

## SOCIAL SECURITY ACT 1986



## APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

## DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This claimant's appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 12 June 1989 is erroneous in law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. This decision should be read with my decision relating to the same claimant the reference to which on Commissioner's file is CIS/255/89, which is being issued at the same time as this decision.

3. The claimant was in receipt of income support under an award made on 10 November 1988. By an earlier decision, issued on 9 August 1988 (which is set out in decision CIS/255/89), the claimant's claim for income support was rejected on the basis that he held capital assets in the form of two properties (neither of which was then his home) one in Merton Road and the other in Stanningley Road, Leeds whose combined value exceeded the prescribed limit of £6,000.00. The award of benefit was made when the Department received notification that Merton Road and Stanningley Road were being offered for sale at £60,000.00 and £50,000.00 respectively. The reason why the award was made was that regulation 46(2) provided for the disregard of resources referred to in Schedule 10 and that paragraph 26 of that Schedule applied. That paragraph, which was inserted in the Schedule with effect from 30 May 1988, by SI 1988 No. 910 is in these terms:

"Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises."

5. According to the adjudication officer, on 6 December 1988 the estate agents appointed to sell Merton Road stated that they had written to withdraw that property from the market and on the same date the agents appointed to sell the Stanningley Road property stated that the claimant had instructed them "not to do

anything with it".

6. On 7 December 1988 an adjudication officer issued the following decision:

"The claimant is not entitled to income support because his capital exceeds the prescribed amount."

7. The claimant appealed against the above mentioned decision (box 5) to the appeal tribunal who heard the appeal on 12 June 1989 and decided:

"Appeal disallowed. The Appellant is not entitled to income support."

Their recorded findings of fact were:

"The Tribunal finds the same facts as in appeal Tribunal Reg No 1/07/6601. Additionally the Tribunal finds the facts set out in Box 5 in the Adjudication Officer's submission proved. The two properties owned by the Appellant had been placed in separate estate agents, 25 Merton Road with Messrs Charles Walker and Co who had instructions to sell the property for £60,000 and 308 Stanningley Road with Mawson and Walton with instruction to put the property on the market for £50,000 but 'not to do anything with it'. Both valuations were wholly unrealistic. The true value of both properties was £54,000. The properties were burdened with a charging order secured upon them to the extent of £33,086. The Appellant had not taken reasonable steps to sell the properties."

Their recorded reasons for this decision were:

"The Appellant's capital exceeds the prescribed amount. (S22(6) Social Security Act 1986).

The two properties belonging to the Appellant fall to be considered as a capital resource. A realistic value of the two properties is £54,000. After deducting the expenses attributable to their sale by reference to Regulation 49 General Regulations and the amount of the incumbrance secured on the properties of £33,086 the capital of the Appellant calculated in accordance with Regulation 49 exceeds the sum of £6000 prescribed by Regulation 45. No relief can accrue to the Appellant under Schedule 10, General Regulations because he is not taking reasonable steps to dispose of the properties.

The Tribunal rejects the Appellant's claim that the properties are incumbered to the extent of £140,000 for the reasons set out in appeal No 1/07/6601."

8. The claimant appealed against this decision and the adjudication officer now concerned supports the appeal. There

is no doubt that the decision of the appeal tribunal is erroneous in law for the reasons given in my decision on file CIS/255/89.

9. The claimant's representative submits that I should give the decision that the tribunal should have given. But there is insufficient information as to the claimant's capital assets, and their value, for me to do this, as explained in decision CIS/255/89. Accordingly, I set aside the decision of the appeal tribunal and refer the case to another appeal tribunal for determination in accordance with my directions.

10. (1) That tribunal should ascertain the exact terms of the award of 10 November 1988. Was it for an indefinite period or for a fixed period?

(2) The attention of the tribunal is drawn to regulation 17(4) of the Social Security (Claims and Payments) Regulations 1987 which provides:

"(4) In any case where benefit is awarded in respect of days subsequent to the date of claim the award shall be subject to the condition that the claimant satisfies the requirements for entitlement; and where those requirements are not satisfied the award shall be reviewed."

The tribunal should make specific findings as to the days subsequent to the date of claim in respect of which there has been an award. As regards all such days, the onus of proving that the requirements for entitlement are not satisfied, and from what date this is so, rests on the adjudication officer.

11. The sole reason for the award was that the claimant in respect of his two houses satisfied the conditions of paragraph 26 of Schedule 10 of the Income Support (General) Regulations. So the award must have been for a fixed period, not exceeding 26 weeks: see paragraph 4 above. The onus is on the adjudication officer to show that as regards the two properties, paragraph 26 no longer applies. Once this has been shown, the claimant no longer "satisfied the requirements for entitlement" and the decision to be substituted must be that the claimant is not entitled to income support unless, and here the onus is on him, he satisfies the tribunal that he is entitled to income support on some ground other than paragraph 26 of Schedule 10. (The relevant considerations in this respect are set out in my accompanying decision CIS/255/89).

12. On the other hand, if I am wrong, and the award was made for an indefinite period, the sole reason for the award cannot have been the satisfaction of the conditions of paragraph 26, which have a maximum period of 26 weeks. It will then be necessary for the adjudication officer to establish that the other conditions under which the award was made are no longer satisfied.

13. The hearing will be a complete rehearing. As directed in decision CIS/255/89, both appeals should be heard by the same tribunal and on the same day.

14. My decision is set out in paragraph 1.

(Signed) V G H Hallett  
Commissioner

Date: 7 September 1992