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CAS

JMH/SH/2

Commissioner's File: CIS/629/1992

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. My decision is that the decision of the social security appeal tribunal dated 2 February 1992 is erroneous in law and, in accordance with section 101(5) Social Security Act 1975, I set that order aside and decide that as from 12 August 1991 the claimant is entitled to income support at a weekly rate of £112.48.

2. This is an appeal by the adjudication officer with the leave of the chairman against the unanimous decision of an appeal tribunal to allow the appeal in that the claimant's income support is to take into account the interest payable on a loan in respect of the double glazing at 1 St Andrew's Close as well as insurance on that property. The sum which is apparently payable under that mortgage is £9 per week.

3. The facts are sufficiently set out in box 2 of the record of the tribunal.

4. The sole question is whether the payment in respect of the loan of £3,500 taken out by the claimant from the Bradford and Bingley Building Society in order to repair the windows, to double glaze them and in respect of insurance (amounting, as I have said, to £9 per week) can be regarded as a repair or improvement qualifying for relief under Paragraph 8(1) if Schedule 3 to the Income Support (General) Regulations 1987, S.I. 1987/No. 1967.

5. When the loan was taken out 1 St Andrew's Close was indisputably "the dwelling occupied as the home" of the claimant.

In November 1990, the claimant and his wife left 1 St Andrew's Close and moved to Crichel Cottage. It is not disputed that income support is payable in respect of a bridging loan taken out to enable the purchase of Crichel Cottage. Unfortunately they have not been able to sell 1 St Andrew's Close and continue to be liable under the Bradford and Bingley Mortgage.

6. Paragraph 8(1) of Schedule 3 provides:-

"There shall be met under this paragraph an amount in respect of interest payable on a loan which is taken out with or without security for the purpose of, -

(a) carrying out repairs or improvements to the dwelling occupied as the home ...

and which is used for that purpose ..."

The money was so used. The question with which I am faced is:-

"Does the regulation relate just to the dwelling occupied as the home at the time the mortgage was taken out, irrespective of whether the claimant is still dwelling there, as the tribunal found: or, as the adjudication officer submits, the provision relates only to the dwelling for the time being occupied by the claimant.

7. In support of his admission, the adjudication officer first relies on paragraph 2 of Schedule 3. So far as is relevant that provides as follows:-

"Subject to the following provisions of this Schedule, the housing costs referred to in paragraph 1 shall be met where the claimant ... is treated as responsible for the expenditure to which that cost relates in respect of the dwelling occupied as the home ..."

It seems to me that that clearly relates to the costs in respect of the dwelling for the time being occupied by him.

Furthermore paragraph 4(6) expressly deals with the situation in this case where the claimant has moved and has not sold the house he formerly occupied. That provides:-

" (6) Where a person is liable to make payments in respect of 2 (but not more than 2) dwellings he shall be treated as occupying both dwellings as his home only -

... (c) in the case where a person has moved into a new dwelling occupied as the home ... for a period not exceeding 4 benefit weeks if his liability to make payment in respect of 2 dwellings is unavoidable."

Clearly the payment in respect of a loan
of 1 St Andrew's Close does not qualify as an
allowable payment under this paragraph.

8. Therefore in the exercise of my jurisdiction my decision is
as set out in paragraph 1 above.

(Signed) J.M. Henty
Deputy Commissioner

(Date) 11 May 1993

