

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

CAS

MR/SH/1

Commissioner's File: CIS/231/91

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. This appeal is allowed. The decision of the Birmingham social security appeal tribunal given on 7 January 1991 is erroneous in point of law. I set that decision aside and give the decision the tribunal should have given which is that the claimant's entitlement to income support from 11 September 1990 is to be calculated on the basis that his capital did not include the former home at 82 Newton Road.

2. The claimant applied for income support on 11 September 1990 after a short period of self-employment. He had moved to a new home during 1989. On 25 June 1990, his former home was transferred to his parents, who were both over the age of 60, in consideration of natural love and affection. By the time of the relevant claim, his parents were living in the former home. On 25 September 1990, the adjudication officer decided that the claimant had deprived himself of his former home for the purpose of obtaining income support and so was deemed to possess capital in excess of £8,000 which had the effect that he was not entitled to income support. Regulation 51(1) of the Income Support (General) Regulations 1987 provides:-

"A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit except"

The claimant unsuccessfully applied for a review of the adjudication officer's decision on the ground that the value of the property fell to be disregarded under paragraph 4(a) of

Schedule 10 to the 1987 Regulations which provides that capital shall be disregarded to the extent that it consists of:-

"Any premises occupied in whole or in part by -

(a) a partner or relative or any member of the family as his home where that person is aged 60 or over or is incapacitated;

(b)"

The claimant appealed. The appeal was treated as an appeal against the decision of 25 September 1990 although it probably ought to have been treated as an appeal against the refusal to review that decision. The distinction is academic in this case.

3. The tribunal dismissed the claimant's appeal without mentioning paragraph 4 of Schedule 10. They may have accepted the adjudication officer's argument that Schedule 10 applied to capital the claimant was deemed to possess under regulation 51(1) only if it applied before the claimant deprived himself of the property. However, regulation 51(6) provides:-

"Where a claimant is treated as possessing capital under any of paragraphs (1) to (4), the foregoing provisions of this Chapter shall apply for the purposes of calculating its amount as if it were actual capital which he does possess."

Schedule 10 is introduced by regulation 46(2) which is in the same Chapter as regulation 51(6) and therefore Schedule 10 applies to notional capital just as it applies to actual capital. It is not necessary that the disregard under Schedule 10 should have been applicable before the claimant deprived himself of the capital (see CIS/81/91 and CIS/562/92).

4. It is therefore plain that, even if the claimant had deprived himself of the former home for the purpose of obtaining income support, that former home fell to be disregarded under paragraph 4(a) of Schedule 10. The tribunal clearly erred in law in not considering paragraph 4(a) of Schedule 10. It is not necessary to consider whether they erred in any other respect. Nor is it necessary for it to be determined whether the claimant did deprive himself of the former home for the purpose of obtaining income support. As there is no dispute about the facts relevant to this appeal, I have given the decision the tribunal should have given on the only question which was the subject of the appeal.

(Signed) M Rowland
Commissioner

(Date) 4 January 1994

