MHJ/14/LM

Commissioner's File: CIS/40/1989
Region: London South

SOCIAL SECURITY ACT 1986
APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW
DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. My decision is that -

   (a) the unanimous decision of the Sutton social security appeal tribnal given on 23 January 1989 is erroneous in point of law and accordingly I set it aside;

   (b) it is expedient that I should give the decision which the tribunal should have given, namely that the claimant is not disqualified for receiving income support from 11 April 1988 by reason only of her disposition of £28,508.73 from her late father's estate.

2. The claimant appeals with leave of the chairman against the decision of the tribunal disallowing her appeal against the decision of the adjudication officer, issued on 20 June 1988, that she was not entitled to income support from 11 April 1988 because she was to be treated as possessing capital which exceeded the prescribed amount of £6,000.00. At the claimant's request an oral hearing of her appeal was directed and this took place on 30 August 1989, when she attended but was not represented. The adjudication officer was represented by Mr M.N. Qureshi of the Solicitor's Office of the Departments of Health and Social Security.

3. At the material time the claimant was a divorced woman in her mid-40s, living in local authority accommodation. She was in receipt of severe disablement allowance and had been in receipt of supplementary benefit since 1978. Supplementary benefit ceased on 10 April 1988 and thereafter entitlement fell to be considered under the rules governing income support. The claimant's father died in 1981 (apparently at the early age of 61). Although a letter dated 15 June 1988 from the claimant's solicitors mentions a will, it is plain that was an error and it is not in dispute that her father died intestate. Although I have not seen it there was presumably a grant of letters of administration and again it is common ground that the great majority of his estate consisted of a freehold property in South-West London, which I shall refer to as 28 S Road. By operation of the law of intestacy the claimant and her sister were the sole beneficiaries of their father's estate and, in due course, the adjudication officer became aware of the claimant's interest and, on 25 February 1986, decided that she was no longer entitled to supplementary benefit because she had capital assets exceeding £3,000.00. However, benefit was reinstated when the claimant informed the adjudication officer that she was unable to realise that capital as her sister, who had been living at 28 S Road prior to her father's death, was reluctant to move out and legal proceedings were therefore being taken to enforce a sale of the property. On

30 March 1988 the claimant's solicitors sent the Department a financial statement setting out the monies received by the claimant as a result of the settlement of the action against her sister. This showed that £45,000.00 had been paid by the sister for the claimant's interest in the property; that the claimant had received £2,000.00 on account, that £4,988.36 had been paid to the Law Society in respect of costs, and that the balance of £38,011.64 had been divided equally between the claimant, her daughter, her son and her grand-daughter, each receiving £9,502.91, although the claimant's share had been reduced by the repayment of a loan of £1,937.92 to the bank and of other debts totalling £1,525.02, so that the actual sum then paid to her was £6,039.97. The claimant advised the local office on 8 April 1988 that she had in fact received these monies and had bought a second-hand car for £1,950.00, so that she currently had £4,089.97 in hand. Subsequently the claimant produced a statement from the bank showing that at the close of business on 27 April 1988 the balance of her account stood at £2,756.36.

4. The adjudication officer decided that the claimant should be treated as possessing the £28,508.73 she had given to her son, daughter and grand-daughter and that, with the £2,756.36 standing to her credit at the bank, she should therefore be treated as possessing capital of £31,265.09; that she should be held to have deprived herself of £28,508.73 for the purpose, or at least a significant operative purpose, of securing entitlement to income supplement, and held that she was not so entitled by reason of having capital in excess of £6,000.00.

5. The relevant law is contained in section 22(6) of the Social Security Act 1986 which provides that -

> "(6) No person shall be entitled to an income-related benefit if his capital or a prescribed part of it exceeds the prescribed amount";

and regulation 45 of the Income Support (General) Regulations 1987 prescribes that amount as £6,000.00. Regulation 51(1) of the General Regulations deals with "Notional capital" provides that -

> "(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."

I emphasise the last sixteen words of that paragraph as they contain the sole issue in this case.

6. The claimant is recorded as having told the tribunal that -

> "When my mother and father bought house in 1967 it took 2 years to buy it. We all knew that it was intended for the grand-children. My father stipulated that proceeds were destined for his grand-children and great-grandchildren. I did take a share but I felt I should not have taken it. Any proceeds meant for his grandchildren. I carried out his wishes",

and so on in much the same vein. The tribunal gave among their reasons for disallowing the appeal that, following R(SB) 40/85, the claimant had deprived herself of the sum in question and -

> " ... although her purpose was at least in part to carry out her father's wishes, her actions had the consequence of bringing her within the prescribed limits. We are satisfied that bringing herself within the limits was not her sole purpose, but was a significant operative purpose."

The tribunal found as facts that the claimant had been in receipt of benefit, had received

£45,000.00, that certain sums had been paid to and children and grand-daughter, and that she knew the capital limit of £6,000.00. They continued -

> "The sum of £45000 came from her father's house. He had stipulated that he wished the proceeds from the house to be given after his death to his grand-children. Although she was reluctant to take a share of the money, she was pressed by her children but did so with reluctance because she wished to carry out her father's wishes."

7. On 11 July 1989 a nominated officer granted the claimant's request for an oral hearing and, inter alia, that among matters which would be likely to assist me in considering whether or not the tribunal erred in law, were

(a) whether the tribunal should have stated their reasons for considering that, in addition to complying with her late father's wishes, the claimant had other purposes for giving away the money in question?;

(b) whether it could be said that because the claimant's acts had the consequence of bringing her within the prescribed limits that must be deemed to have been done with that intent, so as to make it a significant operative purpose?; and

(c) even if such consequence had been in the claimant's mind, was she bound in law to let it override what she considered to be her moral obligation to carry out her late father's wishes?

8. In the light of those extremely pertinent questions Mr Qureshi conceded at the outset that the tribunal's decision was erroneous in law in failing to make adequate findings of fact or give sufficient reasons for their decision. Plainly that is correct, and on that basis I set the decision aside. I then exercised my discretion under section 101(5)(a)(ii) of the Social Security Act 1975, as amended, to make findings of fact and to give such decision as I consider appropriate in the light of those facts.

9. The claimant gave evidence which repeated and considerably enlarged upon the evidence she is recorded as having given to the tribunal. She told me that when her mother and father bought 28 S Road in 1967 they said "We have done this for the grandchildren", but that any money was to be shared between the claimant and her sister. The claimant said that although her father had spoken of making a will, he had decided there was no point in doing so because he knew he could rely upon his wishes being carried out. I pause there to remark that it is indeed unfortunate that there was no will, and all the more so because, as the claimant voluntered, he had had problems with other members of his family upon his mother's death; but I am well aware that it is by no means uncommon for people to leave making a will until it is too late and, in the instant case, I bear in mind that the claimant's father died at the age of 61. After his death the claimant's sister was disinclined to move out of the house and the claimant felt some natural reluctance to press her to do so, so that, she said, it was 18 months or two years before she began to insist that the property must be sold. Eventually she commenced proceedings and a settlement was reached at the doors of the Court. At the time the money was paid out on 30 March 1988 the claimant said she had intended to take nothing but, at her solicitors' suggestion and with the encouragement of her children, she should take a one-quarter share of the balance then remaining. I should mention that she had had £2,000.00 when her son got married in January 1988, but the remainder could not be distributed until the Law Society's charge in respect of the legal aid costs had been discharged. The claimant agreed that she was aware of the capital limit affecting her entitlement to benefit, but she said that she "didn't have a clue" her distribution of the moneys in question would affect her entitlement, and she insisted that her purpose was not to ensure that she continued to receive benefit but solely to fulfil her father's wishes.

10. The claimant was unshaken in vigorous cross-examination by Mr Qureshi who, among other matters, sought to cast doubt upon her veracity in saying that her father had only had about £2,000.00 from British Rail on his death. The claimant had said she believed that her father was still technically employed by British Rail when he died although he had been unfit for work for some two years, and Mr Quresh's challenge was, apparently, based upon his understanding of British Rail's pension arrangements. That seems to me something easily susceptible of proof and, while I do not propose to speculate whether the claimant may have been mistaken in her belief that her father was still employed at the date of his death, in the absence of any evidence rebutting what she told me, I accept what she said. The claimant denied that she had given away the money in question in order to get income supplement, she repeated that her father, although he loved her and her sister, was "besotted with his grandchildren", and that he was never interested in making provision for his daughters, only for his grand-and great-grandchildren. The claimant said that she "knew about the capital limits" but did not know what the effect of her actions would be and she vehemently denied that she had given her money to her children knowing that she could get it back from them whenever she wanted.

11. I accept the claimant as a witness of truth. She struck me as an honest woman who gave her evidence frankly and, in my view, plainly without any "tailoring" of the facts to improve her case; rather the contrary. In his direction the nominated officer referred, correctly in my view, to the claimant as giving "full and cogent reasons" to the tribunal for her actions. I can only say that her version of events became all the clearer when she gave evidence to me, and perhaps particularly so in the light of the circumstantial detail which emerged in cross-examination. I accept the claimant's account of what took place and, more importantly, of her motives for acting as she did. Does that mean that she has discharged the burden of showing that she was not disposing of capital for the purpose of securing or increasing benefit? Mr Qureshi submitted that she had not; that the money was legally hers and that, whatever her father's wishes may have been, she had an "equal moral obligation not to have resort to public funds". He argued that the fact that the claimant had been in receipt of and was aware of the conditions of entitlement to supplementary benefit placed her under an especially heavy duty, and he referred me to R(SB) 38/85.

12. I have carefully considered all the relevant Commissioners' decisions, but in the end the question I have to decide is one of fact and, in the particular and somewhat peculiar circumstances of this case, I have come firmly to the conclusion that the claimant has satisfied me that, in giving the sums in question to her children and grand-child, her purpose was to carry out her father's wishes. In my judgment neither her purpose nor "a significant operative purpose" of her actions was to deprive herself of capital in order to secure entitlement to or increase the amount of income support. The claimant's appeal is accordingly allowed, and it follows that her entitlement to income support will have to be assessed as at 11 April 1988.

(Signed) M H Johnson
Commissioner

Date: 2 October 1989