Bulletin 164
[Other]

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File No.: CJSA/4807/00

Starred Decision No: 66/01

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Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

Mr Damien Abbott,
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 10th August 2001

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

1. This is an appeal by the Claimant, brought with the leave of the Chairman, against a decision of the Romford Appeal Tribunal made on 1 August 2000. For the reasons set out below I dismiss the appeal.

2. The Tribunal's decision was to dismiss the Claimant's appeal from a decision made on behalf of the Secretary of State on 27 April 2000 that the housing costs used in the calculation of the Claimant's entitlement to Jobseeker's Allowance were to be assessed in respect of a loan of £20,379.74. In short, the position at that date was that the Claimant and his wife owed sums secured on the house in which they were then living ("House A") which represented the outstanding balances of

   (i) a sum advanced by way of remortgage in order to repay a sum which had been advanced to them by a previous lender for the purpose of enabling them to buy House A; and

   (ii) a sum advanced to purchase another house ("House B") in which the Claimant (but not his wife) was living (or was about to live) at the time of that advance, but which had since been sold.

   The Tribunal held that interest on (ii) did not qualify as housing costs.

3. The facts in more detail were as follows.

   (1) The Claimant and his wife bought House A in 1978 with a loan from Bradford & Bingley Building Society, secured on House A.

   (2) In 1989 the Claimant's parents died, leaving their home (House B) to the Claimant and his sister.

   (3) On 21 December 1990 National Westminster Home Loans Ltd advanced to the Claimant and his wife, secured on House A

      (i) the sum of £20,000 by way of remortgage in order to enable the redemption of the Bradford & Bingley loan ("Loan 1");

      (ii) the sum of £40,000 for the purpose of enabling the Claimant to purchase his sister's interest in House B ("Loan 2").

   (4) By 21 December 1990 the Claimant and his wife were having marital difficulties. It is unclear from the evidence before me whether the Claimant had by that date already gone to live in House B. If he had not by then already done so, he did so soon after, and lived there, separated from his wife, for about 2 years. In 1993 they became reconciled and he returned to live with her in House A. For the purposes of my decision I assume in the Claimant's favour that he was already living in House B by the time the advances on 21 December 1990 were made.

(5) House B was then sold, but the proceeds were either not paid to National Westminster or (if they were) were insufficient to pay off the entirety of Loan 2.

(6) The Claimant claimed Jobseeker's Allowance on 5 October 1999. At and since that date Loans 1 and 2 have remained owing by the Claimant and his wife to National Westminster, together with substantial capitalised arrears thereon, and secured on House A.

4. The Tribunal's decision was that Loan 1 was, but Loan 2 was not, a qualifying loan for housing costs purposes. Its ground for so holding was that Loan 2 was not made for the purpose of purchasing the house in which the Claimant and his wife were at the date of claim and have since been living (i.e. House A). The Claimant (who was unrepresented before the Tribunal, as he is on this appeal) says that that does not matter. He says that it is sufficient that Loan 2 was made for the purpose of purchasing the house in which he was living (or in which he was about to live) at the time when Loan 2 was made. I agree with the Tribunal.

5. By Reg. 83(f) of the Jobseeker's Allowance Regulations 1996 there is to be included in a claimant's weekly applicable amount for jobseeker's allowance purposes "any amount determined in accordance with Schedule 2 (housing costs) which may be applicable to him in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule."

6. By para. 1(1) of Schedule 2:

> "Subject to the following provisions of this Schedule, the housing costs applicable to a claimant are those costs –
>
> (a) which he or, where he is a member of a family, he or any member of that family is, in accordance with paragraph 2, liable to meet in respect of the dwelling occupied as the home which he or any other member of his family is treated as occupying; and
>
> (b) which qualify under paragraphs 14 to 16."

7. By Reg. 1(3) "dwelling occupied as the home" means

> "the dwelling .....normally occupied by the claimant as his home ....."

8. By para. 14 of Schedule 2:

> "(1) A loan qualifies under this paragraph where the loan was taken out to defray monies applied for any of the following purposes –
>
> (a) acquiring an interest in the dwelling occupied as the home; or
>
> (b) paying off another loan to the extent that the other loan would have qualified under head (a) above had the loan not been paid off.

(3) Where a loan is applied only in part for the purposes specified in heads (a) and (b) of sub-paragraph (1), only that portion of the loan which is applied for that purpose shall qualify under this paragraph."

9. The Tribunal was clearly right to hold that Loan 1 qualified for housing costs. It qualified under para. 14(1)(b) because, had the Bradford and Bingley loan not been paid off, it would have qualified under 14(1)(a).

10. The Claimant in effect argues that Loan 2 qualifies under 14(1)(a), because it was used to defray monies applied for the purpose of "acquiring an interest in the dwelling occupied as the home" (i.e. House B).

11. In my judgment, however, it is clear that para. 14(1)(a) can only apply if and so long as the dwelling which was purchased with the aid of the loan is treated as occupied by the claimant (or other member of his family). It does not apply to a loan which was used to purchase a dwelling which was at the date of the loan, but has since ceased to be, occupied by the claimant (or other member of his family).

12. My reasons for reaching that conclusion are as follows. First, the requirement in para. 14(1)(a) that the loan should have been taken out for the purpose of "acquiring an interest in the dwelling occupied as the home" is simply not apt to refer to a dwelling which has ceased to be so occupied. Those words refer back to the same expression in para. 1(1)(a) of Schedule 2. It is clear that there "occupied" means 'occupied at the time when entitlement to benefit is in issue', not 'occupied at the time when the loan was made'. The latter effect could only have been achieved if the wording had been "acquiring an interest in the dwelling which is or was at the date of the loan occupied as the home", or some similar wording.

13. Secondly, if the meaning contended for by the Claimant were correct, it would be possible, in theory, for loans made for the purchase of any number of homes to qualify under para. 14(1)(a). A person might buy for occupation a series of homes, the loans all being secured on the house in which the claimant is living at the date of claim. But such a result would be wholly inconsistent with the spirit of para. 3(6) of Schedule 2, which limits the circumstances in which payments made in respect of more than one dwelling can qualify.

14. Thirdly, the reasoning of the Court of Appeal in the unreported case of Guest v. Chief Adjudication Officer (2 April 1999) (especially at pages 13 to 15 of the transcript) in my judgment supports my conclusion. In referring to para. 7(3)(b) of Schedule 3 to the Income Support (General) Regulations, 1987 (the then equivalent, in relation to income support, of para. 14(1)(b)) Hirst L.J. said:

> ".....sub-paragraph (b) is to be interpreted as referable to a loan taken out for the purpose of acquiring the applicant's present home."

I accept that the wording of the then applicable legislation was not the same as that which applies to this case. But it was in my judgment sufficiently similar to mean that that case provides support for my conclusion as to the meaning of para. 14(1)(a).

15. For the above reasons the Tribunal's decision was in my judgment correct, and I therefore dismiss the appeal. I stress that I have not considered any issue (because none is raised by the appeal) as to the amount of Loan 1 which qualified for housing costs. This decision deals only with the issue whether Loan 2 so qualified.

(Signed) Charles Turnbull
(Commissioner)

(Date) 14 May 2001