

CAS

IDENTIFIABLE DECISION  
NOT TO BE SENT OUT OF  
THE DEPARTMENT

DGR/SH/19

Commissioner's File: CIS/553/1991

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:

1. My decision is that the decision of the social security appeal tribunal given on 15 May 1991 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

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 15 May 1991.

3. The question for determination by the tribunal was whether the claimant was disentitled to income support on the ground that he had to be treated as possessing capital in excess of the prescribed limit. In the event, the tribunal, upholding the decision of the adjudication officer, held that he was. They made the following findings of fact:-

"Appellant and his wife separated in 1987 at a time when Appellant owned 2 houses, 46 Leamington Street and 14 Temple Street.

Appellant then applied for and was refused Supplementary Benefit/Income Support on the grounds he had 2 properties and had capital available. Therefore above the threshold to get Supplementary Benefit/Income Support.

In January 1989, Appellant's wife applied for a transfer of No. 46 to her to BBBS [Bradford and Bingley Building Society]. It is not known whether this was with her husband's agreement or not. Appellant at the hearing

gave no evidence on this point. Appellant then reapplied for Income Support in January 1990, having been turned down on his claim in January 1989."

The tribunal gave as the reasons for their decision the following:-

"R(SB) 40/85 and 38/85 applied. The tribunal believe that the transfer by Appellant to his wife of No. 46 was done with a significant operative purpose of gaining Income Support. Appellant knew he was refused Income Support so long as he had 2 houses and knew that by getting rid of one he might obtain Income Support. There may have been other operative purposes such as to provide for his wife and family and prevent any future claims but the main purpose was to get benefit which was otherwise denied. It is significant that Appellant could have made the transfer at any time from 1987, had his sole purpose been to provide for his family but he did not until benefit had been refused."

On the question of the claimant's divesting himself of property for the purposes of obtaining income support, I see nothing wrong with the tribunal's decision.

4. The tribunal considered that the claimant had divested himself of 46 Leamington Street for the purposes of obtaining income support, and they explained in some detail the reasons for their conclusions. It was a matter entirely for them, and I see no grounds for interfering with their decision. They were entitled, on the evidence, to reach the conclusion they did.

5. However, the adjudication officer now concerned suggests that the tribunal erred in two technical respects. He first submits that the tribunal should have considered whether or not the claimant's wife had any beneficial interest in the property. I consider there is nothing in that point. It was never contended before the tribunal, or for that matter before me, that the claimant's ownership was other than 100%. I do not think it was incumbent upon the tribunal to investigate matters which were not in dispute. Nowhere in the documentation is it suggested that the claimant was otherwise than the sole owner, or that the claimant's wife herself had a claim to a proprietary interest.

6. The second contention of the adjudication officer, however, has more force. He says as follows:

"6. Furthermore I submit that it was incumbent on the tribunal to consider whether the wife had a statutory right of occupation of 46 Leamington Street under the Matrimonial Homes Act 1967, and the effect such a right of occupation would have on the capital value of the property. Moreover, in my submission the tribunal erred in law by failing to state in their decision the value of the capital of which the claimant had deprived himself.

I accept that submission.

7. Accordingly, I set aside the tribunal's decision and direct that the appeal be reheard by a differently constituted tribunal who will take into account the second contention of the adjudication officer now concerned.

8. I allow the appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 12 January 1993

