

**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 Dover social security appeal tribunal dated 25 November 1994 is erroneous in point of law. Accordingly I set it aside and remit the case for rehearing to a differently constituted appeal tribunal.

2. This is an appeal by the claimant to the Commissioner with the leave of the tribunal chairman against the decision of the appeal tribunal in respect of the decision of the adjudication officer first involved in these appeals.

3. The facts of the case are dealt with in the written submission of the adjudication officer first involved in these appeals to the appeal tribunal. In respect of those matters and of the submission of the adjudication officer now involved in these appeals dated 3 July 1995 the claimant has had the opportunity to comment and I have through his representatives their observations dated 29 August 1995 which are "no further comments". No useful purpose is to be served by my setting out these matters afresh here.

4. The relevant statutory provisions are section 134 of the Social Security Contributions and Benefits Act 1992 and regulations 45, 51 and 51A of the Income Support (General) Regulations 1987. The guidance afforded by the Commissioner is referred to in paragraph 4 of the submission dated 3 July 1995. Nothing is to be gained by my setting out those references to the guidance afforded by the Commissioner in those decisions here.

5. In my judgment the decision of the appeal tribunal is erroneous in point of law in that they have breached the statutory requirements imposed upon them by regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 (now consolidated in regulation 23(2) of the Social Security (Adjudication) Regulations 1995) which imposed the duty of making adequate findings of fact and giving adequate reasoning

to support the grounds of their decision. They have further erred in that they have not followed the guidance afforded by the Commissioner. The issue which the appeal tribunal had to address was whether the claimant should be treated as possessing capital in excess of the prescribed limit of £8,000.

In accordance with the guidance afforded by the Commissioner in decision R(SB) 45/83 in particular at paragraph 15 thereof it is incumbent upon the appeal tribunal first to have made findings of fact as to the amount of actual capital possessed by the claimant before going on to consider the question of "deprivation" and notional capital if appropriate. There is no dispute in the instant case that the claimant possessed actual capital in excess of the prescribed amount. Further there is no dispute that the claimant deprived himself of actual capital when he repaid his mother £12,185.91 and spent various other sums between 12 February 1994 and 20 May 1994. The dispute is whether the claimant deprived himself of that capital for the purpose of securing entitlement to income support, and whether he should accordingly be treated as possessing notional capital from the date of his repeat claim to income support. In this regard I need only refer to Decision CIS/419/92 and to decision R(SB) 40/85 at paragraph 9.

In accordance with that decision as the issues of "deprivation" and notional capital properly fell to be considered in the instant case it was incumbent upon the appeal tribunal to apply the proper statutory tests imposed by regulation 51(1), considering each disposal of capital in turn, indicating all the relevant facts which they took into account in deciding whether the claimant had deprived himself of any capital with the significant operative purpose of securing entitlement to income support. The claimant possessed capital amounting to £21,000 on 12 February 1994 reducing to £6,032.95 by 20 May 1994. A number of transactions were effected between the above dates resulting in the reduction in capital. The appeal tribunal on the face of their record concerned themselves simply with the repayment of the debts which the claimant had with his mother. In failing to consider each of the disposals in turn and to apply the relevant tests to each of these disposals the appeal tribunal failed to apply the relevant statutory provisions referred to in paragraph 4 hereof. I turn now to the claimant's grounds of appeal. The first point raised by the claimant's representative is that the appeal tribunal failed to make a proper finding regarding a previous award of compensation made to the claimant in 1988 and the effect of that award on the claimant's income support entitlement at that time. In their findings of fact the appeal tribunal stated:-

"On or about 3.2.88 Mr Glover was awarded £18,000 compensation out of which he purchased a new car for £11,500 and repaid his mother £4,384; that the Department took no action with regard to these transactions .."

It is argued that such findings do not follow from the evidence before the appeal tribunal. The evidence suggests that the

Department, far from taking no action regarding the above transactions, did make enquiries of the claimant at that time, but following those enquiries, no further action was taken by the Department at that time to disentitle the claimant from income support. The claimant's representative states:-

"The only proper assumption that may therefore be made is that the enquiries satisfied Bromley DSSS that the deprivation was not for the purpose of securing benefit."

This ground of the claimant's representatives is to my mind rightly made. The appeal tribunal in making a finding of fact not supported by the evidence erred in law.

I turn now to the claimant's second ground of appeal where it is argued that the appeal tribunal on the face of their record in setting out their reasons appear to have proceeded from the finding that the debt in question was not immediately repayable or legally enforceable to the conclusion that the significant operative purpose of the deprivation was to secure entitlement to income support. The observations of the claimant's representatives that the reasons for the appeal tribunal's decision are inadequate are rightly made. Nevertheless it does not follow that if a debt is not legally enforceable and immediately repayable, then the repayment of such a debt must be for the purpose of securing entitlement to income support. Once it has been established by an appeal tribunal that the deprivation is in order to repay a debt which is not immediately repayable and legally enforceable, the appeal tribunal must then proceed to consider the claimant's purposes for carrying out such a deprivation, in the light of the guidance afforded in CIS/419/92.

Finally the appeal tribunal erred in law that they failed to consider how the provisions of regulation 51A of the General Regulations would have affected the claimant's entitlement to income support down to the date of their decision. Having fixed the claimant with notional capital under regulation 51(1) of the Income Support (General) Regulations 1987 it was incumbent upon the appeal tribunal to apply regulation 51A to establish the rate at which that notional capital should be diminished.

6. In accordance with my jurisdiction my decision is as set out in paragraph 1 of this decision. I direct that the newly appointed appeal tribunal as the arbiters of fact in rehearing the case shall pay particular attention to all the aspects to which I have referred in paragraph 5 above of this decision. Further they shall consider carefully the exact wording of the relevant statutory provisions and make and record their findings on all the material facts and give reasons for their decision. All issues of fact are at large before the newly appointed appeal tribunal.

7. Accordingly the claimant's appeal is allowed.

(Signed) J B Morcom
Commissioner

Date: