

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. This is an appeal, brought by the claimant with the leave of a Commissioner, against a decision of the Plymouth social security appeal tribunal dated 5 June 1998 whereby they dismissed her appeal against a decision of an adjudication officer that she was not entitled to income support because she possessed capital exceeding £8,000. At the claimant's request, an oral hearing was held in Cardiff but she neither attended the hearing nor was represented. The Secretary of State was represented by Mr Huw James, solicitor, acting as agent for the Solicitor to the Departments of Social Security and Health.

2. The claimant claimed income support from 7 May 1997, the day after she separated from her partner, and she disclosed in her claim form (signed on 26 June 1997 because the Benefits Agency had apparently been dilatory in sending her the form), capital of £800 in a bank, building society or Post Office account. Following enquiries by the Benefits Agency, it became clear that she had opened a bank account on 14 April 1997 and that, among other credits, £41,191.08, representing the proceeds of sale of a former home, had been paid into the account on 28 April 1997. £37,000 had been withdrawn on 13 May 1997, leaving a balance in the account of £6,813.18. That balance had still exceeded £4,000 at the end of June when the claim form was completed. The claimant said that the £37,000 had been "put by" to buy a new house. She said that, "having just moved to a new area, I did not want to buy straightaway after selling my house in Northamptonshire in case I did not like the area". She did not say where the money was. Her claim was disallowed on the ground that her capital exceeded £8,000. She appealed, saying that she now had less than £2,000 in her bank account and that she intended to work and get a mortgage to buy a house "when my son goes to school, but this will not be until September 1998".

3. The adjudication officer's submission to the tribunal drew the tribunal's attention to paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987, which provides that there shall be disregarded from a claimant's capital:

"Any sum directly attributable to the proceeds of sale of any premises formerly occupied by the claimant as his home which is to be used for the purchase of other premises intended for such occupation within 26 weeks of the date of sale or such longer period as is reasonable in the circumstances to enable the claimant to complete the purchase."

However, when setting out that provision in the submission to the tribunal, the adjudication officer added the words "may be disregarded" at the end. That was wholly misleading because sums falling within the paragraph *shall* be disregarded. The adjudication officer also set out passages from CIS/685/92. At paragraph 15, the Commissioner said:

“It follows that the logical construction of paragraph 3 of Schedule 10 is as follows. For 26 weeks from the date of sale the claimant has an absolute right to a disregard of the proceeds of sale of a former home which are to be used to purchase another home. If the proceeds have not been so used at the expiry of the 26 weeks then the Adjudication Officer (and of course the Tribunal) have a general discretion to allow a longer period *for the finding of another home* and the completion of its purchase, i.e. the actual obtaining occupation of it and transfer of the title to it.”

At paragraph 16, he said:

“It cannot, however, be the law that an indefinite holding as to the proceeds of sale of a home with a mere hope or aspiration that the proceeds of sale may be used at some future date for another home renders such proceeds of the sale subject to the disregard.”

4. The adjudication officer ought to have supplied a copy of the full decision. The general rule - which applies to claimants’ representatives as well as to representatives of the Secretary of State - is that it is unnecessary to attach to a submission a copy of any reported Commissioner’s decision upon which reliance is placed, because tribunals may be assumed to have access to reported decisions and copies are available at local offices of the Department of Social Security where claimants are entitled to have sight of them before a hearing. It is, however, necessary to provide a copy of any unreported decision relied upon because neither tribunals nor local Secretary of State’s representatives nor claimants generally have ready access to them (save perhaps to those few decisions available on the Internet). Had a copy of the full decision been supplied in this case, the tribunal would have seen that, in setting out in the submission to the tribunal the above passages from paragraphs 15 and 16, the adjudication officer had omitted the last nine words of the first sentence of the passage from paragraph 15, thus depriving the word “so” in the next sentence of any meaning, and had also made two other less important transcription errors. Representatives who purport to quote from legislation or decisions of Commissioners or the courts must be extremely careful to ensure that their quotations are accurate and not misleading.

5. In any event, the claimant asked the tribunal to deal with her appeal on the papers, without an oral hearing, which is no doubt why the case was decided in Plymouth rather than somewhere nearer where she lived. In the full statement of the tribunal’s decision, the chairman set out the history of the case and the tribunal’s findings, including their finding that the sum of £37,000 was directly attributable to the proceeds of sale of premises which had been occupied by the claimant as her home, and also referred to CIS/685/92 before concluding:

“We decided that paragraph 3 of Schedule 10 to the Regulations requires an element of practical certainty as well as a subjective intent.

It was clear that it was the appellants' intention to wait to consider acquiring another property until such time as her son started school in September 1998 but there was no certainty that she would find work and obtain a mortgage.

We were satisfied that at most the appellant hoped that the proceeds might be used at some future date for another home but we did not consider that this was sufficient to allow for a disregard of the capital pursuant to Schedule 10 to the Income Support (General) Regulations 1987.”

6. The claimant applied unsuccessfully for the tribunal's decision to be set aside and then obtained leave to appeal, referring to both paragraph 3 of Schedule 10 and paragraph 9(b). As there is no evidence that any sum was ever deposited with a housing association, I need not consider paragraph 9(b) any further. As to paragraph 3, the claimant says that, in September and October 1997, she looked at properties which she could have bought outright had she been awarded benefit from May and that she eventually used her capital to buy a house with her new partner at the end of that year. However, an appeal to a Commissioner lies only on a point of law, and before I can consider the claimant's new evidence I must be satisfied that the tribunal erred in law, having regard to the evidence that had been provided by the claimant at the time they considered her case.

7. Mr James adopted the Secretary of State's written submission resisting the appeal and, in particular, relied on CIS/8475/95 and CIS/15984/96, submitting that, to the extent that CIS/685/92 was irreconcilable with those decisions, the later decisions were to be preferred. It does not seem to me that the passages from CIS/685/92 quoted above cannot be reconciled with the later decisions. The second sentence of the first passage perhaps needs to be qualified by the addition of the words “during that period” at the end but it seems fairly clear from the context that that is what the Commissioner meant. He was in fact concerned only with a claim made long after the 26 week period had expired so that the issues before him were whether the period could be extended and whether it was necessary for the condition that the sum was “to be used” for the purchase of another home to be satisfied from a date within the 26 weeks following the sale or merely during the period in respect of which benefit was being claimed. As was said in CIS/15984/96, the Commissioner deciding CIS/685/92 “did not discuss what was meant by the words ‘to be used’ because the issue did not arise in that case”.

8. That issue did arise in CIS/8475/95, where the Commissioner said:

“28. .... In my judgment, Miss Hartridge was right in pointing to the difference between the wording “to be used” in para 3 and the tests of *intended* occupation in for example paras 2, 27 and 28. It seems to me that the claimant has to demonstrate something more than just a genuine intention on his part to use the money from his old house to acquire a new one. ....

29. I therefore accept Miss Hartridge's submission that the words “is to be used” in para 3 require an element of practical certainty as well as subjective intent. It would be unusual for any sum of money to be set aside or earmarked

sufficiently to be impressed with a trust to use it only for the purchase of another home, and para 3 is not in my judgment restricted to cases where there is a binding legal obligation. Nevertheless the claimant must in my view be able to demonstrate at the time relevant for his claim a practical commitment to a purchase that is bound in the normal course of events to involve using the money he is keeping aside for that purpose. Such a commitment can be demonstrated for example by a binding contract for purchase which is not yet completed, or by a firm commitment (e.g. an agreement 'subject to contract') in circumstances where the tribunal is satisfied the money could not reasonably be expected to be withdrawn from the project and used for other purposes such as living expenses instead."

The test enunciated in the first sentence of paragraph 29 of that decision was precisely the test used by the tribunal in the present case, which suggests that they may well have known of the decision. It is important to note that the claimant in CIS/8475/95 succeeded despite the apparent strictness of the Commissioner's approach. In CIS/15984/96 the Commissioner warned against regarding the examples of evidence of commitment given in paragraph 29 of that decision as being exhaustive and pointed out that there were circumstances where, for example, a person could not sensibly look for a home because the location depended on outstanding job applications but where nonetheless the necessary commitment might be demonstrated even though providing the evidence might be more difficult. He said that the Commissioner in CIS/8475/95 had captured the essence of the words "is to be used" in the need for an element of certainty. I gratefully adopt that approach. It seems to me that a claimant must satisfy a tribunal not only that he or she intends to use the capital sum to buy another home but also that it is reasonably certain that he or she will in fact do so within the material time.

9. In the present case, one thing that *was* certain was that the claimant never even intended to use the sum of £37,000 to buy another home within the 26 weeks following the sale of her previous home. The questions therefore were whether it was reasonably certain that she would use that sum for that purpose within an extended period and whether it was reasonable to extend the period to that extent. As was said in CIS/15984/96, there is "an interplay between the degree of certainty required and the reasonableness of any extension. The greater the degree of uncertainty the less reasonable any extension." Both questions require a tribunal to exercise their judgment and, provided they have asked themselves the right questions and taken into account the relevant facts, a Commissioner cannot interfere with their judgment unless they reach a conclusion that is so unreasonable as to be erroneous in point of law. Here the tribunal's findings that "there was no certainty that she would find work and obtain a mortgage" and that "at most the appellant hoped that the proceeds might be used at some future date for another home" show that they were not satisfied that it was reasonably certain that the claimant would in fact use the sum of £37,000 to purchase another home. That was a conclusion they were plainly entitled to reach on the evidence before them and it justified their decision that the sum should not be disregarded under paragraph 3 of Schedule 10 to the 1987 Regulations because, although they did not put it this way, it meant that they were not satisfied that the sum was "to be used" for the requisite purpose.

10. It follows that I am not satisfied that the tribunal erred in law. I will add that, even if I had considered that there had been some technical error in their decision, I would have required some very compelling evidence to persuade me to reach a different conclusion from that reached by the tribunal and, in particular, to persuade me that the claimant was in fact looking in September and October 1997 for a home to buy immediately, as she has asserted on this appeal, or even to persuade me that she did in fact use the £37,000 to purchase a home with her new partner, as she has also asserted. Her evidence has not been entirely consistent and she has, at best, been economical in her provision of evidence about her finances. However, in the absence of an error of law on the part of the tribunal, I have no jurisdiction to consider the accuracy of these assertions that were not before the tribunal.

11. I dismiss the claimant's appeal.

**M. ROWLAND**  
**Commissioner**  
28 June 2000