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RJCA/SH/LB/1W

Commissioner's File:

CIS/8203/95

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS 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. The decision of the social security appeal tribunal dated 2 May 1995 is erroneous in law. I set that decision aside and, in exercise of the power conferred on me by section 23(7)(a)(ii) of the Social Security Administration Act 1992 I give my own decision which is:-

"The value of the building plot owned by the claimant near Tain is, by virtue of regulation 46(2) of the Income Support (General) Regulations 1987 as read with paragraph 2 of Schedule 10 to those Regulations, to be disregarded as capital for the purposes of adjudicating upon the claimant's application of 16 September 1994 for income support."

2. The claimant appeals, with the leave of a Social Security Commissioner, against the tribunal's decision confirming an adjudication officer's decision that the claimant is not entitled to income support from 16 September 1994 because he has capital in excess of £8,000.

3. The record of the tribunal's decision includes the following findings in fact:-

"[The claimant] is single, 29 years old, and at the date of claim shared privately rented accommodation. He claimed income support on 16 September 1994 having been self-employed until 9 September 1994 as a plumber and heating engineer. On his claim form [the claimant] disclosed he owned land in Scotland but had no income and savings of less than £2,500. The property was known as [..... Tain].

On 22 September 1994 [the claimant] was asked for further details about his Scottish property. He replied that the land was not mortgaged nor up for sale. On 14 November 1994 [the claimant] was asked the value of the plot and the amount paid for it. He replied he purchased the land in September 1993 for £12,500. The plot in Scotland has outline planning permission. It is valued at £11,250 for Income Support purposes."

The tribunal's reasons for its decisions are recorded as being:-

"It has been argued on the appellant's behalf that the land in Scotland should be regarded as "premises" within both para 2 and para 28 of the Schedule 10 of the Income Support (General) Regulations and that to so regard it would mean the value of the land should be disregarded under those paragraphs for 26 weeks or such longer period as is reasonable under the particular provisions of each paragraph.

"Premises" is not defined in the Income Support (General) Regulations as far as we can ascertain. We do not accept however that "premises" within the above paragraphs can be construed to include a building plot with outline planning permission. We note in both paragraphs premises is referred to as premises the claimant intends to occupy as his home. In our view "premises" must for the purposes of paras 2 and 28 above mean a building or structure that is habitable or can be more habitable within the 26 weeks mentioned in the paragraphs or such other period as is reasonable in the circumstances. The word cannot be stretched to include a building plot with outline planning permission. We do not therefore accept that the value of the building plot near Tain can be disregarded under Schedule 10 above. We find the Adjudication [Officer] valued the plot at £11,250 under regulation 49 of the Income Support (General) Regulations. (In any case it was agreed on [the claimant's] behalf that the land was worth more than £8,000.) We do not accept that [the claimant] should have been given the opportunity to put the land on the market. It is clear from his answers to the enquiry about the land made on 22 September 1994 and 14 November 1994 it was not his intention to sell the property.

As we agree with the adjudication officer's valuation of the ground and reject the contention that the value should be disregarded we have upheld the decision that [the claimant] is not entitled to Income Support under section 134(1) of the Social Security Contributions and Benefits Act 1992 because he has capital in excess of £8,000.

Had we allowed the appeal we would have had to consider whether [the claimant's] self-employment would necessitate us having to ask for his accounts or details of his earnings so as to allow us to decide whether he had "earnings" that should be taken into account for income support purposes. We should also have had to make a decision as to whether he had ceased trading. Because of our decision to uphold the adjudication officer's decision we have decided that it is not necessary for us to investigate this."

4. The claimant's appeal against the tribunal's decision is on the grounds that the tribunal has misinterpreted the words "premises" in paragraphs 2 and 28 of Schedule 10 of the Income Support (General) Regulations. Other grounds of appeal were stated but I need not go into those because the case turns on that question of interpretation. The adjudication officer now concerned submitted that the tribunal had not erred in its interpretation of paragraphs 2 and 28 of the Schedule and that "premises" as used in those paragraphs could not include mere land on which there was no building which could be occupied as a dwelling house.

5. Schedule 10 is a list of the forms of capital which are to be disregarded in assessing a claimant's entitlement to income support. Paragraphs 2 and 28 are in the following terms:-

"2. Any premises acquired for occupation by the claimant which he intends to occupy as his home within 26 weeks of the date of acquisition or such longer period as is reasonable in the circumstances to enable the claimant to obtain possession and commence occupation of the premises."

and

"28. Any premises which the claimant intends to occupy as his home to which essential repairs or alterations are required in order to render them fit for such occupation, for a period of 26 weeks from the date on which the claimant first takes steps to effect those repairs or alterations, or such longer period as is reasonable in the circumstances to enable those repairs or alterations to be carried out and the claimant to commence occupation of the premises."

6. I heard the claimant's appeal on 19 June 1996. The claimant was not present because he was working abroad. He was represented by his father, Councillor H. The adjudication officer was represented by Mrs S. Rabas of the Office of the Solicitor to the Department of Social Security. I am obliged to them both for their assistance.

construction work has reached the stage of the house being habitable. If one takes the spring as starting in March the period of 26 weeks specified in paragraph 2 would expire at the end of September 1993 but I have no difficulty in deciding that in the case of a claimant who is building his own home the discretion to extend the 26 weeks period should be exercised and that it is reasonable for the extended period to be such period as throughout which the claimant is taking such steps as are necessary to make such progress with the building work as is, in his circumstances reasonable. Given the time that it takes to formulate building plans and obtain planning permission, the fact that the claimant's financial resources are sufficiently modest for him to have needed on more than one occasion to apply for income support and given that the building work has to be done between spells of work, I consider that the extended period under paragraph 2 overlaps the 3 or 4 weeks period during which the income support claim of 16 September 1994 was a current claim. For the purposes of that claim, therefore, the building plot was a capital asset which fell to be disregarded for the purposes of assessing entitlement to benefit.

11. Mrs Rabas made it clear that she did not resile from the adjudication officer's submission as to paragraph 28 of Schedule 10. Councillor H argued that the building plot could come into the paragraph 28 definition because virtually anything, a "bender" or a wooden shack, for example, could be the subject of repairs and alterations to render it fit for occupation. I agree with Mrs Rabas and the adjudication officer that for paragraph 28 to apply there has to be something which can be the subject of repairs and alterations. A bare building site would not be rendered habitable by anything which could be described as a process of repairs and alterations. However, in view of my decision on the paragraph 2 question, consideration of paragraph 28 is academic.

12. For the foregoing reasons the claimant's appeal succeeds and my decision is in paragraph 1 above.

(Signed) R J C ANGUS  
Commissioner

(Date) 5 AUG 1996