

CDAG

RAS/1/LM

Commissioner's File: CIS/351/90

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal dated 6 September 1989 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. The claimant appeals against the tribunal's decision in effect confirming the decision of an adjudication officer that the claimant was not entitled to income support from 23 May 1989 because he was to be treated as possessing capital exceeding the then prescribed amount of £6,000.00.

3. Regulation 51(1) of the Income Support (General) Regulations 1987 provides that a claimant is to be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to income support. In this case the claimant, a married man with three young children, had been in receipt of supplementary benefit then income support since 1987. He had apparently sold his house and shortly after completion in December 1988 received the net proceeds of nearly £12,000.00. He went with his family to Pakistan in January 1989. He was not entitled to benefit while he was away. On 23 May 1989, which was immediately after his return, the question was raised of what had happened to the proceeds of sale. It then appeared that some had been used to repay a debt, £2,300.00 had gone on air fares and £7,500.00 had been spent in Pakistan. Some of the proceeds were not accounted for. The adjudication officer then applied regulation 51(1) and decided that the claimant was not entitled to benefit notwithstanding his contention to the effect that he had sold his home and used the proceeds or most of them not to obtain benefit but to enable him and his family to make a journey that had become necessary because his father was unwell.

4. The tribunal dealt with this case with great and commendable thoroughness and I have had considerable hesitation about disturbing their decision. In the end however I have come to the conclusion that in one particular respect the decision is erroneous in law. They found as a fact that -

" ... given all the evidence available, one of the reasons for the visit to Pakistan, but not the sole reason, was to deprive himself of capital with the intention of being able to claim benefit upon his return."

And in the reasons for their decision they said -

"The tribunal having found as fact, one of the purposes of the visit to Pakistan was to deprive himself of capital for the purpose of obtaining benefit upon his return, it was unnecessary to decide whether or not this was the main or a subsidiary purpose."

Now in R(SB) 40/85 (in relation to regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 which, so far as is presently relevant, is in the same terms as regulation 51(1) of the 1987 Regulations) established that while it is not necessary to show that in the circumstances a claimant's sole purpose was to obtain benefit it nevertheless must be shown that that was a significant operative purpose. The Commissioner went on to say that (paragraph 10) -

" ... if the evidence showed that the transaction had the effect of securing [supplementary benefit] and there was nothing more, a tribunal could legitimately conclude that the person's purpose was to secure supplementary benefit. But there may well be other evidence ... ". (my underlining).

So where there is "nothing more" a tribunal are entitled to conclude that the purpose was to secure benefit. But if there is "other evidence" then the test is significant operative purpose. In this case the claimant's contention was I think that his purpose was to take his family to visit his sick father. That was the "other evidence". The tribunal then had to decide whether the claimant also had a significant operative purpose to obtain benefit. And it seems to me, from the findings and reasons to which I have referred, that the tribunal lost sight of "significant". Certainly they did not refer to it and I think it would be wrong to assume they had it in mind. So it seems they applied the wrong test in respect of this particular aspect of the case. Their decision is on that account erroneous in law and I accordingly allow this appeal. Now even though the events happened so long ago the case must go back to another tribunal because, while I have a great deal of information, I do not think I am in a position to decide whether in all the circumstances there was a significant operative purpose to obtain benefit. Credibility may well be in issue and I have not seen the claimant or any other witness.

(Signed) R A Sanders
Commissioner

Date: 17 March 1992