

Heuristic Case - President's Council Fee  
Payment - § 3(1)(b) Sec. 7

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Commissioner's File: CIS/014/1993

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

1. I allow the claimant's appeal (to the limited extent indicated below) against the decision of the social security appeal tribunal dated 25 September 1992 as that decision is erroneous in law and I set it aside. My decision is that, in calculating the housing costs of the claimant for Income Support purposes, no amount can be included in respect of interest payments in regard to the acquisition of a central heating boiler and a gas cooker for the claimant's home: Social Security Administration Act 1992; Income Support (General) Regulations 1987, S.I. 1987 No. 1967, regulations 17 and 18 and Schedule 3.

2. This is an appeal by the claimant, a widow aged 71 at the relevant time, living with her daughter in an owner-occupied property being purchased jointly by the claimant and her daughter with the aid of a mortgage. The present appeal is against the unanimous decision of a social security appeal tribunal dated 25 September 1992 which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 12 June 1992 in the following terms,

"The claimant is not entitled to housing costs in respect of the central heating boiler and [gas] cooker. This is because the hire purchase agreements are in her daughter's name."

3. I have set the tribunal's decision aside as being erroneous in law only because I accept the concurring submissions of the claimant's representative and the representative of the adjudication officer now concerned to the effect that the

tribunal did not consider sub-paragraph (b) of paragraph 3(1) of Schedule 3 to the Income Support (General) Regulations 1987. That may have been because the question was not fully argued before the tribunal or it may have been because the tribunal considered it to be self evident that sub-paragraph (b) did not apply. Whichever it was, however, I accept the contention that the tribunal erred in law in this omission, though in all other respects it is clear that the tribunal took considerable care with the case and their decision (on form AT3) was completed in exemplary detail.

4. The appeal was the subject of an oral hearing before me on 13 April 1994 at which the claimant was represented by Ms R Walker and the adjudication officer was represented by Ms Churaman of the Office of the Solicitor to the Departments of Health and Social Security. I am greatly indebted to Ms Walker and Ms Churaman for their assistance to me at the hearing and in subsequent written submissions. The claimant was not present but her daughter was present.

5. At the conclusion of the hearing on 13 April 1994, I issued a direction on the adjournment of the hearing to enable the parties to make written submissions as follows, (paragraph 1 of my direction),

".. on the following new points made on behalf of the claimant by Ms Walker at the hearing:-

(a) the potential application to the facts of this case of paragraph (3)(1)(b) of Schedule 3 to the Income Support (General) Regulations 1987, including the questions of (i) lack of heating in the home if boiler not paid for; (ii) the existence of the Court remedy of a Charging Order to enforce a judgment debt and (iii) the meaning of 'the person liable to meet those costs is not doing so' in the present context.

(b) The question whether the gas cooker can in law come within paragraph 8(3)(g) of Schedule 3 to the 1987 Regulations."

6. I have received subsequent written submissions from the parties on these issues and it has been agreed that I am to give a decision in this case without any further oral hearing. I now therefore proceed to do so.

7. The facts as found by the tribunal were as follows,

".. in the second half of 1990 a new gas boiler was purchased [for the home jointly occupied by the claimant and her daughter] for £1,300 by hire purchase arrangement in the daughter's name only and in July 1989 a new gas cooker was purchased on hire purchase, also in the daughter's name only. The claimant had said that the gas cooker and the boiler were purchased in the daughter's name

only because she herself was unable to obtain credit owing to her age."

8. The relevant hire purchase agreements have been produced as part of the papers on appeal and it is clear that they are in the daughter's name only. It is equally clear that I should say, in response to a point that was raised by me in the course of the proceedings, that the mother cannot assert that she is also legally liable on those agreements if for no other reason because of the restrictive provisions of the Consumer Credit Act 1974 requiring in effect signatures of parties sought to be made liable (See eg. sections 64, 65, 127 and 185 of the 1974 Act).

9. The case therefore has to proceed on the assumption that the only legal liability on the hire purchase agreements is that of the daughter whereas the claimant is of course the mother. There then arises the question whether nevertheless the claimant, the mother, can be treated as a "person .. to be treated as responsible for housing costs" under paragraph 3 of Schedule 3 to the Income Support (General) Regulations 1987. If I were to hold that the claimant was to be so treated (which in fact I do not hold) there would then arise a further question whether the gas cooker in any event was an eligible item under paragraph 8(3)(g) of Schedule 3 to the 1987 Regulations. However, as I have found against the claimant on the primary issue i.e. I find that she is not to be treated as responsible for the relevant expenditure I do not propose to decide the question about the gas cooker, as it does not in the circumstances arise.

10. Paragraph 3 of Schedule 3 to the 1987 Regulations headed, "Circumstances in which a person is to be treated as responsible for housing costs" reads as follows,

" 3. (1) A person is to be treated as responsible for the expenditure which relates to housing costs where

- (a) he or his partner is liable to meet those costs other than to a member of the same household;
- (b) because the person liable to meet those costs is not doing so, he has to meet those costs in order to continue to live in the dwelling occupied as the home and either he was formerly the partner of the person liable, or he is some other person whom it is reasonable to treat as liable to meet the cost;
- (c) he in practice shares those costs with other members of his household, other than close relatives of his or his partner, at least one of whom either is responsible under the preceding

provisions of this paragraph or has an equal equivalent responsibility for housing benefit expenditure and for which it is reasonable in the circumstances to treat him as sharing responsibility."

11. The factual position is that the daughter in fact makes the periodic payments in full for the central heating boiler and the gas cooker to the relevant owner (British Gas). Her mother then afterwards reimburses the daughter for the mother's agreed half share of the payments, by way of cash payments to the daughter. I should say at this point that it does not in my view matter exactly what are the mechanics of reimbursement to the daughter by the mother. However it is done, the question is whether or not the mother by making the payments to the daughter becomes a person "to be treated as responsible" for the relevant housing costs i.e interest charges on the two hire purchase agreements.

12. It is agreed, correctly, that the claimant cannot bring herself within either sub-paragraphs (a) or (c) of paragraph 3(1) of Schedule 3 to the 1987 Regulations. She cannot come within paragraph (a) because her only liability is to her daughter and of course her daughter living in the same house with her is "a member of the same household". The claimant cannot bring herself under paragraph (c) because although she in practice shares the costs with her daughter as the other members of her household, her daughter is a "close relative" and is thus excluded under paragraph (c) (see the definition of "close relative" in regulation 2(1) of the 1987 Regulations).

13. However Ms Walker on behalf of the claimant has put forward detailed oral and written submissions contending that the claimant can bring herself within sub-paragraph (b) of paragraph 3(1) of Schedule 3 to the 1987 Regulations. There have been detailed oral and written responses to the contrary on behalf of the adjudication officer, My conclusion is that the claimant cannot bring herself within sub-paragraph (b). It may well be that in the abstract she is "some other person whom it is reasonable to treat as liable to meet the cost" but she fails to come within sub-paragraph (b) because in my judgment it cannot be said of her that she "has to meet those costs in order to continue to live in the dwelling occupied as the home". In my view those words envisage only a situation where there is an immediate threat to continued occupation of the dwelling house, for example because a mortgagee has applied to the Court for possession of the home because of default in paying mortgage instalments. In my judgment anything less than an immediate threat will not suffice. Here it is asserted on behalf of the claimant that because there is the possibility of the creditor, i.e. British Gas, applying to the Court for a Charging Order on the dwelling under the Charging Orders Act 1979, that would mean that the claimant would have to meet the costs of the hire purchase agreements in order to avert what is certainly at present a theoretical possibility of a non-payment by the daughter (in fact she is paying - see below). It also depends

on British Gas electing to chose as one of its remedies for recovery of the debt an application to the court for a Charging Order on the house. In my view those matters are far too remote to be taken into account. Nor does it matter what is the practice of this particular lender or of lenders generally or what is the practice of the County Court in the claimant's district (I have been given detailed written submissions about these matters by the claimant's representative). In my judgment the only circumstance in which a charging order could be taken into account if it has actually been made by the court and is being enforced by an application for sale and possession of the property i.e. similar situation to that of the mortgage, which I deal with above.

14. In my view, paragraph (b) of paragraph 3(1) of Schedule 3 to the 1987 Regulations is very much an 'emergency' provision and cannot be invoked because of the possibility of future action which might result in a threat to the possession of the house by a claimant for income support. In so holding I have taken into account the analogy which the claimant's representative seeks to draw with the requirements of section 72 of the Social Security Contributions and Benefits Act 1992 for an award of the care component of disability living allowance and in particular the law as to what is meant by "continual supervision throughout the day in order to avoid substantial danger to himself or others". The comparison is made because it is suggested that there need not be an actual threat, to possession if it is clear that non-payment might well result in such a threat, just as the risk to a disabled person does not actually have to occur for there to be a need for preventive measures to be taken. This is an ingenious argument but frankly I do not think the so-called analogy can be accepted. The wording of sub-paragraph (b) is categorical i.e. the claimant "has to meet those costs in order to continue to live in the dwelling occupied as the home". That envisages a 'desperate' situation where it can be shown without doubt that there is an immediate threat to possession of the home.

15. It follows that I cannot accept the argument on behalf of the claimant that because the claimant (who is a comparatively elderly woman) could not continue to live in an unheated dwelling if the gas central heating boiler were not there, she could bring herself within sub-paragraph (b). All that is meant by "continue to live" in the dwelling is actually to have possession of the dwelling and not be evicted from it. It does not cover subsidiary matters such as whether or not the dwelling is adequately heated or has other factors making it fit for human habitation. I am not taking a draconian view of the claimant's needs as an elderly lady but merely interpreting what in my view is the undoubted meaning of the words "continue to live" in sub-paragraph (b).

16. It follows that although I have allowed the claimant's appeal on the ground of want of consideration of this particular point by the tribunal, my decision is the same as that of the tribunal and in substance therefore the claimant's appeal has to

be dismissed. A further point has arisen in these proceedings before the Commissioner as to the fact that housing costs had been previously allowed to the claimant in relation to the acquisition on credit of a shower, kitchen units and a refrigerator. Continued entitlement to those costs has been called in question because of the problem whether the claimant could, in regard to the arrangements made for those items, show that she was responsible for housing costs related to them under paragraph 3 of Schedule 3 to the 1987 Regulations. In my view I should not deal with those matters. They should go through the normal process of adjudication, appeal etc. It may be that what I have said about the general interpretation of paragraph 3(1)(b) will assist those involved in such adjudication but I do not consider this a proper case for me to rule on those matters, under section 36(1) of the Social Security Administration Act 1992. In any event. I believe that an adjudication officer has already made a decision relating to them.

(Signed) M.J. Goodman  
Commissioner  
(Date) 3 October 1994