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Commissioner's File: CIS/562/1992

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. For the reasons set out below, the decision of the social security appeal tribunal given on 22 April 1992 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 the tribunal chairman, against the decision of the social security appeal tribunal of 22 April 1992. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant, who was present, was represented by Mr S Johal of the Welfare Advice Centre, Wolverhampton, whilst the adjudication officer appeared by Mr G Roe of CAS.

3. This case has a considerable history. A convenient starting point is 10 September 1983 when the claimant applied for supplementary benefit, stating that a property he owned at 16 Byrne Road, which comprised both a shop and living quarters, would be sold once essential repairs had been carried out. On that basis he was awarded benefit (the value of the property being disregarded), and this continued until he went to Pakistan in April 1987. On his return, he reclaimed supplementary benefit on 30 June 1987. No enquiries were made concerning the property, and benefit (which after 10 April 1988 became income support) was paid until 9 March 1989. It was then discontinued for a period, but later reinstated as from 10 March 1989 and continued until 16 November 1989 when the claimant again went to Pakistan. On his return, he made a further application for benefit on 28 May 1990, but this was unsuccessful. Although he had on 27 September 1989 transferred the property to his son, he was nevertheless treated as still being in possession of it pursuant to regulation 51(1) of the Income Support (General) Regulations 1987 [S.I.1987 No. 1967], and as it was accepted that the value

of the property exceeded the statutory limit for receipt of income support, his claim was disallowed. On 12 November 1991 the claimant reapplied for benefit. He had on 17 October 1991 received back from his son the property he had previously transferred to him. On 25 November 1991 the adjudication officer decided that the claimant was not entitled to income support from 12 November 1991 because his capital resources exceeded the prescribed amount. In due course, the claimant appealed to the tribunal who in the event upheld the adjudication officer.

4. It was accepted by the parties that the only issue before the tribunal was whether, for the purposes of calculating entitlement to income support, the value of the property at 16 Byrne Road was to be disregarded pursuant to paragraph 26 of Schedule 10 to the Income Support (General) Regulations 1987. It was also accepted, and rightly so, that it was open to the claimant to invoke the benefit of paragraph 26 (assuming he could satisfy its provisions) notwithstanding that he had, for the purpose of claiming income support, divested himself of the relevant property. For had to be treated under regulation 51(1) as still being possessed thereof (see CIS/025/1990, paragraph 12; R(SB)9/91, paragraph 15; the Northern Ireland decision R(1)92(IS) to the contrary fails to address the necessary consequences flowing from the claimant's having to be treated as still in possession of the relevant capital). In the event, the tribunal decided that there was to be no disregard under paragraph 26, and that accordingly, as it was not in dispute that the value of the property exceeded £8,000, the claimant was not entitled to income support as from 12 November 1991.

5. Paragraph 26 reads as follows:-

" 26. Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises."

6. The claimant's case, as put by Mr Johal, was that the claim made on 12 November 1991 was a fresh claim, and accordingly the claimant was entitled to have the value of the property, which had now been restored to him from his son, disregarded for a period of 26 weeks, and such further time as should in the circumstances be reasonable to enable him to dispose of it. Mr Roe, however, pointed out that the disregard only applied "for a period of 26 weeks from the day on which [the claimant] first [my emphasis] took .... steps to .... dispose of those premises. It was therefore necessary, Mr Roe argued, to look at the full history of the matter, and it was clear from the evidence presented to the tribunal that the property had been on the market from 1985 or 1986, a period far in excess of the initial 26 weeks or any longer period reasonable in the circumstances. It was wholly unreasonable to allow a period anything like five or six years for liquidation of the premises. This had been the view of the tribunal, and, in Mr Roe's submission, they could not be faulted. I agree.

7. Mr Johal contended before me, as he had done before the tribunal, that during the period when the property had been transferred to the son, namely from 27 September 1989 to 17 October 1991, the claimant had put it out of his hands to dispose of the property, and as a result time should not run against him during that period. In my judgment, there is nothing in Mr Johal's point - for two reasons. Firstly, throughout that period the evidence, as presented by Mr Johal himself at the tribunal, was that the property was continuously on the market. He is recorded as having said, in the chairman's note of evidence, as follows:-

"Claimant had tried to sell the property himself before instructing [Clark Haynes (Estate Agents)]. He has been trying since 1985. He put the sale in the hands of Clark Haynes because he was unable to sell it himself. It has continuously been on sale since 1985, even during the time his son was the owner."

Moreover the tribunal themselves made the following finding:-

"On the tribunal's finding that the property has been continuously ... on sale since at least 1986, the period of 26 weeks prescribed in paragraph 26 has clearly been exceeded."

Accordingly, the fact that the son was the owner for a period did not prejudice the disposal of the property. Moreover, there was evidence that, if a buyer had been found, the son would have co-operated in the sale. Furthermore, the belief he would acquiesce in his father's wishes is confirmed by the fact that he subsequently re-transferred the property to him on 17 October 1991.

8. The second ground on which I reject the contention put forward by Mr Johal is that, even if the property had not been on the market during the period of the son's ownership, that would have been entirely the fault of the claimant. It must be remembered that the starting point is that, where a claimant has property of a value in excess of the statutory limit, he will be disentitled to income support. The severity of this provision is relaxed by paragraph 26, and time will be given to liquidate the property, but only if the claimant complies with the conditions there prescribed. He must take reasonable steps to dispose of the premises, and he must achieve a sale within the specified time of 26 weeks, subject to reasonable extension, but if he does not take reasonable steps, then he cannot invoke the protection. If in the present case, the claimant, by transferring the property to his son, had put it out of his power to take reasonable steps for the disposal of the property and no such steps were taken, then he would have brought this situation upon himself by his own voluntary act, and simply deprived himself of the benefit of paragraph 26. Accordingly, I consider that time ran during the period of the son's ownership.

9. But in any event, the period of 26 weeks prescribed by paragraph 26 and any reasonable extension had lapsed long before the commencement of the period of the son's ownership. Whilst it is clear that the claimant suffered some difficulties in disposing of the property - apparently there was flooding and problems with the builders - nevertheless at the end of the day the tribunal were satisfied that ample time had elapsed for a sale to be effected. Even further time had elapsed if the period, during which the property was in the ownership of the son, was added.

10. In my judgment, the tribunal went into the whole matter with a commendable thoroughness. They gave as the reasons for their decision the following:-

" 1. It was common ground between the adjudication officer and the claimant that the issue in this case was whether the property, 16 Byrne Road, was capital to be disregarded under Income Support (General) Regulations, Schedule 10, paragraph 26. It was not in dispute that the value of this property was well in excess of £8,000 the current sale price having been fixed at £38,000 by the selling agents.

2. Applying the principles quoted in R(SB) 32/83, paragraph 10, the claimant had reached a decision to sell as long ago as 1986 and possibly earlier. Claimant has variously attempted to sell the property himself and through estate agents (Bartlams in 1989 and currently Clark Haynes). He was clearly desirous of selling in order to clear his debts. Clearly the claimant had taken overt action to sell, although the efforts so to do seem to have varied from time to time.

3. Mr Johal's contention on behalf of the claimant that he was not in a position to sell during the period when his son was registered as proprietor is not accepted. The evidence points to a finding that the son was prepared to transfer the property back to the claimant when required by the latter, and would presumably have been prepared to co-operate in taking steps to transfer the property to a purchaser if a sale had been effected. Apart from this there are conveyancing procedures recognising circumstances in which a sale can be effected by a person other than the registered proprietor.

4. On the tribunal's finding that the property has been continuously ... on sale since at least 1986, the period of 26 weeks prescribed in paragraph 26 has clearly been exceeded. The question is whether it is reasonable in the circumstances to allow the claimant a longer period of another 26 weeks to dispose of the property. Having regard to the length of time during which the property has been on sale, the inability to establish a number of factors which might have been relevant eg. possible reductions in the price if a sale was proving difficult and the periodic

apparent lack of effort to effect a sale (it is said by Bartlams that the claimant was frequently not available to show prospective purchasers round) the tribunal find that, while it may originally have been reasonable to extend the period of 26 weeks specified in the paragraph, any such period had long since expired prior to the claimant's current claim.

5. 16 Byrne Road is accordingly not to be disregarded capital and as there is no dispute that its value is well above the limit of £8,000, there is no entitlement to income support."

I see nothing wrong in law with the tribunal's decision.

11. Mr Johal argued that, as the claim made on 12 November 1991 was a new claim, all preceding events should be disregarded, particularly when no claim was actually in being. As indicated above, I reject that approach. The wording of paragraph 26 clearly indicates that the whole history, from the time when the claimant first took steps to realise the property, or for that matter failed to take them after having divested himself of the property, must be taken into account. Any other view would have wholly unsatisfactory consequences, clearly not contemplated by the relevant legislation. It would be open to a claimant to claim the benefit of a disregard for 26 weeks, and on its expiry and the refusal of further benefit, to lodge a new claim and demand a further fresh period of 26 weeks of disregard.

12. This case is wholly without merit. The claimant has been accorded an indulgence over and above what was reasonable, and in deciding that no further time should be allowed the tribunal adopted the only course that was open to them.

13. Accordingly, I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice  
Commissioner

(Date) 1 April 1993