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JMe/1/LM Commissioner's File: CIS/127/93

SOCIAL SECURITY ACT 1986
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:

Social Security Appeal Tribunal:

Case No.

[ORAL HEARING]

1. The adjudication officer's appeal is allowed, in that I find that the decision of the Woolwich social security appeal tribunal dated 28 October 1992 was erroneous in point of law, for the reasons given below. I set that decision aside. I consider it expedient to give the decision in the claimant's case, having made fresh or further findings of fact (Social Security Administration Act 1992, section 23(7)(a)(ii)). My decision, which on the central legal issue is to the same effect as that of the appeal tribunal, is set out in paragraph 2 below.

2. My decision is that for the period from and including 20 May 1992 until the final determination of the claim under the terms of this decision the claimant is not precluded from entitlement to income support by the operation of section 22(6) of the Social Security Act 1986 or section 134(1) of the Social Security Contributions and Benefits Act 1992 (the capital rule). The question of whether the claimant is entitled to income support for all or any part of that period is to be determined by the adjudication officer on consideration of the claimant's circumstances week by week down to the date on which he makes his determination. If the claimant's appointee does not accept the result of that determination the appeal is to be returned to the Commissioner for further decision.

The background

3. The claimant is a widow now aged 84. She suffers from senile dementia and her daughter has been appointed by the Secretary of State to exercise the claimant's rights in relation to social security benefits including income support. The claimant had to go into hospital. In April 1992 she was an in-patient in the Brook Hospital. A consultant geriatrician there recommended that she should transfer to a nursing home. A place was found at the Eltham & Mottingham Nursing Home. The

claimant's daughter made a claim for income support on her behalf on 20 May 1992 on the basis that the claimant would become a resident of the home, whose fees were £305.00 per week.

4. On the claim form was declared the claimant's income of £146.00 per month from a private pension, savings of £1,095.08 in a joint Building Society account (with her daughter) and the joint ownership with her daughter of a house, subject to loans secured on the house for its purchase and for home improvements. The amount outstanding on the loans was £24,900.00. The house had been the home of the claimant and her daughter for over 30 years and her daughter continued to live in it.

5. The adjudication officer took the view that the value of the house could not be disregarded under any provision of Schedule 10 to the Income Support (General) Regulations 1987 (the General Regulations) and that under regulation 52 of the General Regulations the claimant was to be treated as possessing capital of £10,950.00 derived from her ownership of the house. A valuation of the house with vacant possession had been made at between £52,000.00 and £53,000.00. The adjudication officer deducted from £52,000.00 10% of that figure plus the outstanding amount of the loans secured on the house (as required by regulation 49 of the General Regulations), to reach a figure of £21,900.00. He then applied the view that regulation 52 deemed the claimant to have a half-share in the house, which was to be valued at £10,950.00. That amount, when added to half of the amount in the joint Building Society account, was well over the prescribed capital limit of £8,000.00, possession of which meant that a claimant could not be entitled to income support. Therefore the adjudication officer's decision on 22 July 1992 was that the claimant was not entitled to income support.

6. The claimant's daughter appealed on her behalf against that decision, referring to Commissioner's decision CIS/124/1990 and enclosing a valuation by a chartered surveyor expressing the view that the claimant's 50% share of the freehold interest in the house would be of no value. The adjudication officer in the written submission to the appeal tribunal on form AT2 maintained the view summarised in paragraph 5 above and submitted that the issue under regulation 52 was not the marketability of the part-share of the physical asset, but that it was the marketability of the physical asset as a whole which was fundamental. The claimant's daughter attended the hearing before the appeal tribunal on 28 October 1992.

The appeal tribunal's decision

7. The appeal tribunal allowed the claimant's appeal. Its decision was that the claimant "is entitled to income support - her income does not exceed the prescribed amount". Its findings of fact recorded in box 2 of form AT3 were--

> "Facts as stated in paragraphs 2 to 7 of Box 1 are accepted by the Tribunal."

The contents of box 1 (which is for the recording of the chairman's note of evidence) were--

> "1. [The claimant's daughter] did appear before the tribunal.
> Introductions were made and tribunal procedure was explained.
> 2. [The claimant] is a widow aged 83. She suffers from senile dementia and is unable to manage her own affairs. Her daughter [...] has been appointed to act on her behalf for all matters concerning claims and payments of benefit.
> 3. On 20.5.92 [the claimant's daughter] submitted a claim to income support on her mother's behalf.
> 4. Mother and daughter have joint savings of £1095.08 and [the claimant] has a private pension of £146 per month. Claim to Income Support was made to assist with nursing home fees of £305 per week.
> 5. Mother and daughter have a joint mortgage and home improvement loan on property.
> Total outstanding are £16,825 mortgage and £8,075 for the loan. Property is jointly owned.
> 6. [The claimant's daughter] has lived in the house for 34 years - it is her only home.
> 7. Valuation of property involved was between £52,000 and £53,000.
> 8. A.O. considered claim and decided income support was not payable because [the claimant] had capital in excess of the prescribed amount."

The reasons for decision recorded in box 4 of form AT3 were--

> "1. By virtue of Social Security Contributions and Benefits Act 1992, section 134(1) no person shall be entitled to an income-related benefit if his capital exceeds the prescribed amount.
> 2. Prescribed amount is £8,000 - regulation 45 of Income Support (General) Regs.
> 3. Regl 49 of the General regulations provides that capital shall be calculated at its current market value less where there would be expenses attributable to sale, 10 per cent.
> 4. Regl 52 of the General regs considered.
> 5. Taking the "marketing value as a whole" test, A.O. submits [the claimant's] share is £10,950 and is therefore above prescribed amount £8,000. Thus there is no entitlement to income support.
> 6. For [the claimant's] case see "Grounds of Appeal" Box 4, Form AT2". See also her various letters, e.g. those of 27th July 1992 and 12th August 1992. The tribunal will summarise this case as follows as authorities have been cited by the tribunal over and above points made by [the claimant's daughter] herself:
>
> (a) She is not prepared to sell her share of the house. Therefore the question involved is the way the value of the house is assessed. [The claimant's daughter] will remain

as a sitting co-owner and not on the basis of vacant possession.
(b) A.O. has taken the vacant possession value of the house but this is incorrect. The house is owned jointly by mother and daughter. If DSS require her mother to sell her share of the house then the value must be based on the fact that [the claimant's daughter] will be remaining as a sitting co-owner. It is totally inaccurate to use a vacant possession valuation in these circumstances.
(c) Reference is made to decision CIS/24/1990, a summary of which is enclosed with the appeal papers. Facts are similar to present case and Commissioner upheld A.O.'s submission that far from causing claimant's total capital to exceed the prescribed amount to all intents and purposes her interest in ... could arguably have a nil value. See decisions R(SB) 14/86 and R(SB) 21/83.
(d) The tribunal have read and considered both these decisions. R(SB) 14/86 may be the more helpful of the two. Here it was held that the market value of the property was the price it would actually fetch in the market. The tribunal can properly find only the minimum value of a claimant's interest in the property if that value, net of expenses, together with his other assets, obviously exceeds the capital limit.
(e) On page 132 of Mesher on Income-Related Benefits, 1992 Edition, in relation to regl 52 of the "General" Regls, it is said that the proper approach is not to take the market value of the asset and divide it into the appropriate number of shares but to assume that the person has an interest of the deemed percentage and calculate its market value (CIS 24/1990 and CIS 408/1990). This may, depending on the circumstances, produce a much lower valuation.
(f) Reference is now made to letter dated 10.8.1992 from Mr Lane a surveyor. It refers to [the claimant's] house. Mr Lane states that the property is a residential dwelling house and an assessment of value is required in respect of a single share of the interest, where the owner of the remaining share retains occupation of the property. It would therefore be inappropriate to adopt a value for the interest that reflects vacant possession of the property...In effect the value of this asset cannot be realised in the market place...In view of this Mr Lane's opinion is that the interest would be of no value.

7. The view of the tribunal is that the Department have not shown, on a balance of probability, that [the claimant's] assets are above the prescribed limit. Therefore she is not entitled to income support.

8. It may be of general interest to know that Presenting Officer telephoned Chief Adjudication Officer and understands that, notwithstanding decision CIS/24/90 and other authorities, CAO does not accept that this point has been finally settled. It is still one which is open to argument, but the view of this tribunal has, it is hoped, been clearly expressed above."

Subsequent proceedings

8. The adjudication officer applied for leave to appeal to the Commissioner, which was initially refused by the appeal tribunal chairman. On the further application to the Commissioner, a direction was issued that the adjudication officer was to make a submission after a Tribunal of Commissioners had decided the cases of CIS/391/1992 (Palfrey), CIS/417/1992 (Dowell) and CIS/85/1992 (McDonnell). The decision in those cases was given on 20 May 1993 and the adjudication officer's submission was made on 30 June 1993. Following receipt of that submission and the claimant's daughter's observations on it, the Commissioner granted leave to appeal on 20 August 1993. He further directed that the adjudication officer's submission dated 30 June 1993 should be treated as the submission on the appeal and that there should be an oral hearing of the appeal.

9. The oral hearing took place on 14 October 1993. The adjudication officer was represented by Mr S. M. Cooper of the Office of the Solicitor to the Departments of Health and Social Security. The claimant's daughter attended and was able to give some helpful further evidence.

Was the appeal tribunal's decision erroneous in point of law?

10. The adjudication officer, in the submission dated 30 June 1993, submitted that the appeal tribunal was in error because its actual decision mentioned income rather than capital and it made no finding as to the precise value of the claimant's capital assets or the exact nature of the beneficial ownership of the house. At the oral hearing Mr Cooper elaborated those submissions, pointing out that the appeal tribunal did not clearly say that it accepted Mr Lane's valuation or what it found the claimant's capital resources to be, having in paragraph 7 in box 1 apparently accepted the valuation at between £52,000.00 and £53,000.00. In addition, he submitted that in paragraph 7 of box 4 the appeal tribunal adopted the wrong burden of proof, in that the satisfaction of the capital rule was one of the basic elements of entitlement which it was for the claimant to prove. The claimant's daughter's view was that the appeal tribunal had made it sufficiently clear that it considered the value of the claimant's deemed share in the house to be nil or some minimal sum and that since her capital was then clearly below the prescribed limit the appeal tribunal did not need to make any more specific findings.

11. I agree that the appeal tribunal's decision does disclose errors of law. However, I should say that the appeal tribunal displayed an admirable grasp of the difficult legal issue before it and set out its reasoning on that issue fully, and in the main clearly. Unfortunately, as I recognise can all too easily happen under the pressure of time which often affects appeal tribunals, the concentration on the central issue seems to have led to a failure to make all the necessary findings of fact and to deal with the consequences of the determination of the central issue.

12. On the submission made on behalf of the adjudication officer, I would be prepared to say that the mention of income rather than capital in the appeal tribunal's decision was a mere slip of the pen (no doubt prompted by the same error in the description of the adjudication officer's decision on the first page of form AT2). I consider that the failure to make a finding as to the exact nature of the beneficial interests of the claimant and her daughter was not an error of law because, as explained in paragraph 5 of the submission dated 30 June 1993, since it was not disputed that the claimant had some share in the beneficial interest, the exact nature of that interest did not need to be determined. And the finding in paragraph 7 of box 1 of form AT3 was no more than a finding of the valuation of the house with vacant possession. That in itself raised no confusion. But the appeal tribunal did not make any specific finding on the market value of the claimant's interest in the house. From its approach it appears that it accepted Mr Lane's evidence, but it did not say so. On such fundamental matters, "reading between the lines" is not good enough. The appeal tribunal referred to paragraph 6 of R(SB) 14/86, where the Mr Commissioner Monroe suggested that if an appeal tribunal found it manifest that the value of a capital asset would take the claimant over the statutory limit it could properly reach a conclusion as to some minimum value after the deduction of expenses. But in the same passage the Commissioner warned against leaving matters to inference, and his suggestion is not that an appeal tribunal need not make a finding on the value of a capital asset. It is that the finding could be in the form that the evidence shows that the value could not be less than £X, where £X plus any other capital assets of the claimant is manifestly over the statutory limit. I do not need to decide whether an appeal tribunal could properly find that on the evidence the value of a capital asset could not be more than £X, where £X plus any other capital assets of the claimant was manifestly below the statutory limit, because the appeal tribunal did not make a finding even of that kind. It is certainly preferable in all cases that a finding of a specific value should be made. Because of the other errors I have found, I also do not need to decide whether the appeal tribunal wrongly regarded the burden of proof as on the adjudication officer. The Tribunal of Commissioners in paragraph 25 of CIS/391/1992 treated the satisfaction of the capital rule as part of what the claimant had to prove in showing that he was entitled to income support, but the argument that the capital rule operates as an exception to the conditions of basic entitlement does not appear to have been put to the Tribunal. I note that in the consolidating Social Security Contributions and Benefits Act 1992 the side-note to section 134, which contains the capital rule, is "Exclusions from benefit". The point may need to be decided explicitly in some other case.

13. Finally, there is an error of law not mentioned in the submissions. The appeal tribunal decided that the claimant was entitled to income support. It appears that the assumption at the hearing was that the only obstacle to entitlement was the operation of the capital rule. But the appeal tribunal did not

make the necessary findings of fact on the claimant's income and on the factors relevant to the calculation of her applicable amount in order to base a conclusion that she was entitled to income support. Nor did the appeal tribunal indicate a date for the beginning of entitlement. It was clear from the correspondence before the appeal tribunal that the claimant could not transfer from hospital to the nursing home unless and until her entitlement to income support was confirmed. The appeal tribunal could only deal with the situation from the date of claim down to the date of its decision. During all of that period the claimant remained in hospital and, as explained below in paragraph 21, that circumstance made it unlikely that the claimant's applicable amount exceeded her income during that period.

14. For those reasons the appeal tribunal's decision dated 28 October 1992 was erroneous in point of law and I set it aside. I consider that there is sufficient evidence in the documents produced to the appeal tribunal, slightly elaborated by oral evidence to me from the claimant's daughter, to enable me to give the appropriate decision on the appeal. That decision is set out in paragraph 2 above. I now proceed to give my reasons for coming to that decision.

The reasons for the Commissioner's decision

15. It was not disputed by the claimant's daughter that by the date of claim the house was no longer her mother's home, because there was no prospect of her returning to live there, and that none of the disregards of capital in Schedule 10 to the General Regulations applied in the claimant's case. Apart from paragraph 1 on the disregard of the value of the claimant's home, she (the daughter) was under 60 (paragraph 4) and the house had not been put on sale (paragraph 26). That approach is clearly right and I need say no more about those matters. It was also not disputed that regulation 52 of the General Regulations applied to the claimant's interest in the house. In the view of the claimant's daughter the issue was the value to be put on that interest. Regulation 52 provides--

> "52. Except where a claimant possesses capital which is disregarded under regulation 51(4) (notional capital), where a claimant and one or more persons are beneficially entitled in possession to any capital asset they shall be treated as if each of them were entitled in possession to the whole beneficial interest therein in an equal share and the foregoing provisions of this Chapter shall apply for the purposes of calculating the amount of capital which the claimant is treated as possessing as if it were actual capital which the claimant does possess."

16. We now have the benefit of the decisions of the Tribunal of Commissioners in CIS/391/1992, CIS/417/1992 and CIS/85/1992 on regulation 52. In accordance with the principle set out in paragraph 21 of R(I) 12/75, I, as an individual Commissioner, must follow those decisions unless there are compelling reasons

to the contrary. The adjudication officer and the Secretary of State have been granted leave to appeal to the Court of Appeal in those cases. Mr Cooper informed me that the grounds put forward in the application for leave were a reiteration of the submissions made to the Tribunal of Commissioners. He could point to no decision of a higher court or statutory provision or argument of principle which had not been considered by the Tribunal of Commissioners. In those circumstances I took the view that nothing that could possibly amount to a compelling reason for not following the three decisions had been put forward and that there was no point in rehearsing again the submissions made to the Tribunal of Commissioners. Accordingly, I follow CIS/391/1992, CIS/417/1992 and CIS/85/1992, which in any event I consider to have been correctly decided in relation to the legal issue before me.

17. In paragraph 39 of CIS/391/1992 the Tribunal of Commissioners set out four requirements for the application of regulation 52, that there must be (1) a claimant and (2) one or more other persons who are (3) beneficially entitled in possession to (4) a capital asset. Conditions (1), (2) and (4) are plainly satisfied here. I also conclude that condition (3) is satisfied. It is not in dispute that the house was conveyed into the names of the claimant and her daughter. The documents by which the house was acquired were not produced to the appeal tribunal. The claimant's daughter did not have them with her at the oral hearing before me. I consider it unnecessary to impose the further delay of having those documents produced to me. It is most likely that the house was conveyed to the claimant and her daughter as legal joint tenants on the statutory trusts for themselves as beneficial joint tenants in equity, as explained in paragraphs 41 and 42 of CIS/391/1992. It is possible that their beneficial interests were as tenants in common, but in either case the claimant and her daughter were both beneficially entitled in possession to the house, so that regulation 52 operates to deem them to have equal undivided shares as beneficial tenants in common. Whether that is the position in actuality or only by the deeming of regulation 52, the method of valuation will be the same, as explained in paragraph 23 of CIS/417/1992.

18. It must then be asked how the claimant's interest is to be valued. CIS/391/1992 and CIS/417/1992 have decided very clearly that it is the market value of the claimant's deemed share which is in issue under regulation 52, not the appropriate share of the market value of the capital asset as a whole. Therefore, the valuation in this case of the house with vacant possession (see page T19) is of no relevance. At paragraphs 53 and 54 of CIS/391/1992 the Tribunal of Commissioners set out the instructions which should be given to a valuer (and put in evidence) in order to produce a proper valuation of a deemed share under regulation 52 in very similar circumstances to those of the present case. Translated to the facts here, the claimant would have to be assumed to be a willing seller of her deemed half share in the proceeds of sale of the equity of redemption of the house. Her daughter would have to be treated as unwilling

to vacate the house unless forced to do so by order of the court under section 30 of the Law of Property Act 1925. The valuer should look at the factual situation in deciding the market value of the deemed half share, taking account of the powerful argument to resist an application for sale under section 30 and the risks that a hypothetical purchaser of the half share would run in making such an application. The valuer should be asked to express a view as to whether there is any market for the deemed share and, if so, where it lies and what experience he has of that market and comparable values in other cases. That is a very detailed prescription. However, near the end of the submission on valuation of Mr Drabble as amicus curiae in that case (paragraph 29), which was accepted by the Tribunal of Commissioners (paragraph 38), it was said that if a claimant can produce an estate agent to say that there is no market for the claimant's deemed share there would be material for a decision. Further, in paragraph 26 of CIS/417/1992 it was held that the claimant there had discharged the onus of proving that his capital did not exceed £8,000.00 by producing evidence that local estate agents considered that the claimant's deemed share was unsaleable. If the adjudication officer did not produce acceptable evidence to controvert that view then it had to be accepted that the share had no value. That certainly indicates that evidence that there is no market for a share may be accepted although it does not result from the detailed instructions set out in paragraphs 53 and 54 of CIS/391/1992.

19. In the present case, the claimant's daughter obtained a valuation from a chartered surveyor, Mr G. T. S. Lane ARICS. Mr Cooper did not seek to challenge the professional standing or experience of Mr Lane in any way. His valuation was contained in a letter dated 10 August 1992 to the DSS. It is in the following terms--

> "I have been asked to provide a professional opinion as to the capital value of a Freehold Interest in the above property where the Interest is owned in two separate and equal shares.
> The property is a residential dwelling house and essentially I understand that an assessment of value is required in respect of a single share of the Interest, where the owner of the remaining share retains occupation of the property.
> It would therefore appear inappropriate to adopt a value for the Interest that reflects vacant possession of the property. In reality I consider that the 50% share of the Freehold Interest would not attract interest from potential purchasers if offered in the open market. In effect the value of this asset cannot be realized in the market place. The property would be occupied as a residence, but non income producing and therefore would not be attractive to an investor. Moreover a speculative purchaser of the share in the hope of obtaining vacant possession in the future would I believe be unlikely in the present circumstances.
> For these reasons and to summarise, I am of the opinion

> that the interest available for disposal is not a marketable commodity. In terms of value, this is extremely difficult to assess as there are in general no transactions of a similar nature to provide comparable evidence.
> In view of this, my opinion is that the Interest would be of no value."

That opinion may not be expressed precisely in the terms required by paragraphs 53 and 54 of CIS/391/1992 (for instance in the description of the interest to be valued) but in my view it meets the substance of what is required by those paragraphs and must be accepted if there is no evidence to the contrary. The opinion in essence is that no market exists for the claimant's half share. The adjudication officer initially did not put forward any other valuation of that share, no doubt because it was considered that regulation 52 did not require such a valuation. Since the decision of the Tribunal of Commissioners in CIS/391/1992 and CIS/417/1992 has made the legal position clear (at least at the level of the Social Security Commissioners), the adjudication officer has not sought to put forward any alternative valuation or made any suggestion that the situation might have changed since 10 August 1992. Therefore, I conclude that the claimant's deemed half share in the property under regulation 52 has had a value of nil from 20 May 1992 until the present.

20. The result is that the claimant's entitlement to income support from 20 May 1992 has not been precluded by her capital being over the statutory limit. The only other capital asset which she possesses is the joint Building Society account. The claimant's daughter gave evidence to me, which I accept, that the balance in the account, which stood at £1,095.08 on the date of claim, had fluctuated over the period up to the present, to a maximum of about £1,500.00. I am prepared to assume, not having heard any argument on the point, that regulation 52 of the General Regulations applies to the account, so that the claimant's interest at the date of claim was to be valued at £547.54 (there being no expenses in obtaining the cash value of the interest) and has never since then exceeded £750.00. The claimant's capital is well below the statutory limit of £8,000.00 and the level of £3,000.00 at which a tariff income from capital is deemed to exist by regulation 53 of the General Regulations.

21. It is, though, not possible to move directly from the conclusions in paragraphs 19 and 20 above to the conclusion that the claimant was entitled to income support from 20 May 1992. Her daughter told me at the oral hearing that the claimant had been in receipt of income support before she went into hospital, but that after she had been in hospital for some time the payment of income support ceased. The daughter had pursued a claim for a retirement pension based on the claimant's husband's contributions. The period before me extends from the date of claim down to the date when the claim is finally determined (paragraph 10 of CIS/391/1992, paragraph 5 of CIS/417/1992 and paragraph 35 of CIS/85/1992, which I follow in preference to CIS/649/1992). But entitlement must be considered according to

the circumstances as they actually were week by week, rather than as they might have been if the adjudication officer had made the right decision initially or if payment of benefit under the appeal tribunal's decision had not been suspended. The claimant's daughter told me that it was not until June of this year that her mother was able to take up the place in the Eltham & Mottingham Nursing Home, under arrangements made by the local authority under the new Community Care system. While the claimant remained in hospital her applicable amount would seem to have been £10.85 (rising to £11.20 from 12 April 1993) under paragraph 2(b) of Schedule 7 to the General Regulations as a single claimant who has been a person receiving free in-patient treatment for a continuous period of more than 52 weeks. Her income from the private pension would then seem to have exceeded the applicable amount, regardless of any entitlement to retirement pension. Once the claimant ceased to be a patient and became a resident in the nursing home, her applicable amount would seem to have been made up of the personal allowance for a single claimant aged not less than 25 (General Regulations, Schedule 2, paragraph 1(1)(e)), a residential allowance (General Regulations, Schedule 2, paragraph 2A) and the higher pensioner premium (General Regulations, Schedule 2, paragraph 10). Her income then may well have been less than her applicable amount, but the amount of the nursing home fees would form no part of the calculation of entitlement. Under the Community Care system it is for the local authority to meet the costs of any care needs of the claimant and to carry out a financial assessment of the resources of the claimant. A person only retains access to the pre-April 1993 income support system, under which the applicable amount of residents in residential care and nursing homes included the amount of the fees payable up to a maximum figure (General Regulations, regulation 19 and Schedule 4) if she has a "preserved right". In general, a person can only have a preserved right if she was living in or was absent for a limited period from a residential care or nursing home on 31 March 1993.

22. However, I do not have enough precise evidence of the circumstances throughout the period before me to make the decision on entitlement. Therefore, having determined the issue of capital resources, I refer the determination of entitlement to income support to the adjudication officer on the terms set out in paragraph 2 above. The adjudication officer may be assisted by the suggestions in paragraph 21 above, but is not in any way bound by them. The determination must depend on the evidence before the adjudication officer in relation to the entire period from 20 May 1992 down to the date when he makes his determination. If the claimant's daughter as her appointee does not accept the adjudication officer's determination of entitlement, the appeal is to be returned to the Commissioner for final decision.

Conclusion

23. Although the adjudication officer's appeal is allowed, the claimant has "won" on the central legal issue. But that may not lead to entitlement to income support for all or some part of the period covered by the claim.

(Signed) J Mesher
Commissioner

Date: 3 November 1993