

Office

SCAT Issues To Law At An Appeal
Or Decision, At Law & Return To Elements
In Dispute (See Housing Costs)

MJG/SH/4

Commissioner's File: CIS/354/1994

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

1. I grant the claimant leave to appeal against the decision of the social security appeal tribunal dated 17 August 1993 and I allow the claimant's appeal against that decision as it is erroneous in law and I set it aside. I remit the case for rehearing and redetermination, in accordance with the directions in this decision, to an entirely differently constituted social security appeal tribunal: Social Security Administration Act 1992, section 23.

2. This is an appeal to the Commissioner by the claimant, a man aged 44 at the relevant time, living in owner occupied accommodation with his wife then aged 43 and his two daughters then aged 14 and 18 respectively. The appeal was the subject of an oral hearing before me on 4 October 1994 at which the claimant attended. He was represented by Mr S Kolodynski of Counsel. The adjudication officer was represented by Mr A Cousley of the Office of the Solicitor to the Departments of Health and Social Security. I am indebted to all those persons for their considerable assistance to me at the hearing.

3. The claimant appealed to the social security appeal tribunal whose decision (dated 17 August 1993) is now under appeal to me from a decision of the local adjudication officer issued on 26 April 1993 in the following terms,

"As the result of further information received from the claimant, the adjudication officer has reviewed the calculation of the restriction of [the claimant's] housing costs which was made originally on 25 May 1990. The adjudication officer has decided on review that the

applicable amount for housing costs shall be calculated on the sum of £40,956.03 and not £35,658.00 as previously restricted. The new sum is effective from the date of claim - i.e. 30 April 1990."

4. The restriction referred to was imposed in a decision issued on 25 May 1990. It was imposed under paragraph 10(4) to (6A) of Schedule 3 to the Income Support (General) Regulations 1987. The new tribunal will need to consider the details of those subparagraphs in relation to the factual circumstances surrounding the claimant's acquisition of his house in Paignton/Torquay in 1990, its geographical location, etc, etc. I shall not deal any further with those particular aspects of the subject as they are essentially factual and the claimant will have the opportunity fully to develop his argument to the new tribunal. The claimant contends that on the facts the restriction should never have been imposed.

5. The claimant had tried to get this restriction removed in his appeal against the above-cited adjudication officer's decision of 26 April 1993 but the tribunal of 17 August 1993 refused to deal with this particular matter. They made the following findings of fact,

"The appellant was in receipt of income support when he moved from the Swindon area to Paignton. He sold [his house in Swindon] for £76,000 but the net proceeds of sale amounted to [unfortunately this figure partly is illegible] as shown on his completion statement. On his move to Paignton he purchased [a house there] for occupation by himself, his wife and two daughters, aged 14 and 18, with the assistance of a mortgage of £73,900 from Halifax Building Society. On his move the Adjudication Officer reviewed and revised his income support entitlement and imposed a restriction limiting his housing costs to the interest on £35,658. This decision was made on the basis that a suitable alternative property in Torbay could have been purchased for £52,000 and that, on the evidence then before the Adjudication Officer, the net proceeds of [his Swindon house] amounted to £16,342. The appellant subsequently submitted a copy of [the revised completion statement] to the Adjudication Officer who then reviewed and revised the 1990 decision by increasing the amount of housing costs to the interest on £40,956.03. The appellant did not appeal against the 1990 decision within three months of the date when notice of that decision was given to him and the Appeal Tribunal Chairman has refused applications by the appellant for the time for the lodgment of the appeal to be extended."

6. The tribunal's decision was, "The appellant is entitled to housing costs from 30.4.90 in respect of the interest paid to Halifax Building Society on £40,956.03., part of the mortgage to the society secured on [the house in Paignton].".

7. The tribunal in its reasons for refusing to re-open the question of the initial imposition in 1990 of the restriction referred to a passage from Mr Mesher's annotated work on the relevant legislation. The passage occurs in the last two paragraphs on page 603 of the 1994 addition of Mesher. I have considered carefully those passages and the authorities referred to by Mr Mesher. I have also considered CIS/77/92 and CIS/303/92 (to be reported as R(IS) 15/93). I do not consider that any of those cases exactly bear on the point which I have to decide in this appeal and both Mr Kolodynski and Mr Cousley agreed that that was so. However it is fair also to record that Mr Cousley submitted strongly that what is said in those decisions about the nature of a review decision by an adjudication officer is material to considering the issue of principle in this appeal.

8. The tribunal then went on in their reasons to say the following,

"The Act and Regulations contain provisions for appeals against decisions of Adjudication Officers, either on original claims or on reviews and revisions of such claims. It was open to the appellant to avail himself of the opportunity to appeal against the 1990 revision but he did not do so within the time prescribed nor apparently did he satisfy the Tribunal Chairman who considered his application to appeal out of time that he had grounds for so doing. An award of income support contains a number of elements, any of which may be reviewed and revised under the provisions of section 25 of [the Social Security Administration Act 1992]. Such reviews and provisions can be quite frequent, for instance where interest rates are frequently changing, but it would be quite absurd, and surely never intended by the legislature, that on each of these occasions, the calculation of other contents of the entitlement can be altered without such alteration being justified on any of the grounds set out in section 25 [of the 1992 Act]."

9. It is clear that the tribunal took the utmost care with this case and it is only after considerable thought that I have decided that their ruling that they could not look into the question of the initial imposition of the restriction in 1990 is erroneous in law. In my view what has to be borne in mind is that what the tribunal had to deal with in this case was an appeal from a decision of an adjudication officer. On such an appeal the tribunal is entitled to investigate, rule on, confirm or reject any part of the adjudication officer's decision whether or not the parties themselves have raised any issue as to that particular part. That is because the tribunal's jurisdiction is inquisitorial. What the tribunal is not doing is itself undertaking a review of the adjudication officer's decision appealed against. The restrictions in section 25 of the 1992 Act imposing the requirement of grounds for review do not therefore apply to a tribunal considering an appeal.

10. What therefore I have to decide is whether there was express

or implied in the adjudication officer's decision of 26 April 1993 (set out in full in paragraph 3 above) a decision involving the initial imposition of the restriction. Certainly that decision of the adjudication officer of 26 April 1993 was based in its arithmetic on the continuance of the restriction. Presumably, eg. because of possible changes in family circumstances, such restrictions are not necessarily to endure in perpetuity and the adjudication officer's decision of 26 April 1993 therefore in my view did imply a continuance of the restriction. I do not therefore regard it as correct to analyse it as not dealing with the restriction at all. Consequently, the existence and continuance of the restriction was an element in the adjudication officer's decision of 26 April 1993, which the claimant was entitled to have dealt with on an appeal against that decision. By refusing to deal with it the tribunal in my view erred in law.

11. In coming to this conclusion I have not overlooked the Common Appendix to the group of decisions including CSSB/281/1989, which as I understand the position would hold that the adjudication officer's decision of 26 April 1993 did not replace the original adjudication officer's decision of 25 May 1990 (imposing the restriction) but merely varied part of that decision i.e. the actual calculation of the amount of the mortgage on the Paignton house that could be taken into account. However, the Scottish cases referred to were decided on very different facts from those in the present case. Here what one is concerned with essentially is just one matter, namely what the claimant can have counted as housing costs in calculating his entitlement to income support. If there is a review decision of an adjudication officer relating to those housing costs it is perfectly proper in my view to regard all of the factors that are taken into account in calculating those housing costs as being involved in that decision. In my judgment, it would be artificial just to look at one factor in their calculation and refuse to consider others. The situation is very different from one where for example a claimant asked for a review of his income support entitlement on the ground of changes in his housing costs and then sought also to have reviewed a wholly different matter, eg. a disabled person's premium.

12. It follows that I must hold the original tribunal's decision to be erroneous in law. The new tribunal will therefore need to consider all the factors involved in the calculation of the claimant's housing costs for income support purposes. That means starting 'from square one'. The tribunal will have to consider the actual arithmetic of the matter including the question of the additional shortfall on the proceeds of sale of the Swindon house. It will also have to consider in depth whether or not a restriction should have been imposed or continued under paragraph 10 of Schedule 3 to the 1987 Regulations. If it should conclude that that restriction was not properly imposed (but that is entirely a matter for the new tribunal) then its decision can be 'backdated' only to the date of issue of the adjudication officer's decision on 26 April 1993. That is because the tribunal were not dealing with an appeal against the adjudication

officer's decision of 25 May 1990 imposing the restriction. The restriction imposed between 25 May 1990 and 25 April 1993 could only be challenged, as I understand the position, by an appeal to a social security appeal tribunal against the decision of the adjudication officer of 25 May 1990 or by way of an application for review of that 1990 decision, based on an appropriate ground under section 25 of the 1992 Act. However, those are matters on which I should not comment further because they may not arise. It depends on what the new tribunal's decision is as to the restriction.

(Signed) M.J. Goodman
Commissioner

(Date) 7 October 1994