

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons set out below, the decision of the social security appeal tribunal given on 25 October 1988 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 25 October 1988. A Commissioner directed an oral hearing, and at that hearing the claimant, who was present, was represented by Mr N Dyson of the Citizens Advice Bureau at Halifax, West Yorkshire, whilst the adjudication officer appeared by Mr P M Stevens of the Chief Adjudication Officer's Office. I should say that the claimant herself also addressed me.
3. The facts of this case are straightforward, and as far as I am aware, not in dispute. In October 1982 the claimant was separated from her partner Mr R, by whom she had a son called Tom. She received from Mr R, by way of maintenance in respect of Tom, the sum of £11 per week under a Court Order. Originally, she lived in a house at South Milford owned by her jointly with Mr R, the mortgage payments relating to which were met, approximately equally, by herself and her former partner. In November 1985 she and Tom moved to Luddenden near Halifax, on 12 November 1986 she received a payment of £5,465 (less solicitor's costs etc) for her share in the South Milford house. On 24 April 1987 her solicitors received from Mr R a payment of £5,000 in consideration of her agreeing to forego all future payments under the affiliation order made in respect of Tom and

approximately 299 or outstanding arrears. She invested these two sums in the purchase of a new home. On 1 June 1987 she consented to the discharge of the affiliation order by the Selby Justices. On 5 April 1988 she claimed income support as from 11 April 1988. On 26 May 1988 the adjudication officer decided that there was no entitlement to benefit because the claimant's income exceeded her weekly applicable amount.

4. In due course, the claimant appealed to the tribunal, who in the event upheld the adjudication officer. They gave as the reasons for their decision the following:-

"Regulation 40 sets out method of calculation other than earnings. Regulation 54 in defining 'periodical payments' brings any payment representing a commutation of payments made at regular intervals in pursuance of a Court Order within that definition.

Regulation 58(4) brings a weekly payment (so commuted in this case £11 per week) to the weekly calculation.

Mr R was a 'liable relative' under regulation 54(b)."

5. In regulation 54 of the Income Support (General) Regulations 1987 a "payment" is defined as meaning

"a periodical payment or any other payment made or derived from a liable relative; but does not include any payment -

(h) which is not a periodical payment, to the extent that any amount of that payment -

(i)

(ii)

(iii) at the time the determination is made, has been used by the claimant except where he has deprived himself of that amount for the purpose of securing entitlement to income support or increasing the amount of benefit."

6. In that same regulation "periodical payment" is defined as meaning:-

(a) a payment which is made or is due to be made at regular intervals in pursuance of a Court Order or agreement for maintenance;

(b) in a case where the liable relative has established a pattern of making payments at regular intervals, any such payment;

(c)

(d) any payment representing a commutation of payments to which sub-paragraphs (a) or (b) of this definition applies whether made in arrears or in advance.

...."

Mr Dyson contended, and he was supported in his submissions by the oral observations of the claimant herself, that the £5,000 received from Mr R did not constitute a "payment" within the Income Support (General) Regulations. For it was not a periodical payment, and at the time her claim was determined, it had been used up - it had been applied in purchasing her home - and she had not deprived herself of that sum for the purposes of securing entitlement to income support or increasing the amount of that benefit. Indeed, the money had been applied a year or so prior to her making her claim. However, in my judgment, it was not open to the claimant to rely on paragraph (h)(iii) because she was unable to satisfy the opening condition, namely that it was not a "periodical payment". For "periodical payment" covers under paragraph (d) of the definition of that term "any payment representing a commutation of payments to which sub-paragraphs (a) or (b) of this definition applies". However, Mr Dyson on behalf of the claimant refused to accept that the £5,000 represented a commutation of the claimant's entitlement to maintenance for Tom under the Court Order.

8. I found Mr Dyson's argument - and it was repeated by the claimant herself - somewhat difficult to follow. It seemed to proceed on the basis that the sum of £5,000 was fixed by reference to what Mr R could afford and to what was necessary to enable the claimant to purchase the new home. Although simultaneously the Court Order was revoked, so that there was no further liability on Mr R to make the payments of £11 a week, this was not to be linked with the payment of £5,000. There was therefore no commutation; there was no exchange of an entitlement to a fixed sum per week for a lump sum. There were merely two independent and unconnected events. Such an interpretation of the facts - and I would emphasise the facts as set out above were not challenged - is artificial in the extreme, and wholly unacceptable. This was a straightforward case of the claimant's wanting a lump sum - for the perfectly laudable purpose of buying a house - and being prepared to forfeit her entitlement to £11 a week under the maintenance order if Mr R would pay that sum. The parties agreed that £5,000 was an appropriate quid pro quo for the release of Mr R from the Court Order. In other words, they agreed to commute the income payment for a capital sum. The transaction falls exactly within sub-paragraph (d) of the definition of "periodical payment". It follows, of course, that as the payment of £5,000 was a periodical payment, the claimant could derive no advantage from sub-paragraph (h) of the definition of "payment".

9. Regulation 58(4) of the General Regulations provides as follows:-

" 58. (4) Where a payment is made and that payment

whether in arrears or in advance, the weekly amount shall be the weekly amount of the individual periodical payment so commuted, as calculated under paragraphs (i) to (iii) as is appropriate."

Paragraphs (1) to (3) read as follows:-

- " 58 (1) Where a periodical payment is made or is due to be made at intervals of one week, the weekly amount shall be the amount of that payment.
- (2) Where a periodical payment is made or is due to be made at intervals greater than one week and those intervals are monthly, the weekly amount shall be determined by multiplying the amount of payment by 12 and dividing the product by 52.
- (3) Where a periodical payment is made or is due to be made at intervals and those intervals are neither weekly nor monthly, the weekly amount shall be determined by dividing the payment by the number equal to the number of weeks (including any part of a week) in that interval."

As, for the reasons already given, the payment of £5,000 represented a commutation of periodical payments, the weekly amount in the present instance will be £11.

10. Moreover, the weekly payments of £11 will, by virtue of regulation 56(1)(b), continue for 454 weeks from 24 April 1987. For that regulation reads as follows,

- " 56. - (1) The period over which a periodical payment is to be taken into account shall be -

(a)

(b) in a case where the payment is due to be made at regular intervals but is not so made, such number of weeks as is equal to the number (any fraction shall be treated as a corresponding fraction of a week) obtained by dividing the amount of that payment by the weekly amount of that periodical payment as calculated in accordance with regulation 58(4) (calculation of the weekly amount of a liable relative payment)."

11. It is not in dispute that, if the claimant was to be treated as being in receipt of £11 a week from Mr R as a liable relative, at the date of claim her income exceeded her weekly applicable

amount, and there was no entitlement to income support.

12. For completeness, I should mention that the claimant herself mounted before me two further arguments in support of the contention that the relevant transaction should not be regarded as a commutation within the relevant provisions of the General Regulations. First, she said that the word "commutation" envisaged the case where the person responsible for making periodical payments pays a sum in advance, or for that matter in arrears, covering several weeks. It did not envisage a change in character from a periodical sum to a lump sum. I reject that submission. The very word "commutation" implies a change in character. The Collins Dictionary of the English language gives the definition "a substitution or exchange, the replacement of one method of payment by another", whilst the Shorter Oxford English Dictionary gives the definition "the action or process of changing or altering..... the substitution of one kind of payment for another". Manifestly, what was contemplated by the term "commutation" was a change in nature of the kind that took place in this instance.

13. The second point relied upon by the claimant was that if the transaction into which she had entered was a "commutation", with a result that she was caught by regulation 58(4), it operated unfairly. At the time she agreed to receive £5,000 and give up her right to maintenance in respect of Tom, she was not in receipt of benefit, and did not realise that, if at any time in the future she did seek income support, or, for that matter, its predecessor supplementary benefit, she would be prejudiced. In other words, she had unwittingly brought herself, when she did come to claim benefit, £11 a week below what was generally regarded as merely a subsistence level. This was so manifestly unjust that, in her submission, the word "computation" should not bear the meaning suggested by the adjudication officer and the tribunal. I reject that submission.

14. First of all, it should be remembered that the transaction is not all loss to the claimant. She has been able by the commutation to acquire a house with a capital value which will, of course, be reflected in the proceeds of its eventual sale. I am aware, needless to say, that this is no comfort so far as immediate income resources are concerned. But against that, because the claimant did apply the capital sum in the way she did and at a time when, to put it no higher, the possibility of claiming income support in the near future might reasonably be envisaged, it would at least be open to argument that she had deprived herself of that sum "for the purposes of securing entitlement to income support or increasing the amount of that benefit", with the result that she would have derived no advantage from sub-paragraph (h)(iii) of the definition of "payment" in regulation 54. But, be that as it may, I, as indeed have the adjudication officer and the tribunal, have to apply the regulations as enacted by Parliament. If they are thought to operate unfairly, it is for the legislature, and the legislature alone to make any necessary amendments. The adjudicating authorities have no power to waive or modify the statutory

provisions.

15. I have considered whether I should, following the written submission of the adjudication officer now concerned, set aside the tribunal's decision on the ground that they have given inadequate reasons for their decision, and therefore were in breach of regulation 25(2)(b) of the Adjudication Regulations. It is unfortunate that the tribunal made a reference to regulation 40 which manifestly, by virtue of the provisions of regulation 25, has no application. However, on balance I do not think the claimant was misled, nor was there any complaint made before me on that score. The reasons given by the tribunal are short, but in my judgment adequate to explain the position. Had I thought otherwise, I would not have remitted the matter to a new tribunal for rehearing. I would have substituted my own decision which would have been that the claimant was not entitled to income support from 11 April 1988, and my reasoning would have been as set out above. I see no point in having unnecessary hearings before the appeal tribunal.

16. Accordingly, I dismiss this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 8 February 1991