

National Resources - appropriation of
proceeds of sale of house to repay debts NACAB JM

RFMH/SH/24

Commissioner's File: CIS/24/1988

Region: North Eastern

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. My decision is that the decision of a social security appeal tribunal given on 3 October 1988 is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal, who will have regard to the matters referred to below.
2. This is the claimant's appeal against the unanimous decision of the social security appeal tribunal given on 3 October 1988, leave having been granted by the tribunal chairman. I granted the claimant's request for an oral hearing. At the hearing held before me, the claimant was represented by Mr P Lewis from the Cleveland Welfare Rights Service. The claimant attended and Miss Z Nazir acted as interpreter. The adjudication officer was represented by Mr D Tempest from the Chief Adjudication Officer's Office. I am grateful to them both for their helpful submissions.
3. In 1962 the claimant came to England from Pakistan. He was employed as a builder's labourer. In 1982 he was made redundant and received £5,000 as redundancy payment. He spent this sum in redeeming the outstanding mortgage on his house in Abingdon Road which amounted to approximately £700. The house comprised three bedrooms, two reception rooms, bathroom and toilet. He spent the balance of the payment on furniture. He lived there with his wife and three dependent children born in 1972, 1974 and 1976. He was not entitled to supplementary benefit for 26 weeks, because his capital exceeded the prescribed limit.
4. In March 1983 he was awarded supplementary benefit. At the end of 1984 he obtained a grant of £4,300 from the local borough council for the installation of a new roof, a damp course and windows. The builders carried out half the work but failed to finish all the scheduled work after the payment of the final instalment. The claimant claimed single payments for essential repairs and floor-coverings, but these claims were rejected.
5. In approximately 1986 he borrowed £3,000 from a friend ("MF"). No time limit was specified for the repayment of the debt. The claimant spent £2,000 on central heating. He

spent the balance in carpeting his house throughout. In August 1986 he decided to visit Pakistan as he believed the climate would be beneficial to his wife, who suffered from asthma.

6. The claimant's eldest son ("MY") was born in 1960. He was a market trader. He lived with his wife in a house in Breckonhill Road, near the claimant. The claimant borrowed a total of £6,500 from him to finance his visit to Pakistan. He left in October 1986 with his wife and two dependent children. The eldest dependent child stayed in England and lived in MY's household. While in Pakistan the claimant and his family lived with a friend. One dependent child returned to England on 13 January 1987 and on 19 April 1987 the claimant's wife and his other dependent child also returned to England. They stayed with MY and lived in his household. As a result the claimant's house in Abingdon Road remained empty. MY looked after it but following a break-in he allowed friends to occupy the house. They were responsible for all outgoings but paid no rent. The claimant sold them the house on 31 March 1988.

7. The claimant did not return to England. His father became ill and after seven months in hospital he died on 1 December 1987. The claimant remained there in mourning for 40 days. He was in financial difficulties. He borrowed £2,500 through a friend to pay for his father's private hospital expenses and for his return ticket to England. He returned on 22 March 1988. On 29 March 1985 he claimed supplementary benefit. He was then aged 58. He stated that he was living in his house at Abingdon Road. He was issued with a supplementary benefit/income support order book as a quarterly signer at the unemployment benefit office, which he cashed until 9 May 1988.

8. On 9 May 1988 he declared that he had sold his house at Abingdon Road on 7 May 1988 and received the sum of £13,800 from the sale. He gave his new address as Breckonhill Road, where he and his family were living as members of MY's household. He declared that he had nothing left out of the proceeds of sale, as he had used all the money to repay outstanding debts. He produced evidence of savings totalling £1,007.46 on 2 June 1988. He had withdrawn £800 savings in order to clear outstanding food bills. There was no evidence that all or any of the debts had to be repaid by April 1988, nor of any legal obligation or pressure to repay them at that time.

9. In the light of the evidence the adjudication officer on 14 June 1988 decided that the claimant was not entitled to income support from 10 May 1988 because he was treated as possessing capital which exceeded the prescribed amount of £6,000.

10. On 14 July 1988 a girocheque for £1,502.55 was sent to the claimant's wife in respect of supplementary benefit due for the period from 21 September 1987 to 22 March 1988 for herself and her three dependent children.

11. The claimant appealed against the adjudication officer's decision. The claimant and Mr Lewis attended the hearing of the appeal before the tribunal on 3 October 1988. Miss Nazir acted as interpreter. In the event the tribunal dismissed the appeal. After finding the relevant findings of fact the tribunal decided that the claimant was not entitled to income support from 10 May 1988. Their reasons for this decision read:-

"Because the claimant deprived himself of the sum of £13,500 for the purpose of securing benefit from the DHSS. The tribunal decided that the claimant had no capital apart from his dwelling house which was unmortgaged. He had borrowed £3,000 in 1986 to pay for repairs to that house. He had borrowed a further £6,500 from his son in 1986 to visit Pakistan with his family. He had no capital or means of repaying either the £3,000 or the £6,500, apart from raising money on his house or selling his house. Whilst in Pakistan the claimant had also borrowed an additional sum of £2,500. Again the claimant had no expectation of any capital sum to repay that money apart from the sale of his house. Claimant stated that he hoped to get a job on his return to

United Kingdom. The tribunal noted that the claimant had been in receipt of benefit since 1981 and did not accept that the claimant had any realistic expectations of obtaining a job out of which he could repay his debts on his return to the United Kingdom. The claimant also spoke to the tribunal through an interpreter. The tribunal did not accept that the claimant was unable to speak or understand English, he had been in England prior to 1981 and the tribunal in particular noted that on one occasion the claimant spoke in fluent English to his interpreter. The tribunal did not accept that the claimant was unaware of the rule that he would not receive benefit if he had a certain amount of capital."

12. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. Although the tribunal chairman completed the relevant form AT3 in detail and with care, the reasons for decision were inadequate so that there was a failure to comply with the statutory requirements. As a result the decision was erroneous in law. I should put on record that Mr Tempest supported the appeal on this ground.

13. Section 22(6) of the Social Security Act 1986 ("the Act") provides that no person shall be entitled to an income related benefit if his capital or a prescribed part of it exceeds the prescribed amount. Regulation 45 of the Income Support (General) Regulations 1987 provides that for the purpose of section 22(6) of the Act the prescribed amount is £6,000.

14. Under the heading "Notional Capital" regulation 51(1) of the General Regulations provides:

"51. (1) A claimant shall be treated as possessing capital of which he has himself for the purpose of securing entitlement to income support or increasing the amount of that benefit."

Regulation 46 of the General Regulations provides, so far as is relevant to the present appeal:-

"46. (1) For the purpose of Part II of the Act as it applies to income support, the capital of a claimant to be taken into account shall, subject to paragraph (2) be the whole of his capital calculated in accordance with this Part ..

(2) There shall be disregarded from the calculation of a claimant's capital under paragraph (1) any capital, where applicable, specified in Schedule 10."

Schedule 10 lists the capital to be disregarded for the purposes of regulation 46(2). Paragraph 1 lists "the dwelling occupied as the home ..".

15. The question at issue is whether the sum of £13,800, or any part of it, is caught by regulation 51(1) of the General Regulations. This is couched in similar terms to regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981, as amended which deals with "notional capital resources" for the purposes of supplementary benefit. Accordingly this regulation should follow the interpretation given to regulation 4(1) of the Resources Regulations. The adjudication officer and on appeal the tribunal concluded that the claimant had resources which fell to be calculated as capital under the provisions of regulation 51(1) of the General Regulations. As was pointed out in Decision R(SB) 38/85 (albeit for supplementary benefit purposes) three things have to be shown for this provision to be invoked:-

(1) that the claimant has deprived himself of a resource;

- (2) that he has done so for the purpose of securing supplementary benefit or increasing the amount of such benefit (income support in the present case)
- (3) that it is appropriate to exercise the discretionary power of treating the resources as still possessed by the claimant.

16. Once it is shown that a claimant did possess, or receive, a resource, the onus of proving on balance of probability that he no longer has the whole or part of the "notional" resource at the date of claiming benefit rests on the claimant, since it is for him to establish title to income support (R(SB) 38/85). If he cannot satisfactorily account for the way in which a resource which he says he no longer has was disposed of, the proper conclusion is that it remains a part of his actual resources, to be valued under regulation 49 of the General Regulations. Further, by virtue of regulation 7 of the Social Security (Claims and Payments) Regulations 1987, the burden falls on the claimant to provide such documents, information and evidence as may be required for determining the claim, failing which the adjudication officer is entitled to determine on such evidence as is available whether the claimant has established entitlement to income support (R(SB) 29/83).

17. The word "deprive" is an ordinary English word whose meaning is not a question of law. In Decision R(SB) 40/85 the Commissioner considered the meaning of the words for the purposes of "notional resources". At paragraph 8 he stated:-

".. in my judgment it does not change its meaning by reference to the consequences of deprivation. It is in my judgment perfectly proper for an adjudication officer or tribunal to conclude that a person has deprived himself of the resource if as the result of his own act he ceases to possess that resource whether or not he becomes possessed of some other resource in its place. He may thus be held to have deprived himself of a resource if he gives it away, if he uses it up in living frugally or prodigally, or to pay for a holiday or in any other manner that leaves no resource at the end of the day; .."

18. It is not in dispute that the net proceeds of sale of the claimant's house amounted to £13,800. A letter from the claimant's solicitors dated 31 March 1988 shows that completion of the sale took place and that he was sent a cheque for the proceeds of sale on that date. I understand the Department of Health and Social Security are investigating the claim in respect of the inclusive period from 29 March 1988 to 9 May 1988. As a result the period in issue is from 10 May 1988 to the date of the decision by the new tribunal. They should first consider whether the claimant deprived himself of the whole or any part of the sum of £13,800. In determining this issue the new tribunal should investigate the repayment of each debt incurred by the claimant and record findings of fact and reasons for decision in each instance. In considering the sum of £3,000 borrowed from MF, the claimant should be prepared to submit in evidence particulars of the loan and receipt. He should also be prepared to submit receipts for the payment of the installation of central heating and carpeting. The claimant should submit in evidence his bank statement from 31 March 1988 in support of MF's statement in his letter dated 13 April 1988 that "your cheque is cashed in my account on 13 April 1988". With regard to the loan of £6,500 from MY, the claimant stated that he was initially lent £4,000 and £2,500 a week later. Again, the claimant should submit evidence as to this loan and be ready to explain how he spent it bearing in mind that he was living with a friend in Pakistan and had to borrow more money for the return tickets. With regard to the further loan of £2,500 incurred while the claimant was in Pakistan, he should be prepared to supply receipts for the private hospital expenses incurred to justify the repayment on 27 April 1988 by Money Order of 81,100 Rupees. The tribunal failed to explain why the claimant should be treated as possessing £13,500 after hearing evidence that only £12,000 had been disposed of by repayment of debts. They failed to record in what way they decided the balance of £1,500 had been disposed of and the purpose of such disposal. They failed to explain why they considered he had deprived himself of £13,500 and not £13,800, being the whole of the proceeds of sale. In what way did they consider the claimant had not deprived himself of the balance of £300? The sum of £13,500 may of course

have been stated in error instead of £13,800.

19. The new tribunal should then consider the question of "notional resources" with regard to the balance of £1,800. The claimant contends that he withdrew £800 in order to clear outstanding food bills. He submitted a receipt dated 31 May 1988 from a butcher and general dealer for the sum of £658.79 in respect of food supplied from 2 May 1987 to 18 March 1988. Mr Lewis assured me that a further receipt for groceries was before the tribunal. No doubt a copy of this receipt can be obtained as it is no longer in the documentary evidence before me. The new tribunal should have regard to the giro cheque for £1,502.55 sent to the claimant's wife on 14 July 1988 which no doubt could have been used to discharge these debts. However this is a matter for the new tribunal having regard to all the evidence before them.

20. As stated, the claimant should be prepared to provide particulars of the amounts, dates and reasons for the debts incurred and produce some form of evidence that they were in fact repaid and used for the purposes specified. If the tribunal conclude that the claimant deprived himself of the whole or any part of the proceeds of sale, they should proceed to consider whether he did so "for the purpose of securing entitlement to income support or increasing the amount of that benefit." In order to ascertain the claimant's intentions the new tribunal should look at the dates of the various dispositions. No doubt the new tribunal will have regard to the fact that the claimant was not entitled to supplementary benefit following the receipt of a redundancy payment and was presumably aware of the conditions of entitlement. It cannot be over emphasised that the claimant need not deprive himself of the resource for the sole purpose of securing income support for increase in the amount of such benefit. In order to establish intent it is enough to show that the claimant was aware of the financial provisions and of the consequences of depleting his capital with regard to his entitlement to income support. Probably the new tribunal will only be able to reach a conclusion by inference, as there is unlikely to be direct evidence on the state of the claimant's mind at the time. However, they should indicate the facts on which they see such inferences.

21. Mr Lewis submitted that as the claimant's house in Abingdon Road fell to be disregarded under paragraph 1 of Schedule 10 to the General Regulations for the purposes of regulation 46(2), there was no purpose in the claimant selling this property other than to repay the debts incurred. The claimant was in receipt of supplementary benefit prior to leaving for Pakistan and such entitlement would have continued on his return to the United Kingdom if he had not sold the property. He submitted that there was no evidence to indicate that the claimant had sold the house "for the purpose of securing entitlement to income support or increasing the amount of that benefit." I see the force of this argument, however, having sold the house, the claimant then has to explain the disposal of such a large sum of money in such a very short space of time. Mr Lewis stated that all the claimant's transactions had been carried out verbally and there was very little documentary evidence in support. This may be so but it will be for the new tribunal to evaluate the claimant's evidence and determine the issue by reference to the available evidence.

22. If the new tribunal conclude that the claimant did deprive himself of any amount for either of the above purposes, they will have a discretion to hold that the amount is still possessed by the claimant. However they should make it clear why and upon what basis they exercise their discretion.

23. The claim for income support is a continuing claim and the new tribunal have to deal with the matter down to the date of decision. This the tribunal failed to do. The new tribunal should consider whether the claimant is precluded from income support on the grounds of excess capital from 10 May 1988 to the date of their decision. They should examine the position week by week in order to see whether the claimant's capital exceeded the prescribed limit. The claimant should be prepared to submit evidence of his expenditure during this period and the tribunal should also have regard to the application of "the diminishing capital principal" notional reductions in the amount of the claimant's capital by reference to the rate of income support payable to the claimant if his capital had not

exceeded the prescribed limit (R(SB) 15/85). If the new tribunal find that in any week the claimant's capital does exceed the prescribed limit then the claimant will be disentitled to income support for that week by virtue of section 22(6) of the Act. Conversely if in any week the claimant's capital does not exceed the prescribed limit, then he will be entitled to income support for that week.

24. I should add for completeness that on 18 August 1988 the claimant attended an interview in the office with a social fund officer for a crisis loan, but no payment was made to him.

25. Before leaving this case I wish to express my concern that the claimant incurred debts to finance transactions which far exceeded his financial limitations. They were not justified by the claimant saying that the amount of benefit in payment was insufficient.

26. Finally, as stated above, the claimant came to the United Kingdom in 1962. Having seen and observed him, I formed the impression that he understood the proceedings easily without the help of the interpreter. In this respect I agree with the comments of the tribunal.

27. The claimant's appeal is allowed and I give the decision set out in paragraph 1. I appreciate that the claimant is in receipt of no income and Mr Lewis told me he was incurring further debts in order to meet living expenses. In those circumstances no doubt arrangements will be made to expedite the hearing before the new tribunal.

*assertions about
character & moral
behaviour. This
seems to me to be
outside the scope
of a Commissioner's role.*

(Signed) R.F.M. Heggs
Commissioner

Date: 4 May 1989