

SOCIAL SECURITY ACT 1986

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 unanimous decision of the York social security appeal tribunal given on 27 November 1989 is not erroneous in point of law.

2. The claimant, Mr Gerald Smeaton, appeals with leave of the chairman against the decision of the tribunal confirming the decision of the adjudication officer, issued on 13 September 1989, that he was not entitled to income support because his income exceeded his applicable amount.

3. The facts are not in dispute and are accurately summarised with admirable clarity and economy in the tribunal's findings of fact -

"1. Mr Smeaton is aged 59 and lives with his wife aged 61 in a local authority house.

2. Mrs Smeaton has a retirement pension of £29.89 per week and earnings of £262.93 per calendar month.

3. Mr Smeaton made a claim for income support on 10 September 1989.

4. Mr Smeaton's applicable amount is £71.85 per week."

On the basis of those facts the adjudication officer held that he could not, as Mr Smeaton contended he should do, disregard Mrs Smeaton's earnings and retirement pension or, indeed, any part thereof, and that he was accordingly bound to include her part-time earnings and the whole of her pension when calculating the applicable amount of income support to which Mr Smeaton would be entitled. In so doing he applied regulation 23(1) of the Income Support (General) Regulations 1987 which, in so far as it is relevant, provides that -

".... the income and capital of a claimant's partner which by virtue of section 22(5) of the Act is to be treated as income and capital of the claimant,

shall be calculated in accordance with the following provisions of this Part in like manner as for the claimant; and any reference to the "claimant" shall, except where the context otherwise requires, be construed, for the purposes of this Part, as if it were a reference to his partner"

He then went on to calculate the applicable amount in accordance with regulation 17 of the General Regulations and, as he found Mr Smeaton's income to be in excess of the applicable amount, decided that he was not entitled to income support.

4. So far as I am aware Mr Smeaton does not take issue with the calculation of his applicable amount. His contention is that his wife's income is her own and derived either from her earnings or from the contributions which she made prior to their marriage. In support he prayed in aid the equal treatment of women under EEC law and, in a letter dated 15 November 1989, he draws attention to the impending change in the law giving his wife a right to have her income dealt with separately for income tax purposes.

5. At the hearing on 27 November 1989 Mr Smeaton attended and gave evidence, and is recorded as agreeing that the facts as stated were correct. The tribunal found facts as set out in paragraph 3 above and gave as their reasons for their decision disallowing his appeal -

"The applicable amount for Mr Smeaton is £71.85 which is made up of £54.80 for himself and Mrs Smeaton and a pensioner premium of £17.05.

Mrs Smeaton has income of £85.56 and this is in excess of the applicable amount. Section 21 of the Social Security Act 1986 and Regulation 17 of the Income Support (General) Regulations.

Mr Smeaton believes that part of his wife's pension should be disregarded because part of the pension includes an earnings related supplement which is paid because of her contributions when she was working. There is nothing in the Regulations to disregard any of the pension which Mrs Smeaton receives and therefore all the pension has to be taken into account when assessing the income of Mr Smeaton.

It is also the case that the income and capital of a Claimant's partner are treated as the income and capital of the Claimant and therefore in this case the income of Mrs Smeaton is treated as the income of Mr Smeaton. Regulation 23(1) of the Income Support (General) Regulations applied."

6. The tribunal do not mention either the question of European law or of separate taxation. In my view they had no need to do so; Mr Smeaton had not identified any specific ruling of the

European Court modifying United Kingdom social security legislation, and any proposed changes in tax law could not be relevant to the matters before the tribunal. In my judgment the tribunal clearly explained why Mr Smeaton's appeal failed; they dealt with all relevant matters and, in my judgment their decision discloses no breach of the principles of natural justice, no other error of law and complies with the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986. In my view the law is clear and Mr Smeaton's appeal is misconceived. I think it is unfortunate that, the tribunal having given a perfectly adequate decision, he should have been granted leave to appeal, thereby falsely raising his hopes. Because I considered his appeal hopeless and raised no "important matter of principle" I confirmed, on 4 December 1991, the nominated officer's refusal of an oral hearing which, in the circumstances, would only have been a further waste of public time and money.

7. In conclusion I should add for the sake of completeness that plainly no question of European law arises in this case and that, as the adjudication officer now concerned with the case submits, "social security legislation neither follows nor is dependent upon taxing legislation".

8. The claimant's appeal is dismissed.

(Signed) M H Johnson
Commissioner

Date: 27 January 1992