

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

[ORAL HEARING]

1. Mr Henry Williamson, now in his early 80s, had a stroke seven years or so ago and, as is clear from the fact that he has for some time been in receipt of an attendance allowance, needs a great deal of looking after. Following the stroke he spent a period in hospital and was then discharged to the care of his wife in their home. But it was too much for her. She is, I think, in her late 80s and, because of heart trouble and arthritis, needs a great deal of care herself. She has had a spell or spells in hospital after falling and breaking her hip and I think she had another serious fall. So she could not look after Mr Williamson and for a time they both went to be looked after in a residential care home. It soon became apparent that Mr Williamson needed more skilled care than such a home could provide and a place was found for him in Branthwaite Nursing Home. Meanwhile Mrs Williamson stayed on in the residential care home. While she was still there and Mr Williamson was in the nursing home he made a claim for income support which was awarded on the basis that though Mr and Mrs Williamson were husband and wife their resources were not required to be aggregated because they were not "members of the same household" and were not therefore within the definition of "married couple" in section 137(1) of the Social Security Contributions and Benefits Act 1992. Not long after, Mrs Williamson's health deteriorated further. She needed nursing home care and she too was found a place in Branthwaite Nursing Home. It was not appropriate for them to be in the same room together in the nursing home. So they had their own separate rooms, each being billed separately by the Home.

2. Presumably the original award of income support was for an indefinite period and therefore could be terminated only on review. However, when the local office were informed that Mrs Williamson was also now in the nursing home an adjudication officer, by a decision issued on 24 July 1992, decided that

Mr Williamson was not entitled to income support because, now that the Williamsons were in the same nursing home, they were regarded as being members of the same household, their resources therefore fell to be aggregated and their combined capital exceeded the prescribed amount. Mr Williamson, with the help of his son-in-law, appealed to a social security appeal tribunal. The appeal was unsuccessful and he now appeals to the Commissioner. The son-in-law, Mr B. G. Moreland, ably represented him at the hearing. Mr S. Cooper of the Solicitor's Office, Departments of Health and Social Security represented the adjudication officer.

3. Mr Cooper had helpfully given advance warning that, despite the adjudication officer's written submissions to the contrary, he did not support the tribunal's decision. That is a practice which should always be followed when it is proposed at the hearing of a case to depart from the written submissions. In my view Mr Cooper was right to concede that the tribunal's decision is erroneous in law; they had concluded that in the nursing home the Williamsons were members of the same household but they did not explain or at least sufficiently explain why they took that view. Their decision is erroneous in law on that account and I set it aside.

4. Mr Moreland was able to provide further information as to the circumstances of the Williamsons in the nursing home. They could not be in the same room together both because of their very different medical conditions and also because, since his stroke, Mr Williamson had become very demanding and very difficult. They did little together in the home. Mrs Williamson has had to spend a lot of time in bed. On occasions they sit together in the sitting room but often without any communication. Sometimes, but not often, they eat together in the dining room. Neither is able to do anything for the other. Occasionally each will visit the other's room. Both are visited by relatives. They had spent two years quite apart from each other, she in the residential home and he in the nursing home, before Mrs Williamson too was admitted to the nursing home. They are each separately charged by the home as single persons. They have no furniture or other belongings in the home except for essential personal items. Those are the main points made by Mr Moreland and I have no reason not to accept them. On those facts are the Williamsons members of the same household?

5. I recently dealt with this same point, in relation to a couple living in a home for the mentally ill. That was in CIS/671/1992 where I said -

"4. It seems to me from, the dictionary definition of "household" referred to in the Pizzey case and indeed as a matter of what might be said to be obvious, that something more than mere presence in a place is necessary before those present can be said to constitute a household; there must be, I should have thought, some collectivity, some communality, some organisation. As was said in Santos v Santos (1972) 2 AllER247 at 255 "household"

is ".... a word which essentially refers to people held together by a particular kind of tie, even if temporarily separated". Furthermore, it appears to be of essence of "household" that there is something which can be identified as a domestic establishment. In CSB/463/1986 it was said (para 10) "It is a question of fact in each case which turns on the evidence concerning the domestic establishment maintained; the test is sociality not structure". So one might have a domestic establishment in for example a hotel or boarding house - but there must be a domestic establishment.

With these points in mind, I would take the view that the tribunal cannot be criticised let alone said to be wrong in law for concluding that the Gilfillans' mere presence in the same room in the Home in circumstances where they did nothing for themselves, or for each other or collectively, did not turn them into a household of their own. But did all the residents of the home, patients and staff, constitute a household such that it could be said that the Gilfillans were members of that same household? I repeat that that is a question of fact and the tribunal concluded, admittedly without going into the matter in depth, that the Gilfillans were not, in the circumstances, either members of their own or some other household. Now Pizzey made it clear that there maybe circumstances where a group of people living together in a house do not do so as members of a household. There, as I have said, the indicators were said to be the numbers, the fluctuating nature of the 'population' and its impermanence. In the present case all those factors might be said to be present at least to some degree.

5. It has to be remembered that the context in which one is enquiring whether the Gilfillans were "members of the same household" is that of income support. Presumably aggregation of the resources of the members of a "family" is required upon the principle that a family of two or three or more manages on fewer resources than those same persons would if each lived alone; two, it is always said, can live cheaper than one! Now none of that, as it seems to me, applies in the case of the residents of St. Michael's Home each of whom pays, on a purely commercial basis, the charges levied by the Home. As I have said, the Gilfillans are billed separately. And it seems to me that it would be a matter of some injustice if in those circumstances the Gilfillans were to be treated less advantageously, in relation to income support, than the other residents. The context in which "household, has to be given meaning does not, it seems to me, drive one to the conclusion that the tribunal's conclusion on the point must be wrong.

6. In the adjudication officer's written submissions reliance is placed on regulation 16 of the Income Support (General) Regulations 1987 and I have considered whether it

has any bearing on the matter. This regulation, presumably made pursuant to the power in section 20(12)(k) of the 1986 Act to make regulations as to circumstances in which persons are to be treated as being or not being members of the same household, provides, by paragraph (1), that a claimant and his or her partner are to be treated as members of the same household even though one of them is absent from the dwelling occupied as his home. But that is not to be the case where the circumstances are any of those in paragraphs 2 or 3. So that if for example one of them is "permanently in a residential care home" (see paragraph (2)(e)) - to take the most nearly relevant kind of case - he does not fall to be counted as a member of the household in which he previously had his home. The same is true where one or other or all are detained in a National Health Service Hospital or in custody. So paragraphs (2) and (3) provide the circumstances where a person who is "absent from the dwelling occupied as the home" is not to be treated, under paragraph 1, as a member of the household. That does not however, as it seems to me, say anything with regard to whether persons who, like the Gilfillans, are no longer in their own home, are in some other household. Accordingly, regulation 16 would not appear to be relevant to the question in issue in this case."

I take the view, applying what was said in that case, that, on the facts as I have found them, Mr and Mrs Williamson do not have a domestic establishment in the nursing home; there is nothing that can be identified as a "household" in the sense to which I have referred. Nor, for the reasons referred to in that same case and, as Mr Cooper conceded, does regulation 16 of the Income Support (General) Regulations 1987 (on which the adjudication officer had relied) assist the adjudication officer's case.

6. My decision is that the entitlement of Mr Williamson to income support is to be determined, at the material time, on the basis that, in the particular circumstances of this case, he and his wife are not a "married couple" because, while in the nursing home, they are not members of the same household. Mr Williamson's entitlement to income support before Mrs Williamson came to the nursing home thus continues; indeed, for the reason to which I referred above, I doubt if it was ever effectively terminated.

(Signed) R A Sanders
Commissioner

Date: 6 October 1993