

CAS

47/96

DGR/SH/1W/MD

Commissioner's File: CIS/5185/1995

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

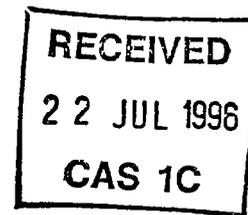
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:



[ORAL HEARING]

1. For the reasons set out below, the decision of the social security appeal tribunal given on 19 January 1995 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 19 January 1995. I was concerned in this case with whether the claimant might be able to invoke the principle in Barclays Bank Ltd v Quistclose Investments Ltd, [1970] A.C.567 ("the Quistclose principle") and accordingly directed an oral hearing. At that hearing the claimant, who was not present, was represented by Miss Sue Brown, a welfare rights officer from the Citizens Advice Bureau, whilst the adjudication officer appeared by Miss J Hartridge of the Solicitor's Office of the Department of Health and Social Security.

3. On 23 February 1994 the adjudication officer decided that the claimant was not entitled to income support from 10 January 1994, because his income (£65.65 per week) exceeded his applicable amount (£36.15). In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer.

4. The facts of the case, which would not appear to be in dispute, are simple and straightforward. On 7 October 1991 the claimant started a full-time degree course at the University of Hull. He had been awarded a maintenance grant by the Essex County Council for the academic year 1993/1994

amounting to £2,720, payable in three termly instalments (Autumn £159.25 (£792.75 having already been paid); Spring £952 and Summer £816). On 10 January 1994 the claimant registered at the Employment Service and claimed income support. On 23 February 1994 the adjudication officer disallowed the claim on the basis that the maintenance grant constituted "income other than earnings" within regulations 29 and 40 of the Income Support (General) Regulations 1987 [S.I.1987 No 1967], and as this exceeded the applicable amount, he was not entitled to income support.

5. However, the claimant contended that, as he was required to repay to the Essex County Council a proportionate part of the Spring maintenance grant, this repayment should be deducted from his income, in calculating entitlement to income support. However, the tribunal rejected that contention.

6. The problem that confronted the claimant was that that part of the maintenance grant remaining to him as at the time of his ceasing to be a student and claiming income support constituted "income other than earnings" available to him, and remained as such unless and until the same was repaid to the Council (see R v. Bolton Supplementary Benefits Appeal Tribunal, ex parte Fordham [1981] 1 All E.R. 50; and CSB/1408/1988). Unfortunately for the claimant, he was unable to repay the residue of the maintenance grant until such time as the Council presented their invoice, and this was not sent to him until 20 March 1994. Moreover, as the claimant had from 10 January 1994 ceased to be a student, his income could not be accorded the favourable treatment provided for under regulation 62.

7. However it occurred to me that the claimant might be able to invoke the Quistclose principle, and contend that the maintenance grant was impressed with a trust whereby, if it was not applied for the claimant's maintenance as a student, it was to be held on trust for the Council. And if this was right, then the moment the claimant ceased to be a student he had no further beneficial interest in any of the maintenance grant still in his hands, with the result that, in calculating his right to income support, there was no "income other than earnings" to be taken into account. It was to deal with this point that I directed an oral hearing.

8. Miss Hartridge contended that there could be no question of the Quistclose principle applying in this instance. If it was to be successfully maintained that there was a trust in any particular case, this had to be demonstrated beyond all doubt (see R(IS) 1/90; and CIS/6042/95). Here, there was nothing to suggest that the Council had created a trust. They had awarded a maintenance grant which, by reason of its being paid in instalments and being intended for contemporaneous consumption, was clearly income and not capital, and the recipient was not restricted as to the manner in which he

applied that grant. More particularly, there was no stipulation in the relevant documentation that, in the event of the recipient's ceasing to be a student, he should forthwith hold the residue on trust for the Council, and repay it to them immediately. What the Council required, if the recipient ceased to be a student, was that he should make a repayment in accordance with what was in effect a time formula. The relevant condition of the grant reads as follows:-

"4. The student agreeing to refund to the Council such sum as they may require in respect of any period of non-attendance, should he/she not attend the establishment for the whole of any period for which a grant has been paid or should he/she withdraw or be required to withdraw from the course prematurely and to be responsible for any fees which are payable in lieu of notice of non-attendance or withdrawal."

I understand that the Council required repayment calculable on a time basis. Thus, if half the relevant term had expired on the recipient's ceasing to be a student, the Council wanted half the grant repaid. It was immaterial how much of the grant actually remained over in the hands of the recipient. Repayment was required on the basis that the grant had been used up in equal amounts each week. Moreover, this was not disputed by Miss Browne.

9. Now the effect of the above arrangement was to remove any possibility that the grant was clothed with a trust. Manifestly, the Council had renounced all beneficial interest in the grant once it had been made, and merely reserved to themselves the right to demand repayment of a sum calculated in accordance with a time formula. They retained no proprietary interest in the actual part of the grant still in the hands of the recipient. There was no right in rem against the residue; their right was in personam against the recipient for repayment of the contractual sum.

10. It follows from what has been said above that it was not open to the claimant to say that he had no proprietary interest in the residue of the maintenance grant on his ceasing to be a student, and accordingly it had to be taken into account as "income other than earnings" pursuant to regulations 29 and 42, without the concessions conferred by regulation 62. As the income in question, calculated on a weekly basis, exceeded the applicable amount, the claimant was not entitled to income support. The tribunal correctly analysed the position, and gave full and adequate reasons for their decision. I see nothing wrong with their determination.

11. Accordingly, I have no option but to dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 18 JUL 1996