

Requirements - restriction on housing costs -
fact that claimant was told by DSS that ^{her} high interest
would be paid was a relevant factor in considering

JJS/16/LM

whether it was reasonable to require her to move - see CIS/617/88 (now R(SB)14/89)

Commissioner's File: CIS/034/1989

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

Name:

Social Security Appeal Tribunal:

Case No: 1:0204741

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside. I refer the case for determination to a differently constituted social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is a claimant's appeal against the unanimous decision of the Bradford social security appeal tribunal, given on 10 January 1989, which dismissed his appeal against a decision of the adjudication officer which had imposed a restriction on meeting his housing costs, under Schedule 3 of the Income Support (General) Regulations 1987.

3. Regulation 17 of the Income Support (General) Regulations 1987 sets out the categories which go towards the total applicable amount which is to be set against the claimant's income in order to determine entitlement. Regulation 17(1)(e) provides that the amounts covering housing costs are to be determined in accordance with Schedule 3 to the Regulations. Paragraph 10 of that Schedule deals with the restriction on the amount of these housing costs, and I set out the sub-paragraphs of that paragraph which are material to this appeal:

"(3) Where the amounts to be met under paragraphs 7 to 9 and, subject to any deduction applicable under paragraph 11 are excessive, they shall be subject to restriction in accordance with sub-paragraphs (4) to (6).

(4) Subject to sub-paragraphs (5) and (6), the amounts to be met shall be regarded as excessive and shall be restricted and the excess not allowed, if and to the extent that -

- (a) the dwelling occupied as the home, excluding any part which is let [5...], is larger than is required by the claimant and his family and any child or young person to whom regulation 16(4) applies (foster children) and any other non-dependants having regard, in particular, to suitable alternative accommodation by a household of the same size; or
- (b) the immediate area in which the dwelling occupied as the home is located is more expensive than other areas in which suitable alternative accommodation exists; or
- (c) the outgoings of the dwelling occupied as the home in respect of which the amounts to be met under paragraphs 7 to 10 are higher

than the outgoings of suitable alternative accommodation in the area.

(5) Where, having regard to the relevant factors, it is not reasonable to expect the claimant and his family to seek alternative cheaper accommodation no restrictions shall be made under this paragraph.

(6) Where sub-paragraph (5) does not apply and the claimant (or other member of the family) was able to meet the financial commitments for the dwelling occupied as the home when these were entered into, no restriction shall be made under this paragraph during the first six months of any period of entitlement to income support nor during the next six months if and so long as the claimant uses his best endeavours to obtain cheaper accommodation.

(7) In this paragraph "the relevant factors" are -

- (a) the availability of suitable accommodation and the level of housing costs in the area; and
- (b) the circumstances of the family including in particular the age and state of health of its members, the employment prospects of the claimant and, where a change in accommodation is likely to result in a change of school, the effect on the education of any child or young person who is a member of his family, or any child or young person who is not treated as part of his family by virtue of regulation 16(4) (foster children)."

4. At the time of the claimant's appeal to the tribunal, he was aged 35 years. He had been receiving supplementary benefit and thereafter income support for two years at that time. He lived with a lady and they had one daughter, aged 6 years, who also lived with them. The claimant's partner and their daughter moved into 7 R Terrace (the dwelling home) on 1 April 1988. This property had been purchased on 30 March 1988 with a loan obtained from Bradford Investments PLC. The interest rate on the money secured was 25 $\frac{1}{4}$ % per annum. It is not in dispute that both the house and the area in which it is situated is suitable for the family. The claimant moved into the dwelling home on 25 October 1988. On 7 December 1988 the adjudication officer decided to restrict the amount paid as mortgage interest to £27.95 a week, the actual mortgage interest payable at that time amounted to £55.55 per week. The adjudication officer regarded the interest as excessive, and he considered it reasonable to expect the claimant and his family to obtain alternative cheaper accommodation.

5. The claimant appealed against that decision on the grounds that he had been unable to obtain a mortgage from a recognised building society, despite making many efforts to do so. He maintained that payment of the full amount of mortgage interest could be made. He was represented by Mr Chris Hyland of the Bradford Employment Initiatives Division of the City of Bradford Metropolitan Council. Mr Hyland has, also, prepared a helpful written argument in support of the claimant's appeal to the Commissioner. Evidence was led before the tribunal. The members found as fact that the claimant's partner was advised by the Department of Social Security, when she moved into the dwelling home, that her high interest rate to the Bradford Investments would be covered by income support. They further found that it was on this basis that she accepted the loan and moved into the house. They expressed the opinion that this advice was unfortunate because, although the full interest rate was paid for six months, it was later disallowed. The tribunal found that the interest rate of 25 $\frac{1}{4}$ % was excessive and held that the adjudication officer was correct in restricting the claimant's housing costs. They pointed out that it was not in dispute that both the dwelling home and the area in which it was situated was suitable for the family. There was however another house advertised for rent at the same postal district for £25.00 per week. The tribunal regarded this as the same area. They further noted that if the claimant's loan

had been at a normal building society rate the repayments would have been £27.00 per week. They expressed regret that the decision to restrict housing costs might result in a forced move by the claimant's family following the review of an earlier decision and of advice given to them. They expressed the hope that this might be prevented by the claimant finally being successful in obtaining employment.

6. Mr Hyland, in his written argument to the Commissioner, says that it was necessary for the tribunal to be satisfied on three factors, first the cost must be excessive, second there must be suitable alternative accommodation available in the area and third the move must be reasonable. He points to the wrong advice given by the Department of Social Security, which resulted in the claimant incurring expense in acquiring and furnishing the dwelling, and says that it would be unreasonable to expect him to lose the money invested. The adjudication officer now concerned supports the claimant's appeal.

7. It is accepted by the adjudication officer now concerned that the sets of circumstances, in which restriction can be applied, provided for by paragraph 10(4)(a) and (b) were regarded by the tribunal as not applicable to the claimant, and that they decided the case on the provisions of regulation 10(4)(c). Mr Hyland does not challenge the findings of the tribunal that the outgoings of the dwelling are higher than the outgoings of suitable alternative accommodation in the area. Both representatives refer to the need for the tribunal to decide whether it is reasonable, having regard to the relevant factors as defined in paragraph 10(7), to expect a claimant and his family to seek cheaper accommodation. It is submitted that only one of the relevant factors therein provided appears to have been considered, namely the availability of suitable accommodation in the area. Clearly all the relevant factors set out in paragraph 10(7) have to be considered by the tribunal. CSB/617/88 is a case where there was an assurance to a building society that the full mortgage interest on a mortgage, necessary for the claimant to purchase a house, would be included as a requirement for supplementary benefit purposes, such assurance having been given by the Department of Social Security at the request of the claimant in that case. The Commissioner held that there could be no estoppel in such circumstances, but held that such a statement was a "relevant factor" in considering whether to restrict the requirements for mortgage interest within regulation 21 of the Supplementary Benefit (Requirements) Regulations 1983. He said at paragraph 16:

"... then the fact that the claimant was led to purchase the house in question by an assurance from the Department that the full mortgage interest would be paid must in my view be something which ought to be taken into account as one of the 'circumstances of the assessment unit' and I direct the new tribunal accordingly. The new tribunal should therefore take into account the effect on the claimant's and her daughter's circumstances of the fact they had but recently moved into the property in question, as the result of an assurance given by the Wellingborough D.H.S.S. letter and would presumably not otherwise have done so. This to my mind must bear on at what date any restriction (if such is justified at all) should first begin to be imposed, bearing in mind that the local adjudication officer's decision in this case imposed the restriction from 18 January 1988, only two months after the claimant had moved into the house at Bromham."

The relevant factors provided for by regulation 21 are, with some variations in wording which do not affect the Commissioner's reasoning, those re-enacted in paragraph 10 of Schedule 3. In the case before me the tribunal found as fact that the claimant's partner was advised by the Department of Social Security that her high interest rate to Bradford Investments would be covered by income support, and it was on this basis she accepted the loan and moved into the property. The tribunal failed to consider whether that circumstance rendered it not reasonable to expect the claimant and his family to seek alternative accommodation; and further they failed to consider the effect of that circumstance on paragraph 10(6) and the limited exemption provided for there. It was of course necessary for the tribunal to consider the reasonableness of a move in terms of

paragraph 10(7)(b), which included all the circumstances of the family, not only those which arose as a result of the assurance given to the claimant's partner by the Department. I am satisfied that the tribunal's decision is erroneous in point of law and must be set aside.

8. The new tribunal will have to consider if the restriction is justified on the basis that the outgoings of the dwelling are higher than the outgoings of suitable alternative accommodation in the area. On the question of what constitutes "the area", I commend to their attention what was said in the decision on Commissioner's file CSB/420/1981 at paragraph 12; the relevant passage is quoted by the Commissioner at paragraph 8 of CSB/1016/1982. I have some difficulty in understanding the comment of the old tribunal where the members said that they considered CSB/1016/1982 and distinguished it as "area question" was not the one in issue. The new tribunal will then have to consider whether, having regard to the relevant factors, it is not reasonable to expect the claimant to seek alternative cheaper accommodation; all the relevant factors set out in paragraph 10(7)(a) and (b) must be looked at. If the restriction is not removed under sub-paragraph (5), the members of the tribunal will have to go on to consider the limited exemption provided for by sub-paragraph (6).

(Signed) J J Skinner
Commissioner

Date: 26 June 1989