

Housing requirements - restriction on "excessive" mortgage.
Letter from DSS saying full mortgage interest would be paid
did not create estoppel but was 'relevant factor' ★
in considering whether reasonable to expect claimant to
move to cheaper accommodation.
MJG/SH/35

Commissioner's File: CSB/617/1988

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: [REDACTED]

Social Security Appeal Tribunal: Bedford

Case No: 03/899

[ORAL HEARING]

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 28 March 1988 as that decision is erroneous in law and is set aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to a differently constituted social security appeal tribunal: Social Security Act 1975, section 101.

2. This appeal to the Commissioner was the subject of an oral hearing before me on 6 December 1988, at which the claimant was present and gave evidence to me. She was represented by Mr A Merriman and Mr K A Venables. The adjudication officer was represented by Mr R A Buckley of the Office of the Chief Adjudication Officer. I am indebted to all those persons for their assistance to me at the hearing.

3. The claimant's appeal is against the unanimous decision of a social security appeal tribunal dated 28 March 1988 which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 20 March 1988 to the effect that,

"The Housing Requirements of the claimant are restricted to £99.07 per week from 18 January 1988."

4. That restricted requirement was because the local adjudication officer had refused to regard as a requirement the full mortgage interest payable by the claimant on a mortgage of £69,890 approximately on a house at Bromham, near Bedford, which the claimant purchased on or about 18 November 1987, having moved there from her previous home (also self-owned) on which the amount of the mortgage was only £25,500. The restriction was in fact made by reference to the average weekly cost of a £50,000 mortgage which the local adjudication officer considered to be a reasonable amount and which would enable the claimant to purchase "a three bedroomed semi-detached house in North Bedfordshire".

5. The restriction was made under the provisions of regulation 21 of the Supplementary Benefit (Requirements) Regulations 1983 S.I.1983 No.1399 (now repeated in the Income

Support (General) Regulations 1987, S.I.1987, No.1967, Sched.3 para.10(4)-(7)), which, so far as relevant, provided as follows,

"Restriction where amounts excessive.

21. (1) Subject to paragraphs (3) and (4), the amounts applicable under regulations 15 to 18 shall be regarded as excessive and shall be restricted and the excess not allowed if and to the extent that -

(a) the home, excluding any part which is let or normally occupied by boarders, is unnecessarily large for the assessment unit, any persons to whom regulation 4(2)(e) of the Supplementary Benefit (Aggregation) Regulations 1981 applies and any other non-dependants; or

(b) the immediate area in which the home is located is unnecessarily expensive; or

(c) the outgoings of the home in respect of which the amounts are applicable under those regulations as aforesaid are unreasonably high by comparison with the outgoings of suitable alternative accommodation in the area.

(2) [...]

(3) Where, having regard to the relevant factors, it is not reasonable to expect the assessment unit to seek alternative cheaper accommodation no restriction shall be made under this regulation.

(4) Where paragraph (3) does not apply and the claimant (or other member of the assessment unit) was able to meet the financial commitments for the home when these were entered into, no restriction shall be made under this regulation during the first 6 months of any period of entitlement to a pension or allowance nor during the next 6 months if and so long as the claimant uses his best endeavours to obtain cheaper accommodation.

(5) In this regulation 'the relevant factors' are -

(a) the availability of suitable accommodation and the level of housing costs in the area; and

(b) the circumstances of the assessment unit including in particular the age and state of health of its members, the employment prospects of the claimant and the effect on the education of any dependants were a change in accommodation to result in a change of school."

6. In addition the tribunal had to consider a letter from the Wellingborough Office of the Department of Health and Social Security, signed on behalf of the then manager of that Office, and addressed to the claimant's Building Society, being received by that Society on 17 September 1987 and reading as follows;

"Dear Sir/Madam

RE: [THE CLAIMANT AT HER WELLINGBOROUGH ADDRESS]

I have been asked by the above named to confirm that whilst she is in receipt of

supplementary benefit the DHSS will include the full mortgage interest with her benefit. I trust this is the information you require."

7. The claimant gave evidence at the hearing before me that the reason this letter was written was because it was required by the Building Society in connection with her proposed purchase of, and application for mortgage on, the house at Bromham, Bedford which she now owns and occupies. There has been some dispute about this at an earlier stage but I find as a fact that that is correct and that, although that letter does not refer in terms to the house at Bromham, it nevertheless can only have been furnished to the Building Society as an assurance to that society that the full mortgage interest on a mortgage necessary for the claimant to purchase the Bromham house would be included as a requirement for supplementary benefit purposes.

8. As a result there was canvassed before the local tribunal and also before me at the hearing on 6 December the question whether that letter in any way 'bound' the DHSS to make a full payment of the mortgage interest and not to restrict it under regulation 21 of the Requirements Regulations, eg. was there an "estoppel".

9. The original tribunal dealt rather summarily with this point by simply making a finding of fact,

"The Department of Health and Social Security letter was not binding for them to pay any amount of mortgage for the claimant."

I am afraid that this is not very clear, though it may have referred to the submission of the local adjudication officer that the letter was not specific enough to refer to a particular mortgage. However, I have on the facts found otherwise. The question of whether such an assurance could raise an "estoppel", e.g. that the Department could not be allowed to deny its truth where a claimant (as here) had acted on it to her detriment, i.e. by purchasing a house and entering into an expensive mortgage, has been the subject of a number of Commissioners' decisions, notably reported Decision R(SB) 8/83 and the decision of a Tribunal of Commissioners on file CSB/1162/1986 (to be reported as R(SB) 14/88) paragraphs 20 - 22.

10. When directing the oral hearing of this appeal, I also directed that it should be argued whether or not this letter could create a valid estoppel "as it does not undertake to do anything not permitted by social security legislation".

11. At the hearing before me Mr Merriman argued, with the aid of reported authorities on estoppel generally, that this factor was sufficient to distinguish the earlier Commissioners' decisions (above cited) and urged upon me that the decision of Denning J (as he then was) in Robertson v. Ministry of Pensions [1949] 1K.B.227; [1948] 2 All E.R. 767 was authority for holding that in circumstances such as the present the Department of Health and Social Security was "estopped" by the letter from the Wellingborough Office and were therefore not entitled to restrict payment of the mortgage interest. The Robertson case is not mentioned in either of the two Commissioners' decisions above referred to (paragraph 9) and I do not know whether or not it was cited to those Commissioners. However, I am bound to follow the decision of a Tribunal of Commissioners (R(I) 12/75, para. 21) and I consider that the Tribunal of Commissioners' decision on file CSB/1162/1986 binds me to reject the application of "estoppel" in the present case. The tribunal said (paragraph 22),

"As with so many of the cases in the social security field where questions of estoppel are raised, the conclusive answer to any question as to whether there can be an estoppel is that the representation relied on by the claimant was not made by the adjudication officer who has made the decision under dispute, or with his authority, but by some other official of the DHSS. That representation cannot bind the adjudication officer."

12. It has been established as a result of my direction of 10 October 1988 that the manager of the Wellingborough Office was not an adjudication officer. The result is in my view that I am bound by paragraph 22 of the Tribunal of Commissioners' decision to hold that a representation by him could not create any estoppel binding the adjudication officer who gave the decision issued on 20 January 1988. Even if the manager had been an adjudication officer, the result could still be the same if e.g. he were wearing an "executive hat" or was not the adjudication officer, who gave the ultimate decision. The situation is not the same in my view as the War Office having implied authority to bind the Ministry of Pensions in the Robertson case (above). An adjudication officer has an independent statutory function of adjudication, conferred by the social security legislation. In my judgment his decisions cannot be fettered by executive misrepresentations by officers of the Department, even if that representation was as to the exercise of a discretionary power which an adjudication officer could in fact have exercised (as here).

13. It is noteworthy that in the Robertson case, the court action was for a pension on a Royal Warrant, where considerations of "estoppel" could rise and which would not necessarily be inconsistent with the operation of the Royal Warrant. But here the claim is made, and must stand or fall, on the provisions of the social security legislation. Consequently, estoppel cannot in my view prevent an adjudication officer from properly considering the relevant Acts and Regulations, eg. regulation 21 of the Requirements Regulations. I therefore proceed to consider the claimant's other grounds of appeal.

14. Both the claimant's representative and the adjudication officer now concerned concur in submitting to me that the original tribunal's decision erred in law in not making sufficient findings of fact and giving adequate reasons for decision as required by regulation 25(2) of the Social Security (Adjudication) Regulations 1986. Although it is clear to me the tribunal took care with this case, those submissions are undoubtedly correct. In particular the tribunal did not deal with the detailed requirements of regulation 21 but merely said that it had "not been satisfied in this case" and that "the adjudication officer was justified in imposing this restriction on the basis of all the circumstances of this case". That is not sufficient and the tribunal should have for example dealt with the questions of what was "the immediate area" (compare Decision on file CSB/1016/82 cited in the adjudication officer's submission of 31 August 1988) and also the question of the education of the claimant's two daughters one aged 8, the other aged 18. All these factors need consideration by the new tribunal and need express findings of fact made about them, which the original tribunal did not do.

15. Lastly I come to a difficult question canvassed in argument before me. Although the letter from the Wellingborough DHSS to the Building Society cannot create an "estoppel", as I have held above, can it nevertheless be regarded as a "relevant factor" within the meaning of sub-paragraphs (3) and (5) of regulation 21 of the Requirements Regulations (set out at para. 5 above)? Mr Venables on behalf of the claimant urged on me that it should be taken into account as one of "the circumstances of the assessment unit" (regulation 21(5)(b)), whereas Mr Buckley for the adjudication officer contended that it was irrelevant since "the circumstances of the assessment unit" did not, he submitted, include circumstances which existed prior to the acquisition of the house in question but only those in existence at the time when it was asked whether or not it would be reasonable to expect the claimant to seek alternative cheaper accommodation (regulation 21(3)).

16. Clearly the "circumstances of the assessment unit" in regulation 21(5)(b) are 'at large' in view of the fact that the particular circumstances such as age, health and education are described by the regulation merely as examples, by use of the words "in particular". Regulation 21(4), although not applicable to this case, does give an indication that the framer of the regulation considered that the length of time that a claimant had been in the property in question could be a relevant matter. Indeed I would have thought that to be so on general principle. If that is so, then the fact that the claimant was led to purchase the house in question by an assurance from the Department that the full mortgage interest would be paid must in my view be something which ought to be taken into account as one of

the "circumstances of the assessment unit" and I direct the new tribunal accordingly. The new tribunal should therefore take into account the effect on the claimant's and her daughter's circumstances of the fact they had but recently moved into the property in question, as the result of an assurance given by the Wellingborough D.H.S.S. letter and would presumably not otherwise have done so. This to my mind must bear on at what date any restriction (if such is justified at all) should first begin to be imposed, bearing in mind that the local adjudication officer's decision in this case imposed the restriction from 18 January 1988, only two months after the claimant had moved into the house at Bromham. Ultimately I must leave all these as questions of fact to the new tribunal but in my view the letter from Wellingborough DHSS is an important relevant factor and the new tribunal should take it into account in that light.

17. Lastly, I should mention that I held an expedited hearing of this case because of the urgency of the matter to the claimant, as apparently the Building Society have threatened to exercise their powers of sale of the house and to evict the claimant and her daughters. I would therefore ask that the rehearing before the new tribunal should take place at the earliest possible date.

(Signed) M.J. Goodman
Commissioner

Date: 12 December 1988