

SOCIAL SECURITY ACT 1986

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A  
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name -

1. My decision is that the decision of the social security appeal tribunal dated 28 September 1989 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 claimant is entitled to income support from 16 May 1989.

2. The claimant appeals against the tribunal's decision upholding the decision of an adjudication officer issued on 4 July 1989 that the claimant was not entitled to income support from 16 May 1989 because, in the adjudication officer's view, the claimant's capital exceeded the prescribed sum of £6,000: regulation 45 of the Income Support (General) Regulations 1987.

3. The claimant and her daughter are the joint owners of a house in which they both lived until the claimant went to be looked after in a residential care home. That was on 16 May 1989. The daughter continued to live in the house. The adjudication officer and the tribunal took the view that the claimant's capital included half the vacant possession value of the house. But, as the adjudication officer who is now concerned with the case agrees, that is not correct. His submissions include the following-

"In reaching their decision, the tribunal have followed the provision of regulation 52 of the General Regulations and simply apportioned 50 per cent of the aforementioned valuation to the claimant. That, I submit, is not the appropriate course of action however since the claimant's capital asset comprises the value of her beneficial interest in the property which may be quite different to her proportionate share of the overall value. Indeed, I submit that were a willing buyer for her share of the property to be found, it is unlikely that he would be prepared to pay much to acquire that interest. This

situation is borne out by the two opinions expressed by estate agents (pages 18 and 19). It is my contention that, far from causing the claimant's total capital to exceed £6,000, to all intents and purposes her interest in 3 Fernlea could arguably have a 'nil' value - see R(SB)14/86 and R(SB)21/83."

I agree with that. On the evidence, at the material time the claimant's capital did not exceed £6,000. Her appeal succeeds. The tribunal should have decided that the claimant was entitled to income support from 16 May 1989 and I substitute my decision to that effect for theirs.

(Signed) R A Sanders  
Commissioner

Date: 13 June 1990