

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

Name:

Social Security Appeal Tribunal:

Case No:

[ORAL HEARING]

1. This is another one of Miss Sibery's appeals which I heard on 27 April 1993; after further written submissions the hearing was resumed and completed on 21 June 1993.

2. In my decision in relation to Miss Sibery's appeal in CIS/490/92 I set out the background circumstances and I do not need to do that again here. It is enough for me to say that this decision deals with the question whether, in relation to the calculation of Miss Sibery's income for income support purposes, she is entitled to a £10.00 disregard pursuant to paragraph 15(1) of Schedule 9 to the Income Support (General) Regulations 1987 which is in these terms -

"15(1) Except where sub-paragraph (2) applies and subject to sub-paragraph (3) and paragraphs 36, 37 and 39, £10.00 of any charitable payment or of any voluntary payment made or due to be made at regular intervals."

And the question arises because of paragraph 6 of Miss Sibery's grandfather's will which provides -

"6. I give devise and bequeath my freehold dwelling house ... together with all furniture and fittings ... to my Trustees Upon Trust to sell the same with power to postpone such sale ... and my Trustees shall hold the net proceeds of such sale Upon Trust to invest the same ...

(a) Upon Trust to pay the net income to or to apply the same for the benefit of my grand-daughter ... during her lifetime ... "

The power of sale has been exercised by the Trustees. The

capital is invested in treasury stock with interest payable six monthly in March and September. The interest is received by the Trustees every six months and paid to a building society in Mr Sibery's name; he then applies it for his daughter's benefit. In 1990 each of the payments was for the sum of £277.63. The adjudication officer refused to allow a disregard under paragraph 15(1) of Schedule 9 and the appeal to a social security appeal tribunal was disallowed. This present appeal is of course against that tribunal's decision.

3. With regard to the application of paragraph 15(1) of Schedule 9 I should first of all say that sub-paragraph (2) and (3) and paragraphs 36, 37 and 39 referred to in paragraph 15(1) have no direct relevance to the point at issue. I should also say that it has never been contended that the payments in question come within the words "charitable payment" but it is said that they are "voluntary" payments within the meaning of that word in that provision. And it is further contended that their status as "voluntary" payments is shown by the fact that the grandfather took it upon himself to make provision for his severely handicapped grand-daughter and his benevolence should, so far as possible, have effect for her benefit; if the disregard is not allowed the State, in the circumstances of this case, is in effect the only beneficiary of this part of the will.

4. This same issue was recently considered by the Commissioner in CIS/702/91. There the question arose in relation to the codicil to a will in which the testator bequeathed to his executor £1,000.00 with the direction that there be purchased from a named insurer an annuity for the benefit of the claimant, seemingly in acknowledgement of the fact that she had spent many years, to the detriment of her own health, caring for her chronically sick husband. The claimant's representative put her case on the basis that the reality was that there was a gift, i.e. a voluntary payment, to the claimant by the testator and that the "intervention" of the insurer was irrelevant. The Commissioner in that case said (paragraph 13) -

"13. Unsurprisingly, Mr Roe - for the adjudication officer - submitted that Mr Poynter's arguments were over refined. They sought to obfuscate the reality of 1990 by invoking the events of 1969/70 - ie the events which, historically, gave rise to the position in 1990. It was to the position as it subsisted in 1990 that the adjudication officer was obliged to look; and by no stretch of imagination could the instalments paid in that year - or, indeed, in any year since the purchase of the annuity - be regarded as "voluntary". It was nihil ad rem that the claimant had not herself given any consideration in return for those instalments."

And he regarded that submission as being rightly made. So, according to the decision in that case, to test whether a payment is a "voluntary payment" one must look at the position between the actual payer and the payee when the payment is made and not

at the previous history. The Commissioner in that case referred to the recent decision of Laws J. in the Queen v Doncaster Borough Council (transcript 11 December 1992) in which the identical provision in relation to housing benefit had been considered. In that context Laws J. said (pages 19 to 21 of the transcript)

"What, then, is the purpose in making a special exception by way of disregard in the case of "any charitable payment or of any voluntary payment"? I can discern no sensible purpose in according a disregard to any regular payment whatever which happens not to be legally enforceable. In the case of a charitable payment, I think the purpose clear: it is to ensure that bodies which administer funds to the disadvantaged under charitable trusts, and thus shoulder part of the burden of looking after people in our society in difficult or distressed circumstances, should be assured that their intended beneficiaries obtain the fruits of their charity in full and that the payments they make will not simply go pro tanto to relieve the State's obligations. If that is right, this policy I think gives colour to that which underlies the disregard of voluntary payments in the same regulation. In his skeleton argument, Mr. Howell made this submission which I accept:

"Charitable payments are made for benevolent purposes. But not all payments made for benevolent purposes are necessarily charitable. (To be charitable, for example, a purpose has to be one that benefits the public of a sufficient section of it rather than individuals.) The effect of specifying both charitable and voluntary payments is to enable payments which are not made for the payer's own benefit to be brought within the scope of the disregard without the need to engage with fine distinctions between charitable and non-charitable payments."

It is not necessary, to appreciate the force of this submission, to embark upon any discussion of the law of charitable trusts for which I at any rate would be poorly equipped. Arrangements might well be made by a body for the relief of some particular group within those entitled to housing benefit without there being in place all the legal requirements for the existence of a charitable trust. In my view Mr. Straker made an illuminating submission, which I also accept, when he said that the question whether a payment is voluntary is to be judged by looking at the volunteer not the recipient so that the issue is not whether the payee has any legal rights: it is, rather, what is the nature of the payment from the putative volunteer's point of view? Looked at in this way the nature of the legislative policy here becomes entirely clear; it is in fact precisely the same as that relating to the charitable payments. The legislator is looking at a payment which is made, to use Lord Halsbury's words,

without anything being obtained in return."

The Commissioner in CIS/702/91 did not see that as conflicting with the view of the matter which, as he says in his decision, he had formed before the Doncaster case was drawn to his attention. Nor does the judgment in that case persuade me that Mr Sibery is right to contend that one has to look at the grandfather's intention when he made his will in favour of his grand-daughter. Laws J. says, in the passage quoted above, that one must look at the nature of the payment. In the present case it is of course a payment by Trustees in execution of their trust and the purpose of the testator is not in my view material to the characterisation of that payment; it might be different in the case of a discretionary trust but that is not this case and I do not have to decide that possibly more difficult point. I should add that in CIS/646/1991 the Commissioner confirmed that the interpretation of "voluntary" in the Doncaster case (which related to housing benefit) was equally appropriate to the same expression used in relation to income support.

5. It follows from what I have said that the tribunal's decision confirming that of the original adjudication officer to the effect that the disregard in question was not available to the claimant is not erroneous in law and I must accordingly dismiss this appeal. I appreciate the points made so thoroughly by Mr Sibery on his daughter's behalf. He has gone to a great deal of trouble and it may be that, at least in the somewhat special circumstances of this case, he wins the moral argument. But I am afraid he does not, in my view, win the appeal which I must of course decide in accordance with the law, or should I say, what I take to be the law.

(Signed) R A Sanders
Commissioner

Date: 6 July 1993

