

MR/SH/1

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

CAS

Commissioner's File: CIS/221/1992

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. This appeal is dismissed.

2. At the oral hearing of this appeal the claimant was represented by Mr Chris Williamson, a welfare rights officer of the Social Services Department of Derbyshire County Council. The adjudication officer was represented by Mr Mark Jenking-Rees of the Office of the Solicitor to the Departments of Health and Social Security. I am very grateful to both Mr Williamson and to Mr Jenking-Rees for their helpful submissions.

3. This appeal gives rise to a short point of construction. The facts are not in dispute. When their mother died in 1989, her home was left to the claimant and her sister. It was sold and the claimant intended to use her share of the proceeds of sale to buy the Council house where she had been living since 1983. The claimant had only ever lived in her mother's house for a period of some 18 months in 1980 and 1981. In 1990, after the sale of her mother's house but before the purchase of her Council house, the claimant claimed income support. The adjudication officer decided that she was not entitled to income support because her capital exceeded £8,000. The claimant appealed on the ground that her share of the proceeds of sale of her mother's home should have been disregarded under paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987. The tribunal dismissed her appeal and the claimant now appeals against their decision with the leave of the tribunal chairman.

4. Schedule 10 to the 1987 Regulations lists capital which is to be disregarded from the calculation of a claimant's capital and paragraph 3 provides that there shall be disregarded:-

"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 sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase."

Mr Williamson argued that the claimant's mother's home was "formerly occupied by the claimant as her home" and so the claimant was entitled to the benefit of paragraph 3. However, Mr Jenking-Rees argued that the phrase referred only to premises owned by a claimant at the time he or she was occupying them as a home.

5. Mr Williamson relied upon a very literal reading of the words of the legislation. Mr Jenking-Rees submitted that it was necessary for me to imply a limitation into the provision in order to give effect to the clear intention of the legislator. Generally legislation is to be construed literally but in Jones v. Wrotham Park Settled Estates Ltd [1980] AC 74 Lord Diplock set out at page 105, three conditions that, if fulfilled, justify a purposive construction which involves reading into legislation words which are not expressly included in it.

"First, it was possible to determine from a consideration of the provisions of the Act read as a whole precisely what the mischief was that it was the purpose of the Act to remedy; secondly, it was apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, an eventuality that required to be dealt with if the purpose of the Act be achieved; and thirdly, it was possible to state with certainty what were the additional words that would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law."

Mr Jenking-Rees' submission requires me to decide whether Lord Diplock's conditions are satisfied in the present case.

6. Consideration of the first of Lord Diplock's conditions requires the ascertainment, if possible, of the purpose of paragraph 3 of Schedule 10. The general purpose of the list of disregarded capital in Schedule 10 must be considered in the light of the fact that income support is an income-related benefit and that capital is generally regarded as a resource which can be used as a means of support in the absence of income. As Laws J said when considering the schedule listing sums to be disregarded in calculating income for the purposes of housing benefit and community charge benefit in Regina v. Doncaster Borough Council Ex Parte Boulton (11 December 1992, unreported):-

"The list of disregards is a long one but the presence of each is surely to be accounted for on the footing that the subordinate legislator had some rational and identifiable purpose in creating what amounts to an exception to the full impact of the application of the primary rules of entitlement to benefit which operates in the benefit holders favour and means to an extent that all benefit holders are not treated even-handedly: some are placed in a better position than others."

What is the rational and identifiable purpose lying behind paragraph 3 of Schedule 10 to the 1987 Regulations? Why should a person whose capital is attributable to the proceeds of the sale of premises formerly occupied by him or her as a home be placed in a better position than a person whose capital is attributable to the proceeds of sale of some other premises? In my view, the reason is clear. Under paragraph 1, the dwelling occupied as the home is disregarded. Paragraph 3 exists because it is recognised that a claimant may have to live in temporary accommodation between selling one home and buying another and it is thought reasonable to allow a claimant to keep intact the sum of money which represents the disregarded equity in the former home and which will shortly be invested, and again disregarded, in a new property.

7. Has the draftsman inadvertently omitted to deal with an eventuality that required to be dealt with if the purpose of the Regulations was to be achieved? In my view, bearing in mind what Laws J said, this question must be answered by considering whether there could be any purpose in the scope of paragraph 3 covering a case such as the present one and placing this claimant in a better position than others. I cannot think of any reason why capital intended for the purchase of a home should be disregarded merely because it is attributable to the proceeds of sale of another home where the claimant once lived but which he or she did not then own. There is no provision allowing capital intended for the purchase of a home to be disregarded when it is the proceeds of sale of any other premises, even though the premises themselves might have been disregarded under paragraph 26 of Schedule 10 while the claimant was endeavouring to sell them. Mr Williamson argued that it was quite possible that the legislator had intended that the proceeds of sale of a family home should be disregarded. It may well be the case that most instances of claimants being entitled to the proceeds of sale of premises where they have lived, but which they did not own when they lived there, are cases where family homes have been left to claimants on the death of relatives. However, I do not think that the intention suggested by Mr Williamson can be implied. As Mr Jenking-Rees argued, whether or not the proceeds of sale of a claimant's parents' home fell to be disregarded would depend entirely on the question whether or not the parents had moved since the claimant had last lived with them. The mere fact that a person has lived in the premises for

a short period at some distant time in the past is too slender a basis for disregarding the proceeds of sale of those premises. Paragraph 3 has a rational and identifiable purpose only if the claimant owned the premises while living in them. In my view the draftsman has inadvertently omitted to deal with the possibility of a person being entitled to the proceeds of sale of premises where he or she formerly lived at a time when he or she did not own them.

8. Had the legislator been aware of the omission, he would have inserted the words "owned and at the same time" after the word "formerly" in paragraph 3 of Schedule 10 or he would have made some similar insertion. I use the word "owned" loosely to include leasehold interests, the proceeds of sale of which can clearly fall within paragraph 3.

9. Therefore, I take the view that all three of Lord Diplock's conditions are fulfilled in the present case and paragraph 3 of Schedule 10 to the 1987 Regulations should be construed so that it has effect only where the claimant owned the relevant premises when he or she lived there. It follows that the tribunal in the present case reached the correct decision for substantially the right reasons and the claimant's appeal must be dismissed.

(Signed) M. Rowland
Commissioner

(Date) 8 March 1994

