

CAT

DGR/SH/24

Commissioner's File: CIS/608/1992

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 12 December 1991 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 12 December 1991.

3. The question for determination by the tribunal was whether the claimant was entitled to income support from 3 June 1991. In the event, the tribunal, upholding the decision of the adjudication officer, decided that he was not, because his capital resources exceeded the prescribed amount. The facts of this case are conveniently set out in the findings of the tribunal. They said as follows:-

"The Appellant is a divorced man aged 66 on whose behalf a claim to Income Support was made on 3 December 1990 when he was admitted to Wardington House Nursing Home. The Appellant suffers from Alzheimer's disease, he is incapable of dealing with his own affairs and requires 24 hours a day nursing care. On 18 December 1990 Mr L R Tipping, general manager at Wardington House, was appointed by the Secretary of State to exercise the Appellant's rights under the Social Security Acts. No one holds a Power of Attorney in respect of the Appellant.

The Appellant's former wife lives in the matrimonial home at 28 Bedwin Walk, Walton Court, Aylesbury. She does not wish to sell the property. The property is valued at

approximately £50,000. There is an outstanding mortgage of £16,000 and any expenses attributable to sale would be in the region of £5,000. The Appellant is a joint beneficial owner and on the above figure his one half share of the net value of the property amounts to £14,500. No application has been made to the court for either a transfer or sale of the property."

4. The tribunal carefully went into the question of whether or not the claimant's interest in the property could be disregarded. For if it could not, the claimant's interest therein clearly exceeded £8,000, with the result that he was not entitled to income support. In the event, the tribunal concluded that there were no grounds for disregarding the property, and as a result found against the claimant. They gave the following reasons for their decision:-

"The Tribunal first of all considered whether the Appellant's interest in the property at 29 Bedwin Walk had to be taken into account. Having regard to the fact that it is occupied by his former wife, the Tribunal concluded that having regard to paragraph 4 of Schedule 10 to the General Regulations the premises could not be disregarded. The Tribunal considered that the valuation of £50,000 was a reasonable one having regard to the depressed property market. With expenses of £5,000 attributable to the sale and the outstanding mortgage in the region of £16,000 the net value of the property is £29,000 in respect of which the Appellant is entitled to half a share namely £14,500. This exceeds the statutory figure of £8,000. The Tribunal considered that it was reasonable to treat the Appellant as having left the marital home on 3 December 1990 and that having regard to paragraph 25 of the General Regulations the following 26 weeks should not be taken into account. The Tribunal then went on to consider paragraph 26 of Schedule 10 which provides a disregard of 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 these circumstances to enable him to dispose of those premises. The regulations specifically referred to 'the claimant' and the correspondence handed in by Mr Tipping only referred to action taken on behalf of the Appellant's wife. In any event the Tribunal noted that the Appellant's wife did not wish to sell the home. The Tribunal therefore had to consider whether the Appellant or his representative had taken any steps to dispose of the premises and it had regard to Commissioner's decision R(SB) 32/83. There was no evidence before the Tribunal that either the Appellant or his representative had made any attempt to realise his share in the former matrimonial home. Nor had any other attempt been made to sell the property. The Tribunal accordingly came to the conclusion that no reasonable steps had been taken to dispose of the premises."

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

5. The claimant's representative contends that by virtue of the claimant's ex-wife having applied to the Public Trust Office (Protection Division) for the appointment of a receiver of the claimant's property her action could be regarded as a reasonable step to dispose of the property, with the result that the same could be disregarded pursuant to paragraph 26 of Schedule 10. There is nothing in this contention for the reasons admirably set out by the adjudication officer now concerned in paragraph 5 of his submissions dated 11 September 1992. He says as follows:-

" 5. I submit that it may be reasonable for the claimant or appointee to delegate the disposal of an asset to another person, and thus for such delegation to be in itself a 'reasonable step ...' within the meaning of paragraph 26 of Schedule 10. In the instant case, however, it is my submission that there is no evidence that the application to the Court of Protection was made by the claimant's former wife at the behest, or with the concurrence of, the appointee. Moreover, I submit that even had a delegation taken place, the available evidence does not allow the conclusion to be drawn that this application was made as part of an endeavour to realise the claimant's interest in the marital home; for it would be necessary to accept that the applicant had adopted a course of action extremely prejudicial to her stated wish to remain resident in those premises (see page T76). The appointee's solicitors may well be correct in contending that an application to the Court of Protection is a necessary first step in the disposal of the claimant's interest, but it does not follow that every application to the Court has such a disposal in view."

6. Manifestly, there has been no action which could properly be regarded as an unequivocal "reasonable step" in disposing of the property. There may be such a step sometime in the future, depending upon the outcome of the application for the appointment of the receiver. Moreover, the appointee himself might at some time take steps to dispose of the property, although if the ex-wife resists, doubtless he will encounter difficult hurdles. But nothing of this sort has so far happened. For completeness, I should mention that I have considered the further observations made by the claimant's representative dated 28 October 1992, but they take the matter no further.

7. Accordingly, I am satisfied that the tribunal reached the only decision they could do on the facts before them, and that they did not err in point of law.

8. I dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 1 September 1993

