

Housing costs - paying off another loan -  
extent to which housing costs can be met.

Commissioner's File: CIS/367/1993

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

Name: Nicola Markey (Mrs)

Social Security Appeal Tribunal: Aylesbury

Case No: 2 1/3356

1. My decision is that the decision of the social security appeal tribunal given on 10 February 1993 is erroneous in point of law and accordingly I set it aside. However, as I consider it expedient to make further findings of fact and to give such decision as I consider appropriate in the light of them, I further decide that the sum of £60,000 is to be used in the calculation of the claimant's housing costs.

2. This is the adjudication officer's appeal against the decision of the social security appeal tribunal of 10 February 1993, leave having been granted by a Commissioner. The appeal was the subject of an oral hearing held before me. The claimant attended and was represented by Mr R V Colquhoun from the Social Services Department of High Wycombe. The adjudication officer was represented by Mr L. Scoon from the Solicitor's Office of the Departments of Health and Social Security.

3. The facts of this case are complicated but not in dispute. The claimant's husband died in May 1984. She is now aged 40 and lives with her three sons now aged 18, 16 and 15. Her youngest son is severely disabled and she is in receipt of attendance allowance and mobility allowance in respect of him. On 26 September 1986 the claimant and an elderly couple (to whom I shall refer to as Mr and Mrs F) purchased as joint tenants the freehold interest in 153 Cressex Road for £94,500. They obtained a mortgage advance of £60,000 from the Nationwide Building Society, for which they were jointly and severally liable. However, they agreed that the claimant and Mr and Mrs F would be liable for £30,000 each. The claimant provided the balance of

the purchase price amounting to £35,450.

4. In the event Mr and Mrs F paid only one mortgage instalment. The claimant was forced to pay the remaining instalments in full. The situation deteriorated and Mr and Mrs F proposed to sell the property. The claimant refused because she was advised that she would only be entitled to one third of the proceeds of sale irrespective of the amount she had invested in the property. As a solution Mr and Mrs F decided to transfer their legal interest in 153 Cressex Road to their Son, (to whom I shall refer to as RF), in exchange for the ~~fee simple interest~~ in his house at 83 The Pastures.

5. 83 The Pastures was formerly the family home of Mr and Mrs F. Some date prior to 1986 RF purchased the property from them with the help of a mortgage from Nationwide Building Society for £20,000. In due course he charged the property to Barclays Bank Plc ("the Bank") to secure further advances.

6. On 27 April 1989 all interested parties executed a Deed of Exchange, the effect of which was as follows:-

- (a) RF conveyed to Mr and Mrs F the freehold interest in 83 The Pastures subject to the mortgage in favour of the Nationwide Building Society, who consented to the liability for the outstanding mortgage on the property being transferred to Mr and Mrs F. The amount outstanding at the date of the Deed of Exchange was £30,990.08.
- (b) The claimant and Mr and Mrs F conveyed all their freehold interest in 153 Cressex Road to the claimant and RF as joint tenants subject to the mortgage in favour of the Nationwide Building Society, who consented to the liability for the outstanding mortgage on the property being transferred to the claimant and RF. The amount of the outstanding mortgage at the date of the Deed of Exchange was £61,940.76.
- (c) In addition the Bank agreed to release 83 The Pastures as security and to accept in substitution a charge over 153 Cressex Road. The amount outstanding at the date of the Deed of Exchange was £44,269.58.

7. It will be seen that the claimant gained nothing from this transaction. The property was subject to a further charge and the claimant's joint and several indebtedness totalled £106,210.34. Had the claimant been independently advised, and acted upon the advice, she would not have entered into a transaction which was so manifestly disadvantageous to her.

8. On 25 August 1989 the claimant and RF obtained a mortgage from Mortgage Express Ltd for £123,000, for which they were jointly and severally liable. They discharged the mortgage on 153 Cressex Road in favour of the Nationwide Building Society

amounting to £62,178.78 and paid off the charge in favour of the Bank amounting to £48,500. The balance of the mortgage funds were used to discharge outstanding debts not related to 153 Cressex Road and to finance RF's haulage business which he carried on from home with the assistance of the claimant. RF. paid his share of the mortgage instalments to April 1990. He then left 153 Cressex Road and was declared bankrupt in 1991. In a letter dated 18 July 1991 an examiner of the Insolvency Service explained the claimant's position in respect of 153 Cressex Road as follows:-

"I refer to your letter of 9 July 1991 and thank you for the information contained therein. The Official Receiver has no objection to the transfer of the equity and the property to your sole name but he would require solicitors to peruse any transfer document and their fees (normally £150 and VAT) would have to be paid by you. A nominal fee of £50 consideration would also have to be paid .."

The claimant claimed and was awarded income support from 2 January 1991. Initially the sum of £123,870 was used in the calculation of the claimant's housing costs. However, following information supplied by the claimant during a visit to the Benefits Agency Office on 15 June 1992, the adjudication officer decided on 30 June 1992 that the reduced sum of £60,000 was to be used in the calculation of the claimant's housing costs. Thereupon the claimant appealed to the tribunal.

10. The claimant and her representative attended the hearing of the appeal before the tribunal on 10 February 1993. In the event the tribunal allowed the appeal. After recording the relevant findings of fact they gave their reasons for decision as follows:-

"Although [the claimant] has not paid to have the Deeds changed she has acted in relation to the mortgage as though she had.. The Official Receiver has acquiesced in the arrangement. The rule of equity is that it looks on that as done which ought to be done. When [the claimant] can afford to perfect her legal title to the property she can do so as there is no time limit in the Official Receiver's letters. The loan has been undertaken to acquire her interest in the property."

11. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present case the tribunal's decision failed to comply with the statutory requirements because the reasons for decision give no indication that adequate consideration was given to the relevant law. As a result the decision was erroneous in law.

12. Regulation 17(e) of the Income Support (General) Regulations 1987, so far as relevant, provides that a claimant's weekly applicable amount shall include any amounts determined in

accordance with Schedule 3 to those Regulations which may be applicable to her in respect of mortgage interest payments or such other housing costs as are prescribed in that Schedule.

13. Paragraph 1 of Schedule 3 to the General Regulations so far as relevant provides that the amounts which may be applicable to a person in respect of housing costs under regulation 17(e) are:-

" (a) mortgage interest payments;

(aa)-(h) ..."

14. Paragraph 7(3) of Schedule 3 provides, so far as relevant, that subject to sub-paragraphs (3A) to (6), "eligible interest" means the amount of interest on a loan taken out to defray money applied for the purpose of -

" (a) acquiring an interest in the dwelling occupied as the home; or

(b) paying off another loan but only to the extent that interest on that loan would have been eligible interest had the loan not been paid off."

Regulation 2(1) of the General Regulations defines "dwelling occupied as the home" so far as relevant to mean "the dwelling together with any garage, garden and outbuildings, normally occupied by the claimant as his homes .."

15. Paragraph 3(1) of Schedule 3 to The General Regulations provides so far as relevant:-

" 3. - (1) A person is to be treated as responsible for the expenditure which relates to housing costs where -

(a) ...

(b) because the person liable to meet those costs is not doing so, he [the claimant] has to meet those costs in order to continue to live in the dwelling occupied as the home and either he was formerly the partner of the person liable, or he is some other person whom it is reasonable to treat as liable to meet the costs;

(c) ..."

16. On 26 September 1986 the claimant and Mr and Mrs F obtained a mortgage for £60,000 from the Nationwide Building Society to acquire the freehold interest in 153 Cressex Road, "the dwelling occupied as the home" in terms of regulation 2(1) of the General Regulations. The parties were jointly and severally liable under

the terms of the mortgage, so that when Mr and Mrs F defaulted on their repayments of the mortgage, the claimant was liable for the full amount outstanding. Mr Scoon accepted that for the purposes of paragraph 7(3)(a) the claimant's "eligible interest" was £60,000. However, the position was complicated by subsequent events. Under the Deed of Exchange executed on 27 April 1989 RF exchanged his freehold interest in 83 The Pastures for the freehold interest of Mr and Mrs F in 153 Cressex Road. He required no further mortgage to acquire this interest. He merely exchanged with Mr and Mrs F the liability for their respective mortgages on their original properties, which at the date of the Deed of Exchange was approximately equal. In consequence of the Deed of Exchange the claimant and RF became jointly and severally liable for the mortgage to the Nationwide Building Society for £60,000 on 153 Cressex Road.

17. RF had charged 83 The Pastures to the Bank as security for loans. Under the terms of the Deed of Exchange dated 27 April 1989 the Bank accepted 153 Cressex Road as security in lieu of 83 The Pastures. The claimant and RF became jointly and severally liable. At that date the amount of the loan outstanding was £44,269.58. RF charged 153 Cressex Road as security for his previous indebtedness. I find as fact and it is not in dispute that subject to the existing mortgage no further money was raised by either the claimant or RF to acquire "an interest in the dwelling occupied as the home".

18. On 25 August 1989, 153 Cressex Road was remortgaged through Mortgage Express Ltd to raise £123,870. The question at issue is whether the claimant is assisted by paragraph 7(3)(b) of Schedule 3 to the General Regulations so as to increase the amount used in the calculation of her housing costs. The tribunal found as fact that a fresh mortgage to Mortgage Express raising £123,870 [erroneously stated as £123,730] was used to discharge the original mortgage and a second mortgage raised to help [RF's] business". The completion statement sent by Mortgage Express on 12 September 1989 supports this finding. The sum of £62,178.48 discharged the mortgage in favour of the Nationwide Building Society. A cheque for £760.12 was sent to RF and the claimant. The balance was used to discharge various debts connected with RF's business and not related to "acquiring an interest in the dwelling occupied as the home". As a result although part of the mortgage from Mortgage Express Ltd was used to pay off the mortgage in favour of the Nationwide Building Society, the claimant's eligible interest remained the same.

19. RF stopped paying his share of the mortgage in 1990 and was made bankrupt in 1991. The claimant found herself liable for the whole amount outstanding on the mortgage in favour of Mortgage Express Ltd. The tribunal decided that because the Official Receiver had agreed to transfer the whole of the freehold interest in 153 Cressex Road to the claimant for a nominal consideration, the loan of £123,870 [erroneously stated as £123,750] "has been undertaken to acquire her interest in the property". It is impossible to ascertain how the tribunal reached this conclusion having found that the mortgage in favour

of Mortgage Express Ltd "was used to discharge the original mortgage and a second mortgage raised to help [RF's] business.". Manifestly they erred in law.

20. Finally I have to consider whether the claimant is assisted by paragraph 3(1)(b) of Schedule 3 to The General Regulations. For the reasons stated above the sum of £60,000 is to be used in the calculation of the housing costs. This is on the basis that only that sum was applied by the claimant and RF to acquire an interest in the dwelling occupied as the home under the provisions of paragraph 73(b). In any event the claimant was jointly and severally liable with RF for all incumbrances on 153 Cressex Road so that nothing can be gained from the provisions of paragraph 3(1)(b).

21. The claimant's case is evocative of sympathy. However, my jurisdiction is limited to the interpretation of the statutory regulations as they are currently enacted. I have no power to amend them or to apply them in an arbitrary way.

22. The claimant told me that unless her housing costs were paid in full her home would probably be repossessed. If that took place the Housing Department had advised her that although she had a severely disabled child she would be offered bed and breakfast accommodation or at best hostel accommodation. I cannot leave this case without expressing my grave concern. No doubt the claimant will seek advice from her Member of Parliament with regard to her possible rehousing.

23. For the reasons stated above the tribunal's decision was erroneous in law. However, pursuant to section 23(7)(a)(ii) of the Social Security Administration Act 1992, I give the decision set out in paragraph 1.

24. I have no option but to allow the adjudication officer's appeal.

(Signed) R.F.M. Heggs  
Commissioner  
(Date) 29 July 1994