

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This partially supported appeal, which is brought by the claimant with the leave of a commissioner, relates to the claimant's entitlement to income support between 27 May 2004 and 6 June 2004. The claimant had been entitled to income support before 27 May and was awarded it again from 7 June. For the reasons set out below the appeal is allowed. I set aside the decision of the tribunal given on 2 November 2004 and I substitute my own decision that the claimant was entitled to income support from 27 May to 6 June 2004 both dates inclusive.
2. The sale of the claimant's previous home had completed on 27 May 2004 and by letter of that date her solicitors wrote to her with a completion statement and a cheque in the sum of £20,193.21 representing the balance of the sale proceeds. The cheque was credited to her bank account on the same day. The claimant used most of this sum to repay two loans totalling £18,000 which had been made to assist her in the purchase and renovation of her new home. The repayment was made by two cheques for £11,000 and £7,000 which cleared her bank account on 3 June 2004. There is no evidence as to when these cheques were handed over to the two lenders.
3. The tribunal hearing was attended by the claimant's representative, but the claimant herself did not attend. At the hearing the representative produced evidence that the claimant had become entitled to income support again with effect from 7 June 2004, so that the tribunal was considering entitlement only for the period from 27 May to 6 June. It was clear from the claimant's bank statement, which was produced, that by 3 June the balance of the account had been reduced to £1082.60. On that basis the claimant was clearly entitled to income support at least from that date unless she had deprived herself of capital for the purpose of entitling herself to income support or increasing the amount of that benefit (regulation 51 of the Income Support (General) Regulations 1987).
4. The tribunal found that the burden of proof that her capital had been legitimately reduced fell on the claimant. This is plainly an error of law. The burden of proof that the claimant has deprived herself of capital for the purpose stated in regulation 51 is clearly placed by the regulation on the secretary of state. It is also plain, given the award of income support from 7 June 2004, that the secretary of state was not seeking to make any such contention.
5. Had there been any significant evidence to suggest that the secretary of state ought to be so contending which the tribunal wished to investigate, then it ought to have adjourned the hearing to enable the claimant to deal with the point which would inevitably have taken the representative by surprise in the circumstances. I am unable, however, to detect any such evidence. The only evidence relied on by the tribunal was that the receipts which were produced were typed on the same typewriter and were only identified further by the production of the business cards in the top right hand corners. On this appeal the claimant's representative has explained that they were typed by staff at the Citizens' Advice Bureau and given to the claimant to get the

creditors to sign. However, it is said that the tribunal chairman refused to allow any explanation to be given as to this. If so, that was plainly a breach of the rules of natural justice, but in any event, the fact that the receipts were typed on the same typewriter for the purpose of the appeal cannot justify the approach of the tribunal on the facts of this case.

6. For the reasons given above, the tribunal was in error of law, and I set aside its decision.
7. It is clear, and the secretary of state accepts, that at least from 3 June 2004 the claimant's capital was less than £8000 and that she was entitled to income support between 3 and 6 June. However, it also appears to me that the claimant's capital was less than £8000 from the time that she issued the two cheques in repayment of the two loans. After that time, it would have been dishonest of her to have withdrawn money from her account to an extent which would have led the bank to dishonour the cheques. I find it inconceivable that the bank would have permitted her more than a very small overdraft facility, as she would have had no prospect of repaying any significant overdraft. In those circumstances it appears to me that, once the cheques were issued, the amount standing to her credit in the account - the debt owed by the bank to the claimant - was of very little, if any, value to her beyond the surplus after the cheques had been met.
8. There is no evidence of exactly when the cheques were issued, and if any significant amount was at stake, this would need to be investigated. However, there is less than a week's income support at stake and the costs involved in remitting the case, or postponing my decision for further evidence to be submitted to me, would be disproportionate. I therefore consider that it is appropriate that I should decide the factual issues myself on the evidence before me.
9. The cheque from the solicitor was paid into the claimant's bank account on the same day it was sent to her by the solicitor. I infer that she collected it herself and paid it in herself. She had debts which she had promised to discharge out of the proceeds of sale, and I consider that on the balance of probabilities she drew and issued the two repayment cheques for £11000 and £7000 on the same day, 27 May 2004. That is consistent with the cheques having cleared her account on 3 June, as it normally takes three to four working days for this to happen. For the reasons given, once the cheques had been issued, that is handed or sent to the payees in such a way as to put them beyond her control, her capital was reduced to just over £1000 and she remained entitled to income support, which she had been receiving before that date. Once the claimant had issued those cheques, she could not honestly withdraw money from her bank account so as to leave insufficient funds to meet them. Different considerations might apply where a cheque is postdated.
10. The appeal is therefore allowed and I make the order set out in paragraph 1.

(signed on the original)

Michael Mark
Deputy Commissioner
29 April 2005