

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:

1. My decision is that the decision of the social security appeal tribunal given on 18 September 1991 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the social security appeal tribunal of 18 September 1992.

3. When the claimant was 89 years old, she went into a residential care home. On 9 February 1990 she claimed, through her daughter, her appointee, income support. The claim was treated by the Secretary of State as having been made on 29 January 1990. In the claim form, the claimant's appointee said that her mother had become resident at the home on 12 January 1990, and requested assistance with the fees until her home was sold. Her savings at that stage were £2,577.88, and income support was awarded and paid from 29 January 1990. On 24 September 1990 the claimant's appointee notified the local office that the claimant's house had been sold, and that income support was no longer needed. On 31 March 1992 a fresh application was made for income support, and it was contended that the claimant's savings were then only £2,100.

4. Enquiries were made as to how the proceeds of sale of the house had been dealt with, and on 11 May 1992 the adjudication officer decided that the claimant was not entitled to income support from 31 March 1992, because she had to be treated as possessing capital in excess of the statutory limit. The

adjudication officer was satisfied that the claimant had deprived herself of £14,500 by way of gifts to the family for the purpose of receiving income support. In due course, the claimant appealed to the tribunal who in the event upheld the adjudication officer.

5. The first matter with which the tribunal had to deal was the ascertainment of the actual capital possessed by the claimant at the date of claim. Unfortunately, this aspect of the case was not fully investigated by the tribunal. The claimant was clearly of a very advanced age, and her daughter had been made her appointee. The possibility automatically suggests itself that the claimant may not have been entirely *compos mentis*, and may not have had sufficient intellectual capacity to make the necessary gifts to her family, which had the effect of reducing her capital by some £14,500. And if she did not have the necessary mental capacity, then the recipients simply held the monies on trust for the claimant, and these sums constituted actual capital possessed by the claimant. If she did have that capital, or any other sum in excess of the statutory limit, she was not entitled to income support. As the tribunal failed to investigate this matter, I have on that count to set aside their decision as being erroneous in point of law.

6. It follows that I must direct that the appeal be reheard by a differently constituted tribunal. That tribunal should first consider the actual capital of the claimant, and if they are satisfied that she had capital in excess of the statutory maximum, then they will disallow her claim to income support. If, however, they are satisfied that she had the necessary mental capacity to make the relevant gifts, then the tribunal must go on to determine whether or not the claimant divested herself of capital for the purposes of claiming income support, in which event she will be deemed still to be in possession of that capital pursuant to regulation 51(1) of the Income Support (General) Regulations 1987. In this connection, they will find helpful what was said in R(SB) 9/91, which, although a supplementary benefit case, sets out principles which are equally applicable to an income support case.

7. Finally, if the tribunal consider that the claimant had at the date of claim notional, as distinct from actual capital, in excess of the statutory they will go on to consider whether, by the date of the hearing that notional capital had diminished sufficiently to fall below the statutory activate from the relevant date entitlement to income support.

8. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) **11 April 1994**