

SOCIAL SECURITY ACT 1986

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This claimant's appeal succeeds. My decision is that the decision of the social security appeal tribunal dated 15 February 1989 is erroneous in law. I set it aside and refer the case to another social security appeal tribunal for determination in accordance with my directions.

2. The claimant was in receipt of supplementary benefit from June 1965. His last payment, according to form AT2 (page T23 c case papers) was for the week ending 1 May 1988.

3. On 28 April 1988 an adjudication officer issued the following decision:

"Mr Cartwright is not entitled to Income Support because his and his wife's capital exceeds the prescribed level."

4. The claimant appealed against that decision to a social security appeal tribunal. A first hearing took place on 2 September 1988. The appeal was adjourned and the case then came before an entirely differently constituted tribunal who met on 15 February 1989. The chairman's note states;

"1. Tribunal carefully considered and at length the facts outlined on AT2 and accompany papers together with the reasons for the DSS decision.

2. No presenting officer present and nor was appellant who had notified tribunal of decision not to attend and indicated his willingness for appeal to be heard in his absence. Notwithstanding, tribunal considered it appropriate to hear appeal in view of delays as experienced in dealing with the appeal."

5. The tribunal's decision was:

"Appellant is not entitled to income support as from 24.4.88, since his wife's capital was in excess of the prescribed limit of £6,000 and had implicitly been so for

some time previous to 24. 4. 88."

Their recorded findings of fact were:

"1. Mr and Mrs Cartwright are married and have lived at Sharpcliffe Hall, Ipstones since 1965. Property is owned by Mrs Cartwright.

2. Appellant has been in receipt of national assistance and subsequently supplementary benefit since 1965.

3. Sharpcliffe Hall and woodlands of 54.374 acres valued at £150,000 on 18.11.88 by District Valuer. House itself valued at £120,000 and Sharpcliffe Hall Farm valued at £80,000.

4. Debt owing to National Westminster Bank Plc in respect of property approximately £35,000.

5. Net value of property is thus approximately £195,000 which is reduced to £175,000 after allowing for expenses of sale.

6. Appellant and his wife still live in property of Sharpcliffe Hall, Ipstones and has continued to do so since 1965.

7. In May 1959, Mrs Cartwright gave appellant a life interest in Sharpcliffe Hall by Memorandum of Agreement which by paragraph two effectively let "the whole of the property and premises known as Sharpcliffe Hall... comprising a total area of some 55 acres...."

8. Notwithstanding the tenancy agreement of May 1959. Mrs Cartwright lives at Sharpcliffe Hall with her husband.

9. Mrs Cartwright's property assets are divisible into, as per District Valuer's valuation of 18.11.88, namely Sharpcliffe Hall and site and woodlands, and Sharpcliffe hall Farm.

10. Value of Sharpcliffe Hall Farm is £80,000 gross".

Their recorded reasons for their decision were:

"1. Appellant's capital resources were aggregated by tribunal along with those of his wife in accordance with Section 22(5) and Section 20 Social Security Act 1986.

2. Actual capital of Mrs Cartwright was calculated in accordance with Regulation 23(1) by reference to Regulation 2 Income Support (General) Regulations.

3. By virtue of value of Sharpcliffe Hall Farm property in net terms of at least £40,000 approximately as at 18.11.88, its value at 24.4.88 (which was date of

adjudication officer's review of appellant's entitlement to benefit) would have been well in excess of £6,000 which is the prescribed amount of capital determined by Regulation 45 General Regulations for the purposes of income support.

4. Value of Sharpcliffe hall Farm arrived at by the formula prescribed in Regulation 4 General Regulations would be a minimum of £40,000. This figure was arrived at by taking gross value of £80,000 and assuming (which would not be expected to be the case) the whole of the debt owing to the Bank of £35,000 was secured on the Farm. This would value the property at £4,000. Thereafter, if 10% of that value were allowed for the sale, net value of property would be £40,000.

5. Sharpcliffe Hall Farm is severable as an asset from Hall itself and woodlands. It is the subject of the tenancy agreement of May 1959 wherein it has been "distinguished" from Hall and woodlands by paragraphs 2 and 6. It has been regarded as a difference and distinguishable entity by virtue of its one time tenancy by a tenant farmer.

6. Sharpcliffe Hall and woodlands are not easily severable since they together have been the subject of a life tenancy agreement between appellant and Mrs Cartwright. Sharpcliffe Hall Farm has also been the subject of a tenancy agreement firstly with a Mr Charles Mc running contemporaneously with the life tenancy granted to appellant of Hall and woodlands. appellant subsequently became a life tenant of the Farm by the separate provisions of paragraph 6 of Memorandum of Agreement provided further evidence of the severability of Farm from Hall and woodlands.

7. Since appellant and Mrs Cartwright live in Sharpcliffe Hall that was regarded as the dwelling house by virtue of Regulation 2 Income Support Regulations. As such that asset £150,000 gross value was to be disregarded in accordance with Regulation 46(2) and paragraph 1 Schedule 10 General Regulations.

8. Mrs Cartwright's interest in the Sharpecliffe Hall Farm property and for that matter Hall and woodlands was not a reversionary interest. R(SB) 3/86 considered and applied. Meaning of "reversionary interest" carefully considered at length by tribunal. Paragraphs 14 and 21 noted in particular with reference to the fact that Mrs Cartwright was in present enjoyment of the whole property. Her present enjoyment of the property including the Far precludes her interests from being considered as reversionary by virtue of the definition thereof in R(SB) 3/86. Since appellant and wife occupy the Hall and woodlands as their dwelling occupied as their home, the Farm with its separate dwelling cannot be regarded as their home. Tribunal considered definition of "dwelling occupied

as a home" in Regulation General Regulations once again and thought it neither impracticable or unreasonable to sell the Farm separately R(SB) 13/84 and R(SB) 27/84 considered and applied. R(SB) also considered in that two separate dwellings cannot be regarded as one home. Tribunal considered that Mrs Cartwright had present enjoyment of Sharpcliffe Hall Farm and the enjoyment did not carry a vested or contingent right to enjoyment in the future. Her interest in the Farm is not purely reversionary though the granting to appellant of the tenancy does give it a reversionary element. The property is still readily realisable.

9. Since Mrs Cartwright's interest in Farm is not a reversionary interest, the [illegible] asset value cannot be disregarded under Regulation 46(2) and paragraph 1 of Schedule General Regulations.

10. Since appellant, prior to the introduction of income support benefit on 11.4.88 in receipt of supplementary benefit he comes within the provisions of Regulation 5(1) Income Support (Transitional) Regulations and is thus entitled to a continuation of benefit in the form in income support until the date of the adjudication officer's review of benefit entitlement on 24.4.88 pursuant to a change in the appellant's circumstances occasioned by revised valuation of the properties."

6. The claimant appealed against this decision saying that his wife's interest was reversionary and fell to be disregarded under the regulations.

7. I granted leave to appeal and issued a direction, the full terms of which are set out at page 75 and 76 case papers, pointing out that a crucial question in the appeal was whether the claimant was a "life tenant" that the agreement of 22 May 1969 described the tenancy as an annual tenancy and that a life tenancy had not, since the 1925 property legislation, been capable of existence at law, though the bank (to whom the property was mortgaged) seems to have accepted that the claimant had a life interest.

8. The adjudication officer now concerned, in a further submission dated 14 November 1991, made after obtaining legal advice, submits that the tribunal erred in law in finding as a fact that the claimant held a life interest in the property. He submits that the tenancy was an annual tenancy and that a claimant's wife in her capacity as landlord held both the legal and beneficial interest in the property and in accordance with regulation 23(1) of the General Regulations the estate, which was owned by the claimant's partner, was to be treated as the capital of the claimant.

9. I agree that the tenancy was an annual tenancy and that the decision of the appeal tribunal was erroneous in law. I set aside their decision for this reason. It is not, however,

practicable to substitute my own decision. The valuation on which the tribunal relied was made without inspecting the property. The question of the onus of proof as to entitlement to income support has not been considered at all. The tribunal arrived at their decision without seeing or hearing anybody for themselves. No presenting officer appeared. Neither the claimant nor his wife nor any witness appeared. The conveyance to the wife dated 14 May 1959 has not been produced. The mortgage to the Bank has not been produced, the amount of the mortgage debt outstanding on 11 April 1988, or subsequently, and the property on which that debt was secured has not been stated by the Bank in any letter in the case papers: see my direction of 25 September 1991, at paragraph 8.

10. I refer the case to another appeal tribunal which should be entirely differently constituted from the tribunal which gave the decision and from the tribunal which first heard the appeal.

11. The fresh tribunal should have before them the whole of the existing case papers including my written direction of 25 September 1991, the further submission of 14 November 1991 and the evidence referred to by Mrs Cartwright in her letter of 31 March 1991, together with the letter herself.

12. There should be a further written submission by the adjudication officer to the fresh appeal tribunal, made after obtaining legal advice. (The claimant is unrepresented and has had no legal assistance whatever.) The following points require to be dealt with in that submission:

- (1) (a) The claimant was, for a period immediately preceding 11 April 1988, entitled to supplementary benefit and is accordingly "a former beneficiary" in terms of regulation 2(1) of the Income Support (Transitional Regulations 1987). Under regulation 4, he is deemed to have claimed income support and, under regulation 5(1), and to have had every question determined in respect of his entitlement to supplementary benefit "immediately before 11th April 1988" to have been so determined in respect of income support.
- (b) Accordingly, was the claimant not deemed to have satisfied, on 11 April 1988, the capital resources limit for income support?
- (2) Does the onus of proof that the capital of Mr and Mrs Cartwright has subsequently exceeded the £6,000 capital limit for income support not rest on the adjudication officer who gave the decision of 28 April 1988?
- (3) (a) It is not in dispute that the value of the Hall does not fall to be included in the claimant's reckonable capital: see paragraph 1 of Schedule

10 to the Income Support (General Regulations).

(b) The adjudication officer now concerned has submitted that "if the claimant is able to substantiate his wife's statement that the farm and hall together comprised a single listed building" the argument that it is impracticable or unreasonable to sell it separately would be greatly enhanced" (submission of 14 November 1991 paragraph 8). Evidence to this effect has now been provided by the wife: letter of 15 July 1987 (page 81 of the case papers). If it is found as a fact that it is indeed impracticable or unreasonable to sell the farm separately, does not its value also falls to be excluded in reckoning the capital assets: see the definition of "dwelling occupied as the home" in regulation 2(1) and paragraph 1 of Schedule 10 to the General Regulations?

(c) The value of the woodlands seems to have been accepted by the tribunal of 15 February 1989 as £30,000 (Hall + Woodlands £150,000, Hall alone £120,000. Difference between the two values = £30,000.) If the mortgage debt (which the tribunal found to be £35,000) was secured on the whole of the property, namely Sharpcliffe Hall, the Hall Farm and the woodlands does not the entire £35,000 falls to be deducted from the £30,000 woodlands? Where a debt is secured on property part of which is disregarded (eg a home) and part of which is to be valued (eg land which can be sold separately) the whole amount of the incumbrance had, under income support, to be deducted from the latter: see decision R(SB) 27/84. paragraph 11(2) Regulation 49(1)(ii) of the Income Support (General Regulations) 1987 is similar terms to regulation 5(a)(ii) of the Supplementary Benefit (Resources) Regulations 1981. Does not the ratio of that decision appears to apply to income support as it applied to supplementary benefit?

13. There is, accordingly, an arguable case for consideration by the fresh tribunal that the claimant should have continued to receive income support by virtue of the provisions of regulation 4(1) of the Income Support (Transitional) Provisions and that there should be no revision on review.

14. The fresh tribunal should ensure:

- (1) that there is a presenting officer at the hearing. This case is quite unsuitable for decision without the presence of a properly instructed officer
- (2) that every effort is made to secure the attendance of

the claimant's wife.

(3) that every effort has been made by the adjudication officer to procure the evidence mentioned in paragraphs 9 and 12 above.

15. That tribunal should make findings on the points referred to in this decision and on all other relevant points raised by or on behalf of the claimant or the adjudication officer.

16. My decision is set out in paragraph 1.

(Signed) V G H Hallett
Commissioner

Date: 13 May 1992