

Disregarded Capital - payment to a claimant for
surrender of tenancy can be disregarded (CAF).

DGR/SH/11/YR

Under para. 3 of Sched. 10, IS (General)

Commissioner's File: CIS/063/1993

Key. SA/94. ★

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

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 11 February 1992 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 11 February 1992. The claimant asked for an oral hearing, a request which was acceded to. At that hearing the claimant, who was present, was represented by Mr J Williams from the Plymouth Claimant's Union, whilst the adjudication officer appeared by Mr G Roe of CAS.

3. The claimant had been in receipt of income support from its inception in April 1988 when on 6 December 1988 the Department was informed by the South Hams District Council that the claimant had been induced on 30 November 1988 to surrender to the freeholder his statutory tenancy of Rose Cottage, where he lived, in consideration of the payment to him of £28,000 together with a further £2,000 in respect of legal costs. The claimant stated that he wished to apply this money to the purchase of a new property by way of "shared ownership." The adjudication officer allowed the claimant to continue to receive income support for six months from 30 November 1988, presumably pursuant to paragraph 3 of Schedule 10 to the Income Support (General) Regulations 1987 [S.I. 1987 No 1967]. On the expiry of the six months' period the adjudication officer decided on 7 June 1989 that the £30,000 did not fall to be disregarded pursuant to any provision of Schedule 10, with the result that, as the claimant

had capital in excess of the prescribed limit, he ceased as from 1 June 1989 to be entitled to income support. In due course, the claimant appealed out of time to the tribunal, who in the event upheld the adjudication officer.

4. At the hearing before me, Mr Williams, on behalf of the claimant, relied on paragraphs 3 and 8 of Schedule 10 which sets out the capital to be disregarded in ascertaining entitlement to income support. I will deal first with paragraph 8. It reads as follows:-

" 8. Any sum -

(a) paid to the claimant in consequence of damage to, or loss of the home or any personal possession and intended for its repair or replacement; or

(b) acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used for effecting essential repairs or improvements to the home,

and which is to be used for the intended purpose, for a period of 26 weeks from the date on which it was so paid or acquired or such longer period as is reasonable in the circumstances to enable the claimant to effect the repairs, replacement or improvements."

It will have been observed from the recital of the history of this matter that, when the adjudication officer came to make his decision on 7 June 1989, the claimant had already enjoyed disallowance of the capital sum in question for a period of 26 weeks, and if paragraph 8 otherwise applied, he could only rely on it if he could show that an extension of that 26 weeks' period was reasonable in the circumstances "to enable the claimant to effect the repairs, replacement or improvements". However, the question of the extension did not arise, as far as the adjudication officer was concerned. He did not believe that the claimant had ever been entitled to have the receipt of £30,000 disallowed in the first place.

5. Manifestly, paragraph 8 (a) - paragraph 8(b) has no relevance -has in contemplation payments made to a claimant by an insurance company "in consequence of damage to, or loss of home or any personal possession and intended for its repair or replacement". Mr Williams, however, argued that paragraph 8(a) was not to be restricted to matters arising out of insurance claims or the like, but was to be interpreted widely. He contended that the plain fact was that the claimant had lost his home when he surrendered his statutory tenancy to the freeholder. On such surrender, which had been effected by a document, he had received a payment of £30,000, and as a result he fell within the terms of paragraph 8(a). Moreover, the freeholder had made the payment, in consequence of the claimant's surrender of the tenancy, for the purpose of enabling him to purchase with the

money a replacement home. I reject that submission.

6. The fact that a person ceases to own or possess property does not necessarily arise out of his having lost it. He may be without possession or ownership, not because he has lost it, but because he has given it away, sold it, or abandoned it. For example, supposing in a train journey a passenger with an umbrella forgets to take it with him at the end of the journey. Manifestly, he will have lost it. But he might conceivably, if the umbrella was of poor quality, have decided to leave it in the train, in which event he would have merely abandoned it. Alternatively, he could have given it to a fellow passenger or conceivably sold it to him. But in the case of abandoning, giving or selling, the person concerned would have undertaken a deliberate act. In contrast, deprivation of the umbrella by reason of his having forgotten it and left it behind would have arisen out of an involuntary act. In my judgment, paragraph 8 has in contemplation only involuntary acts, i.e. where the claimant has against his will suffered damage to or loss of his property, not where he has deliberately brought this about. In the present instance, the claimant deliberately surrendered his tenancy for a cash payment. It was his own deliberate act, and accordingly not something he could not have prevented. The loss was not inflicted upon him against his will by, for example, fire or earthquake. Accordingly, I am satisfied that paragraph 8 has no application in this instance.

7. Paragraph 3 of Schedule 10 reads as follows:-

" 3. 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."

It will be seen that once again there is a 26 weeks' limit, capable of being extended in certain circumstances. Seemingly, the adjudication officer had allowed the claimant a 26 weeks' period of disregard pursuant to this provision, but on its expiry he had taken the view that his paragraph had no more application to the claimant than paragraph 8, and, for that matter, never had had any application.

8. Mr Williams contended that the £30,000 constituted the proceeds of sale of the claimant's home, and should be disregarded, pursuant to this provision, for such period in excess of 26 weeks as was reasonable in the circumstances to enable the claimant to effect a purchase.

9. Mr Roe said that it was the practice of the Department to draw a distinction between the sale of a freehold or leasehold of a claimant's home and the surrender of a tenancy back to the landlord. Only the former transaction fell within paragraph 3. A statutory tenancy could never be sold to a third party; it

could only be surrendered to the landlord, although the statutory tenant could, as here, receive a payment for such surrender. It was not a true sale of a proprietary interest in the property. I reject that submission.

10. Suppose a person has, instead of a statutory tenancy, the residue of (say) a 99 year lease. He can surrender it to the freeholder for a consideration, or alternatively can sell it to a third party. Either way he receives a sum of money for the sale of his home. He had possession, and he gave up that possession to the freeholder or third party, as the case might be. In my judgment, either transaction would fall within paragraph 3, and it would be wholly immaterial that a transaction direct with the landlord would technically be a surrender rather than a sale of a proprietary interest. The claimant would still have sold his home, and it would be irrelevant to whom he sold it. I appreciate that, in the present instance, the claimant's interest was only a statutory tenancy which was not capable of being sold to a third party, but I do not consider that this affects the issue. The claimant still sold his home, albeit the sale was effected with the freeholder. He originally had possession, but after the transaction the freeholder had possession. He received a sum of money for selling his home, and that is to be treated in the manner prescribed in paragraph 3.

11. Unfortunately, the tribunal erred in point of law in not properly applying paragraph 3 to the facts of the case. I must therefore set aside their decision. It is not open to me to substitute my own decision, because clearly matters of fact have to be determined, and the more satisfactory forum for that is a tribunal. Accordingly, I direct that the appeal be reheard by a differently constituted tribunal who will consider whether the claimant was entitled to have an extension of the disregard after the expiry of the statutory 26 weeks, and if so, for how long. In the light of their determination, the new tribunal will decide whether the claimant was entitled to income support for any period, and if he was, how long that period should have been, and the rate of benefit payable.

12. I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 21 June 1994