

**SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS**

Commissioner's File No.: CJSA/1114/2000

**Starred Decision No: 94/00**

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Mr P Cichosz,  
Office of the Social Security and Child Support Commissioners,  
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.

**so as to arrive by 2<sup>nd</sup> March 2001**

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

94/00

Commissioners file: CJSA/1114/2000

**SOCIAL SECURITY ACTS 1992 TO 1998**

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

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is a supported appeal with the leave of a commissioner from a decision of the Blackburn Social Security Appeal Tribunal given on 26 August 1999 that the claimant was not entitled to jobseeker's allowance from 2 November 1998 to 24 August 1999 as his capital exceeded £8,000, but that his capital could be disregarded from 25 August 1999. For the reasons given below this appeal is allowed, the decision of the tribunal is set aside and I substitute my own decision that the claimant's capital between those dates did not exceed £8,000, with the result that he was entitled to jobseeker's allowance between those dates. I remit to the secretary of state the calculation of the jobseeker's allowance to which the claimant was entitled.
2. The issue before the tribunal was as to the value of the claimant's interest in his former matrimonial home. The evidence as to value was provided by a person from the valuation office in Preston, whose qualifications were unstated, and who gave no evidence of her knowledge of property values in Blackburn. This is not a satisfactory basis for such expert evidence, as it leaves a tribunal unable to assess the weight to be given to it. The valuation was provided in February 1999 pursuant to a request from the Blackburn Jobcentre dated 14 January 1999 which stated that it had received a claim for benefit and needed to know the market value of the customer's deemed share in the property, which it identified as one half.
3. The valuation was on a standard form supplied by the Blackburn Jobcentre. The valuer confirmed that using the information supplied, and on certain assumptions to which I shall return, in her opinion the open market value of the property was £30,000, the mathematical deemed share was £15,000 and the deemed undivided

share was £9,200. The valuer assumed that the claimant was a willing seller, considered any encumbrances (there were none in this case), assumed the ownership to be in equal shares, and considered the following factors (all of which appear, amongst others, in the printed form supplied for the valuation):

- (a) if the other owners would agree to the sale of the asset as a whole;
  - (b) if the other owners would be willing and able to buy the share;
  - (c) where the other owners would not buy the share or agree to the sale of the asset as a whole, or were not prepared to vacate the property,
    - (i) the attitude of the courts – whether they would order the sale of the property as a whole; as a partition; or some other order
    - (ii) the length of time a purchaser may have to wait before obtaining possession of the asset, ie the share
    - (iii) the potential legal costs of the buyer
    - (iv) planning and other restrictions on the property as specified on form A64A/LA1
    - (v) the risks that legal owners may try to abuse their position
    - (vi) sales of similar share interests in property, the comparables used to value the share element being VOA database, sales information, land registry list, and estate agents' particulars
    - (vii) that there is a market for the deemed share at or in auctions
4. The valuer stated that she used the information on form A64A/LA1, took into account the above factors relevant to this case and used her professional judgment to reach a balanced valuation figure in valuing the undivided share at £9,200. She did not reflect the costs of disposal of the customer's interest in this valuation. She gave no reasons for her conclusions, nor did she state how she dealt with the various matters in paragraph 3(a) to (c) above.
5. In form A64A, the only relevant form on the file, the claimant identified the property as being a house with two bedrooms and a boxroom. He stated that he was not taking steps to dispose of it, that it was not subject to divorce proceedings, that he did not live in the property as he and his wife were separated and they could not live with each other, that the interest was leasehold "over 21 year" at a ground rent of £3.60. He did not state when the lease commenced. His wife was living in the property and would not sell. He stated that "She will remain all life with daughter who has learning difficulties". He also stated "My wife will not move not at her age, she is ill on insulin and suffers from back pain. My little daughter lives there. I have my daughter's interest at heart". He did not give permission for the property to be valued by an independent valuer stating that his wife would not give permission. He had not talked with her for years. He left the home for her and her daughter.
6. I find it impossible to see how any valuer could come to any meaningful valuation of the claimant's interest in the property on this evidence. It is self evident that the value of the leasehold interest must depend to a significant degree on the length of the remaining term of the lease, yet the valuer has apparently made no effort to ascertain

that length. There was also no evidence as to the condition of the property and no attempt had been made to inspect it even externally.

7. In those circumstances, I do not see how the valuation of the property as a whole could be remotely reliable. Further, although the valuer has stated that she has inspected various classes of documents, there is nothing to indicate what she found there, and it is impossible, therefore, to see any factual basis for her conclusions.
8. The valuation of the undivided share is equally unsustainable, and the valuer has made no effort whatsoever to justify it. The claimant could not enforce a sale of the whole house without an order of the court. Given the purpose for which the property was acquired, and the purpose for which it was being used, it would have been unlikely that any order for sale would have been made at that time, and very likely that no order would have been made for many years, at least until the daughter became 18. Indeed, as was pointed out in CIS/191/94, para.9, there could be no certainty that the property could be sold even at that stage. There was no evidence before the valuer as to the age of the daughter, and there were significant indications that there could be problems even when the daughter became 18, in that she was stated to have learning difficulties and the wife would seem to be diabetic and have other long term problems.
9. By the time it might become possible for the claimant, or any purchaser from him, to get the court to order a sale, on the evidence before the valuer it could well have been the case that only a few years of the lease would have remained. Indeed even now, there is no evidence as to its length, and no attempt has been made to obtain better evidence of the length of the lease either from the property register at the Land Registry or from the claimant.
10. I find it impossible to see how the valuer could have arrived at the figure of £9,200, or indeed any other figure, as representing the value of the claimant's interest, and I can also find no basis for the figure in the decision of the tribunal. It is not enough for the tribunal to accept the opinion of a valuer as to the value of an interest in property, even where the valuer is shown to be an expert, without some reasons being given for adopting the value put forward. I can find nothing in the tribunal's statement of reasons to indicate any basis for the values put by the tribunal on the property or the claimant's share in it. The leasehold interest could not be valued without some idea of the length of term. The value of the claimant's share in it could not be valued without proper evidence of the value of the property itself, proper evidence of the basis on which interests such as those of the claimant were valued and bought, and evidence of the underlying facts which purchasers would need to know to come to their decision. If the evidence of those facts was vague, then it would normally be necessary to ask what a purchaser would pay given such vagueness.
11. It therefore appears to me that the tribunal erred in law in coming to its decision, and its decision must be set aside. In coming to this conclusion, I have found helpful the observations of the commissioner in CIS/191/94. I would emphasize, however, that

the commissioner does not suggest in that case that there is any rule of law that where a wife and children are living in a matrimonial home, the half share of a claimant in that home is likely to be reduced to nil. Everything must depend on the facts of the case, and on the evidence before the tribunal. The commissioner in CIS/191/94 pointed out that where the home is of modest value, and none of that value could be realised by a claimant or any person acquiring his interest for a lengthy, and possibly unascertainable period, it is unlikely that anybody would be prepared to pay very much for the interest, and it may have little or no value. He was there basing his observations on the effects of s.30 of the Law of Property Act 1925. The matter would now be dealt with under s.14 of the Trusts of Land and Appointment of Trustees Act 1996, but similar considerations would still apply.

12. It may also be the case, and I do not need to deal with the question, that the practicability of transferring the interest to a purchaser may be affected by the powers of the court to make orders affecting the claimant's interest in the course of matrimonial proceedings.
13. Proper valuation evidence should include details of the valuer's expertise, the basis on which he or she holds him or herself out as able to give expert evidence in relation to the property in question. Where it is the sale of a share in a property which is in issue, the evidence should deal with the valuer's experience in relation to such shares, and their sale. The property, and any leasehold interest, should be described in sufficient detail, including details of the length of any lease, of any special terms in it, and of the location, size and condition of the property, to show that the factors relevant to its value have been taken into account, and the reasons for the conclusion as to the value should be given. A similar approach should be applied to a share of a property, and an explanation should be given of the factors identified as relevant to the valuation, and how they affect it. The expert should also give evidence of any comparables identified, or of other reasons why it is concluded that the share could be sold at any particular price. If there is no evidence of actual sales of such interests, an acceptable explanation of the absence of such evidence should be given.
14. I appreciate that, in cases of this kind, this will on occasions be a counsel of perfection which cannot be realised. Where a valuer does not have relevant information, and proceeds upon assumptions, the report should state what is missing, and should also state the assumptions upon which it is based. This will normally give the claimant the opportunity to correct any mistaken assumptions or other errors of fact in the report.
15. In the present case, for the reasons which I have given, the valuation evidence is so unsatisfactory as to be worthless. The only evidence of value of the property is the evidence that £12,000 was paid in 1988, but in the absence of any evidence of how the market has moved, or as to the length of the remaining lease, it is impossible to form even a provisional view as to its value. There is also no evidence of any half interest being sold where the wife and a child remain on the premises, so that a

purchaser would not be able to realize any benefit from his investment for an uncertain period, or as to the basis of calculation of the price in such circumstances.

16. I conclude that there is no evidence upon which any tribunal would be entitled to rely that the capital of the claimant exceeded £8,000 on or after 2 November 1998, and in the absence of such evidence I find that his capital did not exceed £8,000. It was common ground that the claimant's capital did not disentitle him from obtaining jobseeker's allowance from 25 August 1999, and it is therefore sufficient that I determine that his capital did not disentitle him between 2 November 1998 and 24 August 1999 (both dates inclusive). I thus arrive at substantially the conclusion which I was invited to reach by the secretary of state in his submissions on this appeal, but for slightly different reasons, and I remit to the secretary of state the question of the amount of jobseeker's allowance to which the claimant was entitled between those dates.

(signed) Michael Mark  
Deputy Commissioner

13 December 2000