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WMW/HJD

Commissioner's File: CIS/227/90

SOCIAL SECURITY ACTS 1975 - 1990

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: MRS F C ON BEHALF OF F

Social Security Appeal Tribunal: Rochdale

Case No: 615 04829

[ORAL HEARING]

1. I hold the decision of the Rochdale Social Security Appeal Tribunal dated 26 February 1990 to be erroneous in point of law. Accordingly I set it aside and remit the case to the tribunal for determination afresh in light of the guidance which follows.

2. This case came before me by way of an oral hearing in Liverpool at which the claimant was represented by Mr David Wyman, Social Rights Officer with Oldham Metropolitan Borough Council, and the adjudication officer by Mr Stephen Cooper, Solicitor, of the Office of the Regional Solicitor to the Department of Social Security.

3. The basic facts giving rise to this case do not appear to have been, or to be, in dispute. In April 1987 the claimant gave to his daughter, now his appointee, the sum of £18,000. On 14 February 1988 he moved into a residential care home in respect of which fees required to be paid. On 4 May 1988 he claimed income support. He intimated savings of £2,800. Further enquiries revealed the transfer of the £18,000 and that the daughter still held that money. An adjudication officer accordingly decided that income support could not be paid since he held that there had been a deprivation of capital to obtain it. Income support was again claimed on 31 August 1989. Savings were then declared of some £3,000 odd in the claimant's right and in the daughter's of some £752.74. When she failed to provide information regarding the disposal of the balance of the £18,000 income support was again refused.

4. There was a final claim on 3 October 1989 following interview of the claimant's daughter by an adjudication officer. The information then provided was that in 1987 the claimant's life savings had totalled over £20,000. The daughter had not been given the whole amount because her father was of the impression that he had to have less than £3,000 in savings to claim income support. In light of that an adjudication officer's decision was issued on 24 October 1989 holding the claimant not entitled to income support from 29 September 1989 because he fell to be treated as possessing capital in excess of the prescribed limit. The exploratory letter noted the amount of savings of which the claimant fell to be treated as still in possession and the total capital then to be taken into account.

5. When the case came before the tribunal there was presented a written submission on behalf of the claimant pointing out the substantial time interval between any disposal of capital and the claim for income support. Indeed it was pointed out that the disposal had taken place before the Income Support (General) Regulations 1987 came into effect. It was accordingly submitted that the disposal could not have had as any part of its purpose the securing of an entitlement to income support. There were further submissions as to the true purpose of the gift, which were on matters of fact and so not for me. The adverse explanation recorded in the preceding paragraph was said to have been made only because of pressure.

6. The tribunal heard evidence elaborating upon the factual reasons for the disposal and about the pressure the claimant's daughter had felt about being required to make her statement. The chairman's note of evidence in that concludes -

"I thought that they needed me to say that."

The findings of fact made by the tribunal were these -

"1 Appellant, widower, 79. Lived with daughter (now his appointee) for 20 years prior to admission to Residential Care Home on 14 2 88.

2 Appellant over the years paid an amount to his daughter for board and lodging and latterly daughter drew his pension and attendance allowance. She saw to his financial needs and gave him pocket money.

3 In April 1987 appellant physically and mentally fit. Gave daughter £18000 and made will leaving balance devisable between his other children and an elderly aunt."

The unanimous decision was to refuse the appeal. The legislation and regulations were referred to and the tribunal added this by way of reasons -

"Tribunal found that in April 1987, the appellant had deprived himself of a capital resource (namely £18000) with the intention of securing entitlement to state benefit. (At time of deprivation, equivalent benefit to Income Support would have been supplementary pension which had a capital "cut-off" at £3000)."

Against that decision the claimant now again appeals with leave of the chairman.

7. The grounds of appeal may, I think fairly, be summed up as being that no reasonable tribunal could have considered, on the basis of the findings of fact, that the claimant should be held to have deprived himself of capital for the purpose of obtaining income support especially given that that purpose required to be a "significant operative purpose". Mr Cooper on behalf of the adjudication officer supported the appeal on the grounds of inadequate facts found and inadequate reasons provided. He also pointed to a minor slip in the tribunal decision where they had held that the claimant was not entitled to income support from 29 September 1989 whereas the last claim, the one before them, had not been made until 3 October 1989. Nonetheless that is the date which the adjudication officer had put into his disentitling decision as the date from which disentanglement commenced. Since the case is to go to a new tribunal I need not say any more about that matter.

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of regulation 51 which ascribes the purpose solely to the obtaining of "income support". I see, and was referred to no other, warrant for extending the meaning of those words to include all or any other income related benefit.

11. But because the point just discussed may be the subject of more authoritative determination by the Court of Appeal it may be that parties would wish to arrange deferment of any further hearing by a tribunal until that Court has delivered its judgment.

12. Finally it was pointed out by Mr Cooper that there was an error of law in the tribunal decision in respect that the adjudication officer's determination had clearly applied a diminishing capital rule. It was incumbent upon the tribunal to consider that matter, to check, in my view at least, that it had been properly calculated and so to explain to the claimant how it would operate for the future. Only thereby could he know when a claim free of the restriction of regulation 51 might properly be presented.

13. The appeal succeeds.

(signed) W M Walker
Commissioner
Date: 29 January 1992