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MJG/SH/7

Commissioner's File: CFC/015/1990

★ 22/92

FAMILY CREDIT (GENERAL) REGULATIONS 1987
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I dismiss the claimant's appeal against the decision of the social security appeal tribunal dated 20 April 1990 as that decision is not erroneous in law: Social Security Act 1975, section 101 (as amended).

2. This is an appeal to the Commissioner by the claimant, a woman born on 21 January 1959. The appeal is against the unanimous decision of a social security appeal tribunal dated 20 April 1990, which dismissed the claimant's appeal from a decision of the local adjudication officer on 7 June 1989, holding the claimant not to be entitled to family credit as at the date of her claim on 8 May 1989. The reason given by the tribunal for their decision was that the claimant's "capital assets exceeds the £6,000 limit". That was a reference to section 22(6) of the Social Security Act 1986 which provides,

"No person shall be entitled to an income-related benefit [which family credit is - 1986 Act, s.20(1)] if his capital or a prescribed part of it exceeds the prescribed amount."

Regulation 28 of the Family Credit (General) Regulations 1987, S.I. 1987 No. 1973 (the "General Regulations") provides,

"For the purposes of section 22(6) of the Act as it applies to family credit (no entitlement to benefit if capital exceeds prescribed amount) the prescribed amount is £6,000 [raised to £8,000 by S.I. 1990 No. 691 as from 9 April 1990]."

3. The capital in question was a dwelling house owned by the claimant but occupied by a protected residential tenant. The

claimant's own home was elsewhere. The District Valuer had valued the house at £9,500. It does not appear to have been suggested by the claimant that the house was (even with a 10% discount - see para.6 below) less than £6,000 in value. It appears also to have been conceded that the tenanted house could not have its value disregarded under paragraph 27 of Schedule 3 to the General Regulations i.e., "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". That concession appears to have been made in the light of enquiries made by the local office into the situation by which the house, although at one time put up for sale, had been withdrawn from the market due to a lack of response. That particular point has not been taken on appeal to the Commissioner.

4. The subject of the appeal to the Commissioner concerns the claimant's claim before the tribunal that the tenanted dwelling house should have been disregarded as coming under paragraph 6 of Schedule 3 to the General Regulations, which provides as follows,

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"CAPITAL TO BE DISREGARDED

1-5.

6. The assets of any business owned in whole or in part by the claimant and for the purposes of which he is engaged as a self-employed earner or, if he has ceased to be so engaged, for such period as may be reasonable in the circumstances to allow for disposal of any such asset."

[An identical rule is prescribed for Income Support by paragraph 6(1) of Schedule 10 to the Income Support (General) Regulations 1987, S.I. 1987 No.1967].

5. The claimant's representative is recorded in the chairman's note of evidence as addressing the tribunal in the following terms,

"[The dwelling house] should be disregarded under Schedule 3, para 6 of General Regulations. [The claimant] is a self-employed earner. She looks after the property. Goes up every week. Checks the tenant. Regulated Tenancy. Cannot increase rent. Has a certificate of exemption from Class II National Insurance and also letter of exemption from tax from the [Inspector of Taxes]. Section 4, Social Security Act 1975. Self-employed. Actually checks the tenant. Tried to sell but no-one wanted to buy with sitting tenant at fixed rent."

6. The tribunal made the following findings of fact,

"[The claimant] owns a house with a capital value of £8,550

[i.e. £9,500 less the 10% deduction under regulation 32(a)(i) of the General Regulations] for the purposes of the Regulations. The house is tenanted and she collects the rent from the tenant every week and checks that the property is in repair. The last time repairs were needed was 18 months ago."

7. The tribunal gave as its reasons for decision,

"[The claimant] cannot be treated as a self-employed earner on the strength of merely collecting the rent from the tenanted house. The house is not a business, it is an investment and as such its value falls to be included as a capital asset for family credit purposes."

8. I should say first that the question of whether the claimant is to be treated as a "self-employed earner" i.e. "a person who is gainfully employed in Great Britain otherwise than in employed earner's employment" (Social Security Act 1975, section 2(1)(b)) is not for this purpose conclusively determined by the fact that the claimant has a certificate of exemption (under section 7(6) of the Social Security Act 1975) from paying Class II contributions as a self-employed earner - see R(FC) 2/90 paragraph 16. In any event the question on the facts of this case is not so much whether the claimant is a self-employed earner as whether the dwelling house was to be treated as one of the "assets of any business" within paragraph 6 of Schedule 3, to the General Regulations (see paragraph 4 above).

9. As to that question, the appeal to the Commissioner (supported by a further written submission from the adjudication officer dated 24 October 1991) is on the basis that the tribunal did not properly explain their reasons for rejecting the claim that the dwelling house was a business asset. In paragraph 6 of that submission the adjudication officer says,

"Clearly, it is possible for property to be an asset of a business. There would be no dispute that a person owning several blocks of flats which are rented to tenants was engaged as a self-employed earner running a business, the flats being assets of this business. It is also possible, I submit, that a person who owns a single property and receives rent from a tenant of this property is engaged as a self-employed earner; equally it is possible that this person is not a self-employed earner. It is my submission that it is a question of fact as to whether, in any particular circumstances, a business is being run."

10. In my judgment that submission is too widely stated. The word "business" is not defined anywhere in the Social Security legislation, so far as I can see. However, the mere receipt of rent from a letting has been held in another context not of itself to be a "business" - Bagettes v. G.P. Estates [1956] Ch. 290, C.A. Cf Re Wallis, ex p. Sully (1885) 14 Q.B.D. 950). In Smith v. Anderson (1880) 15 Ch.D. 247 at 258-261 Jessel M.R. discussed the meaning of "business". At page 260-261 he said,

"There are many things which in common colloquial English would not be called a business, even when carried on by a single person, which would be so-called when carried on by a number of persons. ... for instance, a man who is the owner of offices, that is, of a house divided into several floors and used for commercial purposes, would not be said to carry on a business because he let the offices as such; but suppose a company was formed for the purpose of buying a building, or leasing a house, to be divided into offices, and to be let out, should not we say, if that was the object of the company, that the company was carrying on business for the purpose of letting offices, or was an office-letting company, trying it by the use of ordinary colloquial language? The same observation may be made as regards a single individual buying or selling land with this addition, that he may make it a business, and then it is a question of continuity. A man occasionally buys himself land, as many landowners do, and nobody would say he was a land-jobber or dealer in land. But if a man made it his particular business to buy and sell land to obtain profit, he would be designated as a land-jobber or dealer in land. ... so in the ordinary case of investments, a man who has money to invest, invests his money and he may occasionally sell the investments and buy others, but he is not carrying on a business."

The actual decision on the facts of the case by Jessel M.R. was overruled by the Court of Appeal (1880) 15 Ch. D. 268 et seq. but without in any way impugning the definition of business given by Jessel M.R.

11. In R(SB) 4/85 at paragraphs 9-12, the learned Commissioner considered the meaning of "business" in a context similar to the present one but he was not concerned with the particular type of problem that I have here and I do not find his remarks of assistance in the present context.

12. In my judgment, however, using Jessel M.R.'s definition of "business" by analogy, it cannot be said that the carrying of a business is constituted by the ownership by an individual of a tenanted house, the collection of the rent, the execution of repairs and the carrying out of other landlords' duties. For that reason, in my view, the tribunal are correct in law in saying in their reasons for decision, "The house is not a business, it is an investment and as such its value falls to be included as a capital asset for family credit purposes." The tribunal had found the relevant facts and drawn their conclusion, which was a conclusion of law and was correct in my judgment. Consequently I do not accept that the tribunal erred in law and in my view its reasons were sufficient.

13. Lastly, I should say that the fact that paragraph 6 of Schedule 3 to the General Regulations uses the plural noun in the expression "the assets of any business ..." is not conclusive of the matter just because the claimant only owns one house. That

is because the use of the plural noun has to be taken as qualified by section 6(c) of the Interpretation Act 1978 (applied to Regulations by section 23 of that Act), stating, "In any [regulation], unless the contrary intention appears, .. words in the singular include the plural and words in the plural include the singular." I do not consider that any contrary intention is shown here and that the word "assets" could also mean a single asset. Nevertheless the circumstances of this case show that there could not be any question of the house being an asset of a business.

(Signed) M.J. Goodman
Commissioner

(Date) 16 March 1992