

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 social security appeal tribunal dated 18 June 1991 is erroneous in law and I set it aside. As it is appropriate for me to do so, I give the decision which the tribunal should have given which is that the award to the claimant of income support did not fall to be reviewed in consequence of the gift to his daughter of the property in which he had formerly resided; accordingly the award of income support continues unless and until it is reviewed on some other ground.

2. The claimant had, it appears, been in receipt of income support from at least December 1988. He and his wife then lived and continued to live in their own house in Swadlincote. Their grown up daughter lived with them. There was a mortgage on the house, the claimant had fallen into arrears and the building society was pressing for possession. Now the claimant and his wife had their own reasons for wanting to leave their house. They had serious health problems and could no longer easily manage the stairs. They wanted a bungalow and were in touch with their local authority about that. Eventually there was an arrangement between all interested parties whereby the house went to the daughter and her fiance who took over the mortgage. The building society refrained from further action and the claimant and his wife got their bungalow from the local authority. However, while all those somewhat complicated arrangements were being finalised the local office, who were being kept in touch with what was happening, told the claimant that if the house went to the daughter he would lose his income support because of regulation 51(1) of the Income Support (General) Regulations 1987 which 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 ... "

And when the arrangements were completed an adjudication officer

issued a decision, on 17 January 1991, that "The claimant is not entitled to income support from 21 1 91. This is because he is treated as possessing capital which exceeds the prescribed amount of £8,000." The claimant unsuccessfully appealed to the tribunal. He now appeals to the Commissioner.

3. I have taken the facts as I have recounted them from a written submission on behalf of the claimant which was put before the tribunal. That submission put the facts more fully and graphically as follows -

"Mr Thompson was in arrears with his mortgage after he had to leave his employment in December 1988 when he was told to leave because of ill health. The arrears built up because the DSS took until 11.1.91 to pay the correct amount for mortgage interest payments. The mortgagors, the Leeds Permanent, applied for a possession order on 1.5.90 but this was adjourned for 2 months for his benefits to be resolved. It was further adjourned on 10.7.90 because his benefits had not been sorted out. His claim for mobility allowance is still on-going although he claimed in December 1988. The building society repeatedly applied to the court for relisting, pushing for the grant of a possession order and eviction. At a further hearing on 13.9.90 the Registrar agreed to adjourn indefinitely provided Mr Thompson's daughter Allison and her fiance took over the house and mortgage debt and this was agreed by the mortgagor's solicitor. All parties attended a meeting at the local Leeds Permanent office on 22.9.90 where an agreement was made.

Mr Thompson and his wife both have severe mobility problems. Mrs Thompson receives mobility allowance and Mr Thompson is appealing to a MAT following refusal of benefit. They both found it increasingly difficult to cope with the stairs in their house and approached the district council on 26.3.90 to enquire about accommodation in a bungalow. He was informed by a council officer that accommodation could be provided but not if they sold their house. When Mr Thompson explained about his mortgage arrears, it was the council official who suggested that he transfer the mortgage and arrears to his daughter. This would clear his worry over eviction, provide suitable accommodation for himself and his wife and prevent his daughter becoming homeless. Mr Thompson thought that this was a suitable action to take and therefore went ahead with the arrangements.

After Christmas 1990, events happened very quickly. By the time that Mr Thompson telephoned the DSS on 10.1.91 to inform them of what was happening, it was too late to change their plans. He told them of his mortgage arrears and that his priority was to get a council bungalow because neither he nor his wife were able to climb stairs. He was offered a tenancy by the council on 11.1.91 and had to decide immediately. He really had no choice but to accept

the tenancy at this stage and immediately wrote to the DSS to inform them of his impending move on 21.1.90."

Now it is clear that the tribunal accepted most if not all of that account because in their findings of fact they recited the essential particulars. They said -

"1. Appellant was in arrears with his mortgage to Leeds Permanent Building Society, and a contributory factor in the build up of arrears was because the DSS took until 11 January 1991 to pay the correct amount for mortgage interest payments. However, details of the amounts involved were not available at the hearing.

2. Appellant and his wife have severe mobility problems. Mrs Thompson unable to upstairs in the past 3 years.

3. Appellant was desperate to resolve his problems of debt and to obtain bungalow accommodation without making his daughter homeless.

4. On 10 January 1991 appellant was made aware of the effect of transferring the equity of his property to his daughter as regards income support when speaking with an officer of the Department on the telephone. At this stage it would not have been too late to refuse the Council tenancy and to cancel the gift to his daughter."

Now the first thing that has to be said is that the claimant was already in receipt of income support pursuant to an award for an indefinite period: see regulation 17(1) of the Social Security (Claims and Payments) Regulations 1987. Accordingly, the award could be terminated only by a review under section 104 of the Social Security Act 1975. There is absolutely nothing to suggest that a formal review ever took place and accordingly there has never been a valid termination of the award. Apart from any other consideration the tribunal's decision is erroneous in law because of the tribunal's failure to deal with this point. But it seems to me to be quite plain that on the merits the tribunal reached a conclusion which is simply not justified by their findings of fact. For regulation 51 to apply it is well established that there must have been a significant operative purpose to secure entitlement, possibly continued entitlement, to income support: see R(SB) 40/85. Now in this case the claimant was already in receipt of income support and there were, as the findings of fact make clear, compelling reasons for the arrangements that were entered into; paragraph 3 of the findings -

"Appellant was desperate to resolve his problems of debt and to obtain bungalow accommodation without making his daughter homeless."

makes this tellingly clear. Paragraph 4 deals with the advice given by the local office and the tribunal seem to have found that episode of particular significance because they say, in

their reasons,

"At the time the deprivation occurred which was after the conversation with an officer of the Department on 10 January 1991 the appellant was aware of the capital rules and yet he still went ahead with the transaction knowing the consequences."

Yet, as it seems to me, the warning makes it absolutely clear that the claimant simply could not have had as any part of his purpose the securing of entitlement, or continued entitlement, to income support. How could he, when he had been warned that he would lose his entitlement if he went ahead? Plainly his whole purpose was to achieve the result referred to in paragraph 3 of the findings of fact. And, happily for him, the view I take of the matter is that he does not lose his entitlement; in any event, as I have said, he could not do so without a review and I conclude that there were no grounds for review.

4. I assume that there will be no difficulty giving effect to this decision. If there is any problem the case can come back to me on the application of either party.

(Signed) R A Sanders
Commissioner

Date: 21 June 1993

