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Commissioner's File: CIS/685/1992

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: -----

[ORAL HEARING]

1. I allow the adjudication officer's appeal against the decision of the social security appeal tribunal dated 27 April 1992 as that decision is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions of this decision, to an entirely differently constituted social security appeal tribunal: Social Security Act 1992, section 23.

2. This is an appeal by the adjudication officer from the unanimous decision of a social security appeal tribunal dated 27 April 1992, which allowed the appeal of the claimant (a married man born on 23 June 1941) from a decision of the local adjudication officer as follows,

"[The claimant] is not entitled to Income Support because he possesses capital in excess of £8,000."

The capital in question was in fact £30,000 approximately from the proceeds of sale of the claimant's home.

3. At the claimant's request the appeal was the subject of an oral hearing which was scheduled to take place before me on 20 May 1993. At that hearing the claimant was present but no one appeared on behalf of the adjudication officer despite the fact that it was the adjudication officer's appeal. I caused enquiries to be made and it appeared that the adjudication officer or those representing him had overlooked the date and

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time of the hearing. This was a most regrettable oversight. As a result I had to adjourn the hearing, first until later in the same day on 20 May 1993, when Mr L Scoon of the Office of the Solicitor to the Departments of Health and Social Security attended and asked for an adjournment. I am grateful to Mr. Scoon for attending at short notice. I indicated to him that I had given serious consideration in the circumstances to giving notice to strike out the adjudication officer's appeal under regulation 27(3) of the Social Security Commissioners Procedure Regulations 1987, S.I. 1987 No. 214 "for want of prosecution". Indeed the claimant asked me to take that course. However after hearing Mr Scoon I decided not to adopt that course in the present case and further adjourned the hearing until the next day i.e. 21 May 1993. The result of this was that the claimant (and his wife who attended with him), and the Commissioner experienced a considerable loss of time and in the claimant's case considerable anxiety. There was, moreover, an unnecessary additional expenditure of public money. I record these matters in order to indicate that there ought to be some 'fail-safe' system of checking in the case of appeals by adjudication officers that they attend or are represented at a hearing before the Commissioner. Any further failure to do so may well result in a striking out for want of prosecution.

4. At the adjourned hearing on 21 May 1993 the claimant was again present. The adjudication officer was represented by Mr M Jenking-Rees of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to the claimant and to Mr Jenking-Rees (who was in no way implicated in the failure to appear on the previous day) for their assistance to me at the hearing.

5. The adjudication officer's statement of facts to the tribunal was as follows,

"[The claimant] is a married man aged 50 years. He lives with his wife .. aged 49 years and their son .. aged 21 years. They have no dependants. [The claimant] last worked as self-employed ... until 4.11.91. On 27.11.91 [the claimant] registered unemployed and claimed Unemployment Benefit and Income Support for himself and his [wife]. He receives £65.95 per week, being unemployment benefit for himself and dependant's benefit for his wife as from 28.11.91. On his claim form for Income Support [the claimant] declared capital of £30,000. He stated that he had been unemployed for 6 months from February 1990. He was offered a job in Weston-Super-Mare, which he accepted. He therefore sold his home [in the Havant area] and started looking for another house to purchase. After 3 months he was made redundant. He could find no other job in that area, so moved back to Havant where he was offered a job with a previous employer. He started to look for another property, but could find nothing he liked. He was again made redundant. He feels he cannot obtain a further mortgage until he has found a job. The Adjudication Officer has decided that as [the claimant] is not actively seeking

to purchase a house then the £30,000 plus accrued interest is available capital and therefore [there] is no entitlement to income support. [The claimant] has appealed against this decision and states that the capital has been put aside for the purchase of another property some time in the future."

6. The social security appeal tribunal in box 2 of their record of decision (on Form AT3) "Findings of tribunal on questions of fact material to the decision" have simply entered "As Box 1." Box 1 of Form AT3 is in fact for the recording of the "Chairman's note of evidence" and that particular box is completed in considerable detail. However, the omission to make findings of fact in box 2, headed "the relevant facts accepted from the evidence available" is undoubtedly an error of law. I cannot for example tell from the tribunal's record of decision which parts of the claimant's evidence and the submission of the presenting officer were accepted by the tribunal. For that reason I must set the tribunal's decision aside as being erroneous in law.

7. In their reasons for decision, the tribunal stated,

"Whilst [the claimant] has £8,000 + of savings and because prima facie he is disqualified from receiving Income Support we decided that this should be disregarded in accordance with Para 3 Schedule 10. His house was sold on 19 October 1990 and because the 26 weeks in para 3 of Schedule 10 of the Income Support (General) Regulations 1987 that [sic] he can hold the proceeds of sale for expired in about 19 April 1991. [sic]. By 20 December 1991 although the 6 months had passed [the claimant] was again unemployed. He is looking for a permanent job. He is pursuing a part-time course which hopefully will lead to a Social Work qualification. This will increase his chances of getting a permanent job. We accepted he was reluctant to take on a mortgage to buy a house until he got a job. We also accepted the one Building Society he had asked had said no mortgage because he was unemployed. We found that in the circumstances it was reasonable for the 26 weeks to be extended to give the Claimant a longer period to complete the purchase of a home."

8. As a result of that the tribunal's unanimous decision was, "His appeal is allowed. We find that as at 20 December 1991 he did not have in excess of £8,000 capital (as defined). He is therefore entitled to Income Support".

9. The adjudication officer appeals to the Commissioner on the ground that the tribunal's decision was inconsistent with a decision of Mr Commissioner Reith on file CIS/321/1990. That decision was not cited to the social security appeal tribunal although it had in fact been issued before the tribunal given its decision. That does not; however, alter the fact that the decision represents the learned Commissioner's view of the relevant law, as it always had been. The decision on file CIS/321/1990 was "starred" but I understand will not be reported.

10. The position as to whether a single Commissioner follows another's decision is stated in para 21 of a decision of a Tribunal of Commissioners in R(I) 12/75, as follows,

"A single Commissioner in the interests of comity and to secure certainty and avoid confusion on questions of legal principle normally follows the decisions of other single Commissioners ... it is recognised however that a slavish adherence to this could lead to the perpetuation of error and he is not bound to do so."

11. In his decision on file CIS/321/1990, the learned Commissioner contrasted the provisions of paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987 [S.I. 1987 No. 1967] and regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981, No. 1527], which I now set out.

Income Support (General) Regulations 1987

Schedule 10

Capital to be disregarded

.....

12. Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase."

"Supplementary Benefit Resources (Regulations) 1981

Capital resources to be disregarded

6. (1) In calculating a claimant's capital resources the following should be disregarded:-

.....

(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances."

13. In paragraph 7 of his decision on file CIS/321/1990, the learned Commissioner said of these provisions,

"In my view, however, the disregard provisions contained in paragraph 3 of Schedule 10 [to the Income Support (General) Regulations 1987] are much more strict. Paragraph 3 gives a claimant a period of 26 weeks to obtain premises for his occupation within these 26 weeks or such longer period as

is reasonable in the circumstances to enable him to complete the purchase of these premises. The present claimant never reached the stage of being found entitled to an extension of the period of 26 weeks."

The Commissioner came to the conclusion that had the supplementary benefit provision (see paragraph 11 above) applied to the facts of that case, there could have been a more general extension after the period of 26 weeks had expired than was possible under paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987. In this case the adjudication officer's appeal is on the basis that the tribunal erroneously considered that they had a general discretion to extend the 26 weeks period contrary to the stricter rule applicable under the Income Support regulation.

14. At the hearing before me, Mr Jenking-Rees submitted that under paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987 there must be an intention to 'occupy new premises formed by the claimant within the initial 26 week period and by the end of that period there must have been an intention to occupy specific premises. If there was then no such intention, the disregard could not apply. He also submitted that the extension for "such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase" was not available at all if the relevant intention had not been formed within the initial 26 weeks period.

15. I do not accept Mr Jenking-Rees' contentions. In my judgment an examination of regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 and paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987 shows that there is no substantial difference between the two. The additions in the Income Support regulation possibly stem from the fact that when regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 referred to "any sum attributable to the proceeds of sale of the home" that was logically inaccurate since if the "home" had already been sold it was no longer the claimant's "home". For that reason in the corresponding Income Support regulation (paragraph 3 of Schedule 10 to the 1987 Regulations) the words used are "any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home". Paragraph 3 of Schedule 10 to the 1987 Regulations then goes on to describe such sum as to be "used for the purchase of other premises intended for such occupation" i.e. occupation as the home. Then paragraph 3 of Schedule 10 continues "... within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase". All of that phrase refers back to the meaning of "the purchase" as being "the purchase of other premises intended for such occupation" i.e. the "26 weeks" refers not to the intention to occupy but to the purchase. It follows that the logical construction of paragraph 3 of Schedule 10 is as follows. For 26 weeks from the date of sale the claimant has an absolute right to a disregard of the proceeds of sale of a former home which are to be used to

purchase another home. If the proceeds have not been so used at the expiry of the 26 weeks then the adjudication officer (and of course the tribunal) have a general discretion to allow a longer period for the finding of another home and the completion of its purchase, i.e. the actual obtaining occupation of it and transfer of the title to it. That as I understand it was always the position under regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981. In my judgment the position is no different under paragraph 3 of Schedule 10 of the 1987 Regulations. It follows that I must respectfully dissent from the Commissioner's decision on file CIS/321/1990 which did appear to have rather special facts.

16. It follows that I must remit this case to an entirely differently constituted tribunal for them to make a detailed investigation into the facts. I mention this because at the hearing before me the claimant gave rather more evidence than appears to have been recorded by the original tribunal and the new tribunal will need to look carefully into these matters. In my judgment the whole problem here turns on the meaning of the words "as is reasonable in the circumstances" and that is the matter that the new tribunal will need to ascertain. My direction in law is that there is no necessity under paragraph 3 of Schedule 10 to the 1987 Regulations for the claimant actually to have formed an intention to buy specific premises within the 26 weeks period. Consideration must be given to the kind of circumstances that occurred here where the claimant was bona fide seeking other employment and had the misfortune to lose it very shortly after obtaining it. It cannot, however, be the law that an indefinite holding on to the proceeds of sale of a home with a mere hope or aspiration that the proceeds of sale may be used at some future date for another home renders such proceeds of sale subject to the disregard. Within those parameters the new tribunal has a complete discretion, in my view, to arrive at what conclusion it considers right on the facts of this case. My having allowed the appeal on the point of law as to the original tribunal's findings of fact is no indication of any view by me one way or the other on what the new tribunal's decision should be.

17. Lastly I would ask, because the claimant has been under considerable hardship in this case and his favourable decision from the earlier tribunal has been the subject of appeal by the adjudication officer, that the tribunal authorities would re-schedule the rehearing directed by this decision, at the earliest possible date. The claimant's benefit has been suspended during the duration of the adjudication officer's appeal. An issue was raised before me as to whether it had been correctly suspended but, under regulation 37 of the Social Security (Claims and Payments) Regulations 1987, that is ultimately a matter for the

Secretary of State. I understood from Mr Jenking-Rees that that matter was being actively investigated by the Secretary of State and that I would be informed of the result of the investigation in due course.

(Signed) M.J. Goodman
Commissioner

(Date) 2 July 1993

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