

MJG/SH/12

Commissioner's File: CIS/242/1993

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:

The

Social Security Appeal Tribunal:

Case No:

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 1 February 1993 as that decision is erroneous in law and I set it aside. My decision is that, in relation to the deceased claimant's claim for Income Support dated 23 January 1992, the deceased claimant is not to be treated as possessing any part of the proceeds of sale of No. 6 K. Court. The deceased claimant's entitlement to Income Support shall be assessed accordingly by the local adjudication officer. Any difficulty as to such assessment can be referred to me for Supplemental Decision or Direction. Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner. The appeal was commenced by the claimant, a widow born on 21 December 1910. Unfortunately she died on 26 September 1993 but her appeal has been carried on, under a Social Security Appointment, by the claimant's son.

3. An oral hearing of the appeal was due to have taken place before Mr Commissioner Johnson on 21 December 1993 but, after considering a letter received on 18 November 1993 from the Citizens Advice Bureau on behalf of the claimant's son asking to withdraw the request for an oral hearing, Mr Commissioner Johnson cancelled the hearing and stated that he would decide whether or not a new hearing date was necessary when he had had an opportunity to examine the file again. Unfortunately Mr Commissioner Johnson has since died and the case has been referred to me. In a direction dated 25 January 1994 I stated,

" 1. I do not consider that the cancelled oral hearing in this case needs to be reinstated, it being appropriate for the Commissioner to give a decision on the papers alone. . . the case should be referred to another Commissioner for decision."

4. The position as to that direction is that there need be no oral hearing as, having considered the terms of regulation 15(2) of the Social Security Commissioners Procedure Regulations 1987, I consider that this is a case where the appeal can properly be determined without a hearing. I have taken into account all the circumstances of the case and the reasons originally put forward in the request for the hearing. As to the case being referred to another Commissioner for decision, I had in mind that a particular Commissioner had been concerned in another case involving problems of the sort in issue in this case. However, that Commissioner is not available in fact to deal with the case and therefore I am giving a decision on this appeal myself.

5. The case is in some respects complicated and the documentation is voluminous. However I consider that the essential issues in this case are comparatively easily defined. I quote from the relevant paragraphs of the careful summary of facts of the local adjudication officer to the tribunal. They read as follows,

"[The claimant] is an 81 years old widow who has been living in residential care homes or nursing homes since 23.9.89. [She] has been in receipt of Supplementary Benefit, laterly Income Support for many years. She had been living in owner occupied properties with her son C- since December 1979. There were joint mortgages on these properties and the properties were in the joint names of [the claimant and her son C-] on both of the properties [the claimant] claimed for and received help on the mortgage interest payments due. The last such property was 6 K. Court on 20.11.90 [the claimant's son C] provided evidence that the property at 6 K. Court was for sale and Income Support was paid. . . in September 1991 [the claimant's son C] wrote to the Department and advised that his and his mother's flat [No. 6 K Court] was sold subject to contract. . . on 6.10.91 a further letter was received from [the claimant's son C] which states that although his mother was a joint mortgagee of 6 K Court she had not provided any capital to the purchase. On 6.11.91 the Department received a letter from [the then appointee] to say that the property [No. 6 K Court] had been sold but she was unsure of the exact date of sale. [The claimant's son C] was visited on 23.1.92 and a new claim form SP1 was completed. He made a statement on the claim form that his mother agreed not to take any proceeds from the sale of the property as her name had only appeared on the mortgage for her protection."

6. There was before the tribunal a letter dated 20 October 1991 from the claimant to Solicitors acting in the sale of No. 6

K Court and the purchase by the son C of a house in his own name. That letter read as follows,

"I confirm that I [the claimant] am agreeable to the whole of the proceeds of the sale of 6 K Court .. being used towards the purchase of 12 S.H. in the sole name of my son [C]."

7. The tribunal of 1 February 1993, which clearly took great care with this case, made the following findings of fact,

"We further find that the property [No. 6 K Court] was sold for £83,000 and that after redemption of the mortgage and related bills etc the proceeds of the sale exceeded £50,000. As [the claimant's] share of the property was 50% her share of the proceeds was in excess of £25,000. We note the letter dated 20 October 1991 [see paragraph 6 above] and, assuming it to be true, find that by signing this letter [the claimant] deprived herself of a sum of over £25,000. We also find that [the claimant's son C] having been his Mother's appointee for many years was (or must be deemed to be) aware of the Regulations as to capital and savings. We find that the property was sold on or before 6 November 1991 but later than 6 October 1991."

8. The tribunal gave as its decision that the claimant was not entitled to Income Support from 23 January 1992 because at that date she was to be treated as having capital in excess of £8,000. They gave the following reasons for their decision,

"At the date of claim (23 January 1992) [the claimant's] deemed/assessed capital considerably exceeded the prescribed amount of £8,000. Therefore under section 22(6) of Social Security Act 1986 no entitlement to Income Support could exist. Under regulation 45 of Income Support (General) Regulations [1987] the prescribed amount is £8,000. Regulation 46 requires the whole of [the claimant's] capital to be considered. Under regulation 51 capital of which a person has deprived his/herself is to be treated as capital of that person - none of the exceptions assist [the claimant]. R(SB) 40/85 and R(SB) 33/85 are applied. We found that the deprivation of capital was significantly related to reducing capital and level where an entitlement to Income Support could arise."

9. The tribunal were therefore applying regulation 51(1) of the Income Support (General) Regulations 1987 which provides as follows,

"Notional capital

51. (1) 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 ..."

When asking whether there is a purpose of "securing entitlement" to Income Support that clearly includes securing continued entitlement to Income support. It does not therefore matter that the claimant had previously been in receipt of that benefit. The question is whether by relinquishing to her son her share (whatever its value - see below) of the proceeds of sale of 6 K Court the claimant had done that and deprived herself of that share "for the purpose of securing entitlement to income support".

10. I have taken into account the detailed submissions on the law that have been put forward in this case both by the claimant's son and by the adjudication officer now concerned and I am much indebted to them for their researches. I accept the concurring submissions of the claimant's son and of the adjudication officer now concerned that the tribunal erred in law because its reasons for decision do not deal altogether with some of the issues in this case, such as how the late claimant's share in 6 K Court was to be valued and whether the letter of 20 October 1991 (set out in paragraph 6 above) was in truth an assignment by the claimant of her share in the proceeds of sale of 6 K Court to the son or whether it had some other effect. As I accept those submissions, I set aside the tribunal's decision as being erroneous in law though I emphasise as indicated above that it is clear to me that the tribunal had taken considerable trouble with this case.

11. Under section 23 of the 1992 Act, I can either remit the matter back to another tribunal for redetermination, as the adjudication officer has asked me to do, or deal with the matter myself, making my own findings of fact where appropriate. I have borne in mind the length of time that this case has been outstanding; the fact that apparently now only a short period of potential entitlement to benefit is concerned i.e. the period from 21 December 1992 to 30 March 1993 (see the claimant's detailed observations of 14 July 1993); the fact that the claimant has now died; and the fact that there is a considerable mass of documentary evidence before me. In all the circumstances I consider this an appropriate case myself to give a decision.

12. There are of course problems about the valuation of the claimant's share in No. 6 K Court. The law in this matter is at the moment in a state of flux because although there has been a decision of a Tribunal of Commissioners dealing with the matter on file CIS/391/92 (Palfrey) the adjudication officer has sought to appeal against that Tribunal decision to the Court of Appeal. However, I do not consider that I need to defer a decision in this case because of the consequent uncertainty. That is because even if the late claimant's net share in No. 6 K Court exceeded £8,000 in value, I have come to the conclusion that the letter dated 20 October 1991 cited in paragraph 6 above operates as a valid written assignment of the claimant's share of the proceeds of sale to her son C (see section 53(1)(c) of the Law of Property Act 1925 which provides that an equitable interest (which a share in the proceeds of sale is) can be transferred in writing, signed by the transferor or his/her agent).

13. That being so there was a deprivation by the claimant of herself of her share in the proceeds of sale (whatever the correct value for that should be) but equally I conclude that by so depriving herself of that share she did not do so "for the purpose of securing entitlement to income support". I have taken into account in detail the authorities on this subject and the fact that all that is necessary for a claimant to fall within regulation 51(1) is that a "significant operative purpose" should be the securing of income support (R(SB) 40/85). I have also taken into account the detailed history of this matter. My ultimate conclusion is that the claimant's son is correct when he submits, eg. in paragraph 6 of his written submissions at page 118 of the appeal papers, as follows,

"[My late mother's] purpose of relinquishing her share in the sale of proceeds in her son's favour was not that of securing entitlement to Income Support or increasing the amount of that benefit, but was in fact in recognition of some 15 years he had cared for her following her husband's death and to enable her son to purchase a suitable property for himself and his future wife"

I conclude that that is the truth of the matter and that this is not the case of an attempt by a relation of an elderly person to obtain the elderly person's capital and cast that person on to the income support fund, so to speak. I appreciate that the late claimant was in fact obtaining support by means of supplementary benefit or income support towards paying a share of the mortgage and to that extent the son C benefitted. Nevertheless it is clear to me from the papers that he had in fact been involved in considerable work and anxiety in looking after his late mother and is to be commended for the way in which it is clear that he did so. I do not consider it unrealistic on the facts of this case to regard the ultimate relinquishment of the share in the proceeds of sale of No. 6 K Court as being referable to gratitude to the son for this. It also very possibly recognised that in truth, whatever might be the position as to the legal title to the property, in reality No. 6 K Court, largely if not entirely, was to be regarded as being morally belonging to the son by that time.

(Signed) M.J. Goodman
Commissioner

(Date) 21 April 1994