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FAMILY CREDIT (GENERAL) REGULATIONS 1987
SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Susan Julie James

Social Security Appeal Tribunal: Bury St Edmunds

Case No: 2 09 4924

[ORAL HEARING]

Decision

1. This claimant's appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 2 October 1989 is erroneous in law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

Representation

2. I held an oral hearing of this appeal. The claimant, who did not appear, was represented by Mr Mark Rowland of Counsel instructed by Mr David Thomas, Solicitor, of the Child Poverty Action Group. The adjudication officer was represented by Mr L. Varley of the Solicitor's Office, Department of Social Security.

Nature of the appeal

3. This appeal relates to the valuation (for family credit purposes) of the claimant's interest under her father's will. She was, in the event, the sole beneficiary and a principal asset in his estate was a semi-derelict property. The father's executor, a solicitor had retained control of this property, which he was trying to sell. No assent in favour of the claimant had been executed.

4. If that value is (when added to any other capital assets of hers) less than £6,000.00 (the capital limit at the time), so that the claimant is not precluded from obtaining family credit on grounds of the amount of her capital, the question whether the claimant satisfies the other conditions for obtaining family credit requires to be considered. These are dealt with later in this decision.

The claim for family credit

5. The claim was before the appeal tribunal and is dated 28 February 1989. The claim form bears three receipt stamps, one dated 31 March 1989, another dated 6 April 1989 and the third dated 5 May 1989. This shows that the claimant was employed for 37¹/₂ hours a week with P.E.D. Limited and that this type of job is "Assembly". In answer to questions on form FCS 2037 dated 10 April 1989, P.E.D. Limited set out the claimant's wages from 2.../[illegible]2/1989 to 24/03/89 (5 weeks in all) and stated that the claimant left on 24/03/89.

6. On 29 March 1989 the claimant's solicitors sent the completed claim to the local office of the DHSS. This has been stamped as received on 6 April 1989. In a covering letter they stated:

"We believe you want confirmation concerning the derelict property she has inherited. We have been trying for many months to realize this, but at the moment she is not deriving any benefit from it and we fear that it will be two or three months at the lowest before a purchaser can be found in the current economic climate."

In a later letter dated 2 May 1989 they stated:

"The property 67 Silver Street has not been vested in Mrs James and is still owned by the Executors. It is for sale. A purchaser has been found but he was not able to obtain the requisite planning permission. The property is on the market again. No income is being derived from it and it is not under the control of the Applicant."

The adjudication officer's decision

7. The adjudication officer treated the claimant as the beneficial owner of the derelict property and issued the following decision on 16 May 1989:

"The claimant was not entitled to Family Credit on the date of claim 6.4.89 because the claimant had capital of more than £6000.

Social Security Act 1986 section 22(6). Family Credit (General) Regulations, regulations 28 and 29."

8. The claimant appealed against this decision and in his written submission on the appeal the adjudication officer stated that as the derelict property had been valued at £80,000.00 as a result of an earlier claim the adjudication officer had decided that the claim should be disallowed on the basis that the claimant held capital in excess of £6,000.00. When visited at the property in question on 9 September 1988 the claimant had told a visiting officer it was for sale for £200,000.00.

The appeal tribunal's decision

9. The claimant appealed to an appeal tribunal who heard the appeal on 2 October 1989. The chairman's note of evidence states:

"The appellant was represented by Mr Longford of Messrs Rushtons and Lloyd, Newmarket. He submitted that the appellant was not entitled to the property in question No. 67 Silver Street Burwell. The appellant's late father George William Parr died on 13 September 1987. Under the terms of Mr Parr's Will, all of his estate passed to his wife but in the event of her pre-deceasing him his estate went to his daughter Doreen Julie Parr.

Her real name was of course Susan Julie Parr. She was, however, the only daughter. Mrs Parr pre-deceased her husband. Mr Longford's argument was that until an Assent in respect of the property it was not her property. It remained in the names of the Executors. It did not pass until a Deed or until an Assent was perfected.

Soon after Mr Parr's death the question of the sale of the property was investigated. The property was in a village and was capable of redevelopment. In December 1987, January's made a report and the scheme for development was, in fact, prepared. An application for planning permission was lodged early in 1988, but there was a refusal. A sale was negotiated on the 26 September 1988 in the sum of £185,000, but this fell through. The property was re-offered, but of course the market had become difficult and in July 1989 the Agents advised that even with planning permission for four plots the value of the property was about £120,000. In, fact, in September 1989 Black Horse Agencies negotiated a sale in that sum, a contract had been submitted, but not yet acknowledged. The Presenting Officer mentioned that the Tribunal could consider Regulation 27 of the Family Credit (General) Regulation and it was agreed that the property could be disregarded for such a period as is reasonable in the circumstances to enable the property to be sold."

10. The appeal tribunal's decision was:

"Dismiss the appeal."

11. Their recorded findings of fact were:

- "1. On April 1989 the Appellant made a claim for Family Credit.
2. Her late father George William Parr died on 13 September 1987 and probate to his estate was granted on 29.10.87. Under the terms of the will of the late Mr Parr the whole of his estate was left to his wife but, if she predeceased her Husband then the estate passed to his Daughter Susan Julie Parr named

in the will as Doreen Julie Parr. Mrs Parr pre-deceased her husband.

3. As at the date of his death, therefore, the whole of his estate passed immediately to his daughter.
4. The sale of the property was negotiated subject to contract on 26 September 1988. Application for planning consent had been made on the property but had been refused.
5. In July 1989 the agents valued the property with planning permission at £120,000.
6. A contract for a sale at £120,000 subject to contract was negotiated in September 1989."

Their recorded reasons for this decision were:

"Whilst the Tribunal understand the point made by Mr Longford, whichever way one looks at the matter as at the date of the death of her late father in September 1987, the whole of his estate passed to the appellant, her mother have pre-deceased her. Probate was granted on 29 October 1987 and the property was put on the market clearly during 1988 following a refusal for planning consent. It appeared that consideration had been given to development early in 1988 and eventually a sale was negotiated in September 1988 at £185,000 but this did not proceed. Whilst the matter had clearly been considered since, no real decision has been made as to a somewhat lower asking price until the middle of 1989 and ultimately a sale was negotiated again subject to contract and the contract was sent out in August 1989. The price this time was £120,000. We are now some 2 years from the date of the death of the late Mr Parr and the property still has not been sold. At the date of claim a year and a half had passed from his death and whilst the Tribunal accept that there existed difficulties in the market nevertheless they conclude that a more than reasonable time had elapsed in which the property could have been sold. Consideration had been given to development but this had been refused. It may well be, of course, that events then turned against the appellant but the question the Tribunal had to consider is whether or not such longer period as is reasonable in the circumstances had expired to enable the property to be sold. They conclude that whichever way one looks at the matter the period of 18 months is reasonable to enable the property to be sold and that they do not exercise their discretion in this respect. The property is clearly well in excess of £6,000 and thus as at the date of claim the appellant had capital of more than £6,000 and was not entitled to Family Credit. For these reasons the appeal fails."

Was the appeal tribunal's decision erroneous in law?

12. It clearly was for the following reasons.
13. Until there was a written assent by the executor to the

vesting of 67 Silver Street in the claimant, it remained vested in the executor, as executor: see section 36(4) of the Administration of Estates Act 1925. Administration could not be said to be complete until such an assent had been executed or the property had been sold and the net proceeds accounted for to the claimant. The claimant's interest was in an unadministered estate. Her interest was a chose in action and did not confer entitlement to any beneficial interest in any specific property: see Commissioner of Stamp Duties (Queensland) v Livingston [1965] A.C. 694 at pages 712G, 713 A-B and 717 C-D. The claimant accordingly had no property right in the house: cf. decision R(SB) 5/85. It therefore was not capital which the claimant "possesses in the United Kingdom" in terms of regulation 32 of the Family Credit (General) Regulations 1987.

14. The tribunal might, on receipt of an affirmative answer to an enquiry of the executor as to whether he would, at the date of claim, have been willing to assent forthwith to the property vesting in the claimant, have treated (i.e. deemed) the claimant to be possessed of this property on the basis that it was

"capital which would become available to the claimant upon application being made but which has not been acquired by him."

See regulation 29(2) of the above mentioned Regulations. But they never made such enquiry and clearly never considered that regulation or, if they did, failed to refer to it in their decision.

15. (1) If the tribunal had found the necessary fact to enable them to apply regulation 29(2), they would then have been in a position to consider whether the value of that property, of which the claimant was to be treated or deemed to be possessed, should be disregarded under paragraph 27 of Schedule 3 to the Regulations which provides for the disregard of the following capital:

"Any premises where the claimant is taking reasonable steps to dispose of those premises, for a period of 26 weeks from the date on which he first took such steps, or such longer period as is reasonable in the circumstances to enable him to dispose of those premises."

(2) The tribunal considered paragraph 27 in the context of the property belonging to the claimant. It is not in dispute, however, that they erred in law in interpreting this provision "solely by reference to the length of time that the property had been awaiting disposal" and did not give any indication of what significance, if any, should be attached to the other circumstances surrounding the claimant's inherited property and her disposal thereof: see paragraph 6 of the written submission dated 8 August 1990 of the adjudication officer then concerned.

16. I set aside the decision of the appeal tribunal as erroneous in law. It is not expedient for me to substitute my own decision

because further facts require to be found before any decision can be given on the merits and further evidence is required before these facts can be established. Accordingly, I refer the decision to another social security appeal tribunal which should be entirely differently constituted.

Directions to the fresh tribunal

17. There should be a further written submission from the adjudication officer to the fresh tribunal, made after taking legal advice, on the points set out below. The claimant should have an opportunity of replying in writing before the hearing.

18. The date of claim was treated by the adjudication officer and the former tribunal as 6 April 1989, the date on which the letter from the claimant's solicitors is stamped as received: see paragraph 5 above. It is not clear that this is the correct date of claim. The date of claim is the date on which the claim was received in an appropriate office: see regulation 6(1)(a) of the 1987 Claims and Payments Regulations. The date stamp on the claim form shows this to have been 31 March 1989. A specific finding as to the correct date of claim should be made.

19. Whichever date of claim is chosen, of the possibilities, the evidence before the former tribunal was that the claimant's partner had left the employment referred to on the claim form: see paragraph 4 above. Had he taken another job by the date of claim and, if so, was he engaged and normally engaged at that date in remunerative work within the meaning of section 20(5)(b) of the Social Security Act 1986 and of regulations 4 and 5 of the Family Credit (General) Regulations 1987, as in force at the date of claim? Evidence and findings answering this question are required.

20. The claim form bears a date (28 February 1989) when the claimant was in remunerative work. Is benefit now being claimed from the date when that claim should have been received (say 1 March 1989)? If so, the question arises whether, since the claimant was apparently relying on her solicitors, there was good cause for late claim, in terms of the relevant regulations. Specific findings should be made on these points.

21. If there was good cause for a late claim for a date when the claimant's partner was in remunerative work, it will be necessary to make a finding as to whether that was work in which the claimant was normally engaged in terms of regulation 5 of the Claims and Payments Regulations.

22. If the claimant's husband satisfies the normal remunerative work requirement at the relevant date, the next step will be to make the enquiry referred to in paragraph 14 above, namely whether the executor would have been willing to vest the Silver Street property in the claimant at the date of claim, if he had been asked to do so. If the answer is no, it will be necessary to make findings as to whether the claimant's interest in her father's estate had a market value at the date of claim

and, if so, what that value was. If the answer is Yes, the tribunal should apply regulation 27 of Schedule 3.

23. Whether the date when reasonable steps were first taken to dispose of the property is taken to be (a) the date when the solicitors were instructed to sell (11 December 1987) or (b) the date when it was first put on the market (14 June 1988), the period of 26 weeks had expired by the date of claim. In my judgment, steps to sell at market value are reasonable steps to dispose of the premises in terms of paragraph 27 (which is set out in paragraph 15(1) above). Looking at the history of the matter and the extensive and continuous efforts which had been made by the executor to sell the property, it is certainly arguable that the period of 26 weeks should be extended to after the date of claim, so that the value of the property should be excluded from the computation of the claimant's capital. That however is a matter on which the tribunal should, after considering the further written submissions and any further oral submissions or evidence, reach their own conclusions. In so doing, full reasons, taking account of all the circumstances, should be given.

24. The appeal tribunal should make findings on the points referred to in this decision and on all other relevant points raised by or on behalf of the claimant or the adjudication officer. The record of their decision should comply with regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986.

25. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Deputy Commissioner

Date: 4 May 1993