

JMH/SH/3

Commissioner's File: CIS/484/1993

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

1. My decision is that the decision of the social security appeal tribunal was not erroneous in point of law and I dismiss this appeal. In his submission to me (52) the adjudication officer submitted that the tribunal's decision was erroneous in point of law as they have not accepted the claimant's word that he does intend to return to the flat in Blackpool and have not explained fully why they have not accepted his evidence. In fact, as I read it, what the tribunal found, with which I agree, was that the claimant's evidence of intention fell short of that required by paragraph 4(8)(a) Schedule 3 to the Income Support (General) Regulations 1987. However, the adjudication officer also invited me to substitute my own decision as he submitted there was sufficient evidence available. Having regard to my interpretation of the tribunal's decision above, I do not think I need to do that but, had it been necessary, I should have done so.

2. This is an appeal with the leave of the Commissioner from the decision of an appeal tribunal held on 12.5.93 that the claimant was not entitled to Housing Cost in respect of his flat in Blackpool.

3. The claimant and his wife have a flat in Blackpool. On 14.1.93, he and his wife opted to live with his mother-in-law at Bingley after she had suffered a bereavement. The claimant started an employment training scheme at Keighley. The short question with which I am faced is whether for the purposes of paragraph 4(8)(a) of Schedule 3 to the General Regulations the claimant "intends to return to occupy [the Blackpool flat] as his home." It is accepted that (b) and (c) of that sub-paragraph are

both satisfied but it is settled that, in order to qualify under sub-paragraph (8), all three conditions in (b), (c), and (a) must be satisfied - R (1/91)(IS).

4. In his evidence to the tribunal, box 2 (T31), the claimant stated that he had put the Blackpool flat on the market. However, he also stated that if he were to obtain employment in the Bradford area he would not return: but, if he obtained employment in the Blackpool area and had not sold the Blackpool flat he would return. The tribunal found that there was not a clear unconditional intention on his part to return and that was a necessary precondition for entitlement. In his submission to the tribunal (T11) he had stated:-

"We opted together, to live temporarily at the above address. From 9.1.93 until such time as:-

- (i) The Employment Training programme is fulfilled by me.
- (ii) We sold the Blackpool flat at the above address.
- (iii) I obtained employment in the Bradford area.
Or
- (iv) Financial circumstances necessitate discontinuity of the arrangement (i), (ii) and (iii).

There was evidence that, in accepting the employment training programme at Keighley, he was marginally worse off than he would have been had he accepted a training programme at Blackpool. However that difference is caused by the fact that in the Blackpool figures he had provided he added £4.14 p.w. for maintenance/ground rent for the flat and he made no deduction for weekly travelling expenses and lunches which he did as regards the Keighley figures. The basic figures are of course the same, except for what is in dispute before me.

5. On 2.6.93 the claimant (42) wrote a letter to the chairman expanding, in the light of the hearing, the nature of his intention to return, probably because of his experiences at the appeal tribunal and their decision. However, in essence I do not think much was changed since if he obtained a job in Bradford he intended to stay there, and if he obtained a job in Blackpool he intended to return. He also said that he intended to return if he did not find a suitable job in Bradford. This evidence was not admitted by the chairman but if and in so far as the claim is a running claim I do not think that this makes any substantial difference to my decision.

6. What does "intend" mean in the context of paragraph 8(4)(e) of the third schedule which runs:-

"A person shall be treated as occupying a dwelling as his home for a period not exceeding 52 weeks while he is temporarily absent therefrom only if -

(a) he intends to return to occupy the dwelling as his home ..."

There is no direct authority on this provision but it seems to me that not a little assistance may be derived from the cases on the meaning of "intend" in the context of section 30(1)(f)(ii) of the Landlord and Tenant Act 1954 (and its precursor). That section provides that there is a ground for refusing a new tenancy if "on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding ...".

What are the required qualities of intention for this purpose? It means that the landlord must have a firm and settled intention not likely to be changed - Fleet Electrics v. Jacey Investments 1956 1 WLR 1027 (C.A.). And in Cunliffe v. Goodman 1930 2 KB 237 (C.A.) Asquith LJ said at p254:-

"This leads me to the second point bearing on the existence in this case of "intention" as opposed to mere contemplation. Not merely is the term "intention" unsatisfied if the person professing it has too many hurdles to overcome, or too little control of events: it is equally inappropriate if at the material date that person is in effect not deciding to proceed but feeling his way and reserving his decision until he shall be in possession of financial data sufficient to enable him to determine whether the project will be commercially worth while."

7. I adopt by analogy that form of reasoning in this case. It seems to me that what the claimant is, in effect, doing is reserving his position until the end of his employment training programme to see whether he obtains a job in Bradford or in Blackpool. This is a perfectly reasonable attitude and indeed entirely understandable. Nevertheless, it does I think detract from his claim that he is intending to return to the flat at Blackpool. In truth, he may or he may not depending on what happens and in those circumstances he cannot, in my decision, be treated as intending to return.

8. Accordingly my decision is that the decision of the appeal tribunal was not erroneous in law and I dismiss this appeal.

(Signed) J.M. Henty
Commissioner

(Date) 13 May 1994