of son-in-laws and daughters-in-law one could cross the divide. He pointed to the former equivalent Supplementary Benefit Regulation which had provided for sisters-in-law and brothers-in-law but suggested that that did not affect this case for the reasons already given.

10. Mr Atkinson presented an alternative submission based upon paragraph 19 of R(SB)6/86. There Lord Scarman is quoted as observing that if giving the literal meaning to a statutory document provided absurd consequences, or must have been as a result of a drafting mistake, it would be legitimate to give a contrary effect. That was in support of Mr Atkinson's contention that if one person was a close relative of another then the other must be a close relative of the first. There was no logic, he claimed, in allowing the matter to run only one way. If so the whole question became a lottery, as in this case, as to which of two sisters-in-law first fell ill and required to leave the common home.

11. Persuasive as were Mr Atkinson's submission I cannot give effect to them. Mr Cornwell seemed to suggest at one stage that the opening words of regulation 2(1) -

"In these Regulations, unless the context otherwise requires ..."

could be disregarded because the general principle of the definition was set out in specific terms. For my part I rather think that those words require regard to be had to the context in which a phrase such as "close relative" is used in the regulations. That drives attention in the first place to paragraph 4 of Schedule 10 read within the context of regulation 46(2). That latter requires disregard from the calculation of a claimant's capital of anything comprehended within the Schedule. That means that, here, Mrs Jones' capital is to be disregarded in respect of any premises occupied by a relative of hers. That means that the question, fundamentally, is simply whether Mrs Pospiech is a relative - that is for the reasons already given a "close relative" - of hers. Mrs Pospiech is the sister of Mrs Jones' late husband. Relatives of spouses are not comprehended within the definition in regulation 2(1). Only spouses of relatives get to qualify. Whether or not there is any logical reason for that is neither here nor there. The regulation is quite clear and the tribunal were in fundamental error in assuming that because the relationship of sister-in-law could be applied from Mrs Jones to Mrs Pospiech as much from Mrs Pospiech to Mrs Jones, that they were "close relatives". The test is only allowed to operate in the one direction because of the context within which the matter has to be tested as set out above. Whilst I accept that it appears anomalous that that should be so I am unable to hold that the consequences are so absurd or that there must have been a drafting mistake such as to warrant my innovating upon the clear meaning of the regulation.

12. The adjudication officer's appeal succeeds.

(signed) W M Walker
Commissioner
Date: 2 December 1992