Bulletin/not handbook Re proceeds of sale of house.

DGR/BF

Commissioner's File: CSB/1064/1984

C A O File: AO 2222/85

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Margaret Kay

Social Security Appeal Tribunal: Worcester

Case No: 08/05

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 23 August 1984 is erroneous in point of law, and accordingly I set it aside. However, as it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is not entitled to supplementary benefit as from 29 June 1984.

2. This is an appeal by the adjudication officer, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 23 August 1984.

3. On 15 June 1984 the claimant, who had been in receipt of supplementary benefit as an unemployed person for a number of years, moved into 401 Hurcott Road, Kidderminster, having sold her previous home in Wolverley for £19,000. The purchase price of the new house was £9,500 and various expenses incurred amounted to £1,562.32. However, substantial repairs and renovations were required to be done to the property, and a sum of £6,227 was held back to meet this expenditure. The money was retained by the claimant's solicitors. After taking into account the purchase price, the expenses, and the sum of £6,227, there remained from the original proceeds of sale of the old home a balance of £1,710.68. However, on 25 June 1984 the adjudication officer decided that the claimant had capital in excess of £3,000 and was therefore not entitled to benefit from her next pay-day which was Friday 29 June 1984.

4. In due course, the claimant appealed to the tribunal who, in the event, reversed the decision of the adjudication officer. They gave as the reasons for their decision the following:-

"The tribunal had regard to Resources Regulation 6(1)(b). The money (£19,000) was clearly the proceeds of sale of the claimant's home. Certainly, it was earmarked for a new 'home'. The definition section of the Regulations were of little help: 'home means accommodation'. It means more than the buildings and the tribunal felt that the word 'home' included the essential repairs. In particular, the tribunal felt that had the claimant bought a renovated property, the money would have been regarded as earmarked for a home. Accordingly, the claimant should not be penalised for effecting the renovation through her own initiative. The repairs were essential to make the home habitable. They were not merely cosmetic.

Resources Regulation 7 provides that capital under £3,000 should be disregarded in this regard."

5. Regulation 6(1)(b) provides as follows:-

"6. (1) In calculating a claimant's capital resources, the following shall be disregarded:-

(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within six months of the date of sale or such longer period as is reasonable in the circumstances".

6. Now, in the present case the proceeds of sale of the claimant's home clearly consisted of the £19,000, and provided that they were used, within the time limits specified in regulation 6(1)(b), for the purchase of another home, they could properly be disregarded in calculating the claimant's capital resources. Manifestly, then, had the claimant retained the £19,000 until such time as she found a fully renovated house to purchase, this sum would, at least for the periods specified in regulation 6(1)(b), have fallen within its terms. The difficulty in the present case is that, instead of waiting for a renovated house, the claimant opted to purchase a property which was badly in need of repairs and renovation, so that she applied out of the original proceeds of sale only part of the relevant monies, leaving herself with the balance at her unrestricted disposal, although in practice she had earmarked the same for vital repairs and renovations to the house purchased. The tribunal took a robust attitude in the matter, and concluded that the claimant had bought a house, and not a home, and that, until such time as it had been properly repaired and renovated, it was not a home within the Resources Regulations. On this view, no new home had as yet been purchased, and therefore the £19,000, or more accurately the balance of it still in the possession of the claimant, fell within the ambit of regulation 6(1)(b). The claimant was therefore entitled to supplementary benefit and was not caught by regulation 7 of the Resources Regulations.

7. The same approach had been adopted by a tribunal in decision R(SB)14/85 but this was rejected by the learned Commissioner. He said at paragraph 8 of his decision:-

"8. (1) First, [the tribunal] misconstrued regulation 6(1)(b) of the Resources Regulations. The regulation provides that in calculating a claimant's capital resources there shall be disregarded 'any sum attributable to the proceeds of sale of a home which is to be used for the purchase [my underlining] of another home within six months of the date of sale or such longer period as is reasonable in the circumstances.' This disregard is limited to proceeds intended to be used, within the prescribed time, for the purchase of another home. It does not extend to proceeds put into an investment account for later use by the purchaser on 'necessary building work and amenities' or costs for 'fitting up' a flat.

(2) Sums to be used for building work, amenities or fitting up may be 'essential repairs or improvements to the home' in terms of regulation 6(1)(g)(ii) .... but in order to qualify under regulation 6(1)(g)(ii) the sum must have been 'given or loaned' to the claimant or his partner. Proceeds of sale received by such a person are accordingly not within that prescription.

(3) Counsel for the claimant sought to support the tribunal's conclusion that 'home' imported a completed home and not a mere shell. In his submission, regulation 6(1)(g)(ii) was not exhaustive and it must have been intended that 'purchase', in regulation 6(1)(b), should include the cost of the works done after the shell had been acquired, in order to make a completed home. There could, he submitted, be a two-stage purchase under which (1) the shell was brought and (2) the home was completed.

(4) I accept that a claimant might contract to purchase a flat from a vendor once that flat had been converted or refurbished, paying the purchase price to the vendor who had agreed to carry out the conversion or refurbishment, in two (or more) stages as work proceeds. Proceeds of sale intended to be used for such a purchase might (depending on the exact nature of the intended transaction) fall within regulation 6(1)(b). But the facts found by the tribunal are contrary to any such conclusion in the present case. The tribunal found that the claimant had bought a 60 per cent share of a house and had banked the balance of the money received from the sale of his former house to spend on conversion of the new property. It is clear from their findings that it was the claimant and his son and daughter-in-law who were undertaking the conversion, not the vendor, and that the purchase was completed and the claimant went into occupation before the conversion took place ...."

I consider that those observations apply mutatis mutandis to the present case. The claimant bought a home, and this action took the balance of the original proceeds of sale, which were earmarked for rendering the home fully habitable, outside the ambit of regulation 6(1)(b).

8. Of course, I accept that the mere purchase of land with a building on it does not necessarily constitute the purchase of a home. Each case must be looked at on its facts. Manifestly, a building which consists of no more than four walls without any kind of fixture, fitting or amenity could not sensibly be regarded as a home. However, there comes a point when that building could be regarded as fit for habitation at least by some people, and it becomes a nice point of judgment as to whether it can then be called a home. Different people have different standards. Some will accept a particular building as habitable whilst others would not. It is, in my view, a matter for the tribunal to determine in any given case whether having regard to the circumstances of the claimant the building in question could be regarded as his home.

9. Now, although in the present case the tribunal, in the exercise of their judgment, decided that the building had not been sufficiently renovated to constitute a home, I do not think that they were entitled on the evidence to reach that conclusion. What is fatal to any such determination is, in my view, the fact that the claimant actually moved into the premises and did not occupy any other accommodation. Although clearly she was dissatisfied with the state of the building, she was nevertheless prepared to accept it as sufficiently habitable for her to go into occupation. If she had been asked the question 'Where is your home,' she would have said, '401 Hurcott Road, Kidderminster'. Had, however, she not moved in, but instead lived in some other accommodation, merely supervising the repair and renovation work, then in those circumstances the tribunal could reasonably have reached the conclusion that the building in question was not the claimant's home. However, this did not happen.

10. In the circumstances, then, as the tribunal could not have reasonably reached the conclusion that the property was not the claimant's home, then the balance of the £19,000 could not be disregarded pursuant to regulation 6(1)(b), and it necessarily followed that the claimant had a sum in excess of the statutory maximum imposed by regulation 7. Accordingly, the claimant was not entitled to supplementary benefit as from 29 June 1984.

11. For completeness, I should say that the claimant has also complained that her solicitors were misled by a member of the staff of the local office of the Department of Health and Social Security and contends in effect that the adjudication officer is estopped. However the adjudication officer acts independently of the Department of Health and Social Security in making his decisions, and he must base them only on the statutory provisions and case law; he cannot be influenced by any advice previously given by an officer of the Department as to the potential outcome of a claim or a review. In other words, the doctrine of estoppel has no place in this jurisdiction (see Decision R(SB)8/83). It is, nevertheless, open to the claimant to approach the Secretary of State, and if she can convince him on the facts that the Department did mislead her or her solicitors, it is open to the Secretary of State to make an ex gratia payment. However, this is a matter entirely for him and does not fall within my jurisdiction. And, needless to say, I make no comment whatsoever on whether or not anything of a misleading nature was in fact said.

12. Manifestly, for the reasons given above, the tribunal erred in point of law, and I must set aside their decision. However, as all the relevant facts have been found, and as it is expedient that I give the decision the tribunal should have given, I can conveniently go on to dispose of the matter finally by deciding that the claimant is not entitled as from 29 June 1984 to supplementary benefit.

13. I allow this appeal.

(Signed) D G Rice
Commissioner

Date: 16 September 1985