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**THE SOCIAL SECURITY COMMISSIONERS**

*Commissioner's Case No: CFC/2493/1997*

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM A DECISION OF AN APPEAL TRIBUNAL ON A QUESTION OF LAW

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

**MR COMMISSIONER JACOBS**

*Claimant:*

*Tribunal:*

*Tribunal's Case No:*

**Decision:**

1. My decision is as follows. It is given under section 23(7)(b) of the Social Security Administration Act 1992.
- 1.1 The decision of the Dover Social Security Appeal Tribunal held on 13th December 1996 is erroneous in point of law.
- 1.2 Accordingly, I set it aside and, as it is not expedient for me to give a decision on the claimant's appeal to the tribunal, I refer the case to a differently constituted tribunal for determination.
- 1.3 I direct the tribunal that rehears this case to conduct a complete rehearing. In particular, the tribunal must proceed in accordance with paragraphs 8 to 11.

I also direct that this case be put before a legally qualified panel member of the Appeal Tribunal in order to determine whether it is appropriate to give any directions under regulation 38(2) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999 in order to ensure that all relevant evidence is before the tribunal at the rehearing. See paragraph 9.

**The appeal to the Commissioner**

2. This is an appeal to a Commissioner against the decision of the Appeal Tribunal brought by the claimant with the leave of the tribunal's chairman. The adjudication officer supports the appeal.

**The adjudication officer's decision**

3. The claimant claimed Family Credit on 20th April 1996. The adjudication officer refused the claim on the ground that the claimant's capital exceeded the threshold beyond which there was no entitlement to benefit. The claimant applied for a review of that decision, but the adjudication officer decided that there were no grounds for review. The claimant appealed against that decision to a tribunal.

4. The background to the case was this. The claimant and her husband owned a house. They had two endowment policies with the proceeds from which they intended to repay their mortgage. They moved and the house was put up for sale. When the house was sold, in July 1995, the proceeds allowed the mortgage to be repaid without the use of the policies. The couple intended to use the policies to support the mortgage necessary for the purchase of their present home from the local council. However, this was not possible and the policies were surrendered in March 1996.

**The treatment of the claimant's capital**

5. The claimant argued that the proceeds from the surrender of the endowment policies were to be disregarded under paragraph 3 of Schedule 3 to the Family Credit (General)

Regulations 1987. This provides that there is to be disregarded in calculating the claimant's capital

“Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of the sale or such longer period as is reasonable in the circumstances to allow the claimant to complete the purchase.”

6. The majority of the tribunal decided that claimant did not fall within that provision, because of the time gap between the sale of the former home and the surrender of the policies. The chairman dissented. Unfortunately, but not surprisingly in the circumstances, the full statement of the tribunal's decision (written by the chairman) is largely a statement of the reasons for the chairman's dissenting opinion. The claimant's grounds of appeal were based on the chairman's reasoning.

7. The reason given by the majority for its decision is not sustainable. The mere existence of a time gap was not alone sufficient to place the claimant outside paragraph 3, although that gap was a factor that the tribunal was entitled to take into account in applying the correct test.

8. However, the conclusion reached by the majority was correct. The chairman's view was wrong in law, because it gave insufficient weight to the requirement that the sum be

“directly attributable to the proceeds of sale of any premises formerly occupied by the claimant”.

It may be the case that the surrender of the policies was attributable to the sale of the former home, but that is not the same thing as being attributable to the proceeds of sale of that home. Those words limit the scope of the paragraph. It is not necessary to give an exhaustive statement of what is covered by those words. They clearly cover the proceeds of sale themselves and would also include any form of investment into which those proceeds had been put pending their use in another purchase. However, the words do not include the amount obtained on surrender of policies that could have been, but were not, used to repay the mortgage on the former home.

9. The adjudication officer submitted to the Commissioner that the claimant's grounds of appeal did not identify an error of law in the tribunal's decision, but that the decision was erroneous in law on another ground. This was that the tribunal had not considered whether any of the other money in the claimant's accounts represented the proceeds of sale of the former home. I agree with that submission. This means that the tribunal's decision was erroneous in law. As I do not have the evidence to deal with the question that has to be investigated, the case must be remitted to another tribunal for rehearing.

10. In the course of the proceedings before the Commissioner, a direction was issued by a Nominated Officer (now called a Legal Officer to the Commissioners) referring to the decision of the Commissioner in CIS/7330/1995. That decision dealt with a form of life insurance and the Commissioner held that its surrender value had to be disregarded under the

Income Support equivalent to paragraph 16 of Schedule 3. This provides that there is to be disregarded in calculating the claimant's capital

“The surrender value of any policy of life insurance.”

I do not doubt the correctness of anything contained in that decision. However, it is not relevant to this case. Paragraph 16 takes out of the calculation of the claimant's capital the amount that would be obtained if a life insurance policy were surrendered. It does this only for so long as the policy remains in existence. Once the policy is surrendered and its value is realised, the protection of paragraph 16 ceases to apply. The reference to “surrender value” in paragraph 16 is not a reference to the amount actually realised when the policy is surrendered.

11. The claimant's endowment policies almost certainly contained a life insurance element. Paragraph 16 applied until the policies were surrendered. After that it had no application.

### **Summary**

12. The tribunal's decision is erroneous in law and must be set aside. It is not appropriate for me to give the decision that the tribunal should have given on its findings of fact and it is not expedient for me to make further findings of facts. There must, therefore, be a complete rehearing of this case before a differently constituted tribunal. The tribunal will decide afresh all issues of fact and law on the basis of the evidence available at the rehearing in accordance with my directions. As my jurisdiction is limited to issues of law, my decision is no indication of the likely outcome of the rehearing, except in so far as I have directed the tribunal on the law to apply.

### **Changes made by the Social Security Act 1998**

13. The Social Security Act 1998 is being brought into force in stages over this summer and autumn. It abolishes the title and status of adjudication officers, transferring their functions to officers acting in the name of the Secretary of State. It also abolishes Social Security Appeal Tribunals, transferring their existing cases to the new and nameless Appeal Tribunal. The Appeal Tribunal is differently constituted from a Social Security Appeal Tribunal. In this case, the tribunal is likely to consist of a legally qualified panel member sitting alone: see regulation 36(1) of the Social Security and Child Support (Decisions and Appeals) Regulations 1999. I mention these changes for the claimant's information. It is likely that by the time of the rehearing the claimant's appeal will fall under the new arrangements.

**Signed: Edward Jacobs**  
**Commissioner**

**Date: 21st September 1999**