

Law

Office

DGR/SH/20

Resurrection on Housing Cases -
Change of Circs. - (Faint)

Commissioner's File: CIS/404/1992

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:

Social

Case No

1. My decision is that the decision of the social security appeal tribunal given on 27 January 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 the leave of a Commissioner, against the decision of the social security appeal tribunal of 27 January 1992.

3. On 21 May 1991 the adjudication officer decided that the claimant's applicable amount for income support purposes included an amount for housing costs of £173.39 per week. This sum had been restricted because, prior to her acquiring an interest in the relevant home, the claimant had been a tenant thereof. Presumably, the restriction was being imposed pursuant to paragraph 10(1) of Schedule 3 to the Income Support (General) Regulations 1987, in which event this tenancy had to be of a type specified in that particular provision. It would seem that the claimant has never disputed that she was caught by paragraph 10(1), so that restrictions on the amount of housing costs prima facie applied. Her case was that they should be lifted pursuant to paragraph 10(2)(b). For that paragraph provided as follows:-

" 10. (2) Sub-paragraph (1) -

(a)

(b) shall cease to apply if its application

becomes inappropriate by reason of any major change in the circumstances of the family affecting their ability to meet expenditure on household costs;

(c)"

The adjudication officer refused to lift the restriction, and accordingly the claimant appealed to the tribunal, who in the event upheld the adjudication officer.

4. The claimant, in seeking to invoke paragraph 10(2)(b) sought to rely on two things, namely the birth of her son since the property had been purchased, and the disappearance of her boyfriend, the baby's father, who previously had undertaken to meet the costs of the mortgage. She contended that these were major changes in the circumstances of her family, and affected her ability to meet expenditure on housing costs. Her family consisted of herself and her infant son. The boyfriend had never lived with her, and on no footing was part of her family. The tribunal considered both the birth of Richard and the disappearance of the boyfriend to be insufficient to activate paragraph 10(2)(b).

5. As regards the relevance of the birth of Richard, the adjudication officer now concerned has made the following helpful submission:-

"I would submit the birth of Richard is not a change as foreseen in sub-paragraph 10(2)(b). The claimant would receive prior to the birth of Richard the applicable amounts in premiums for herself and her first child plus housing costs. After the birth of Richard she would receive an increase in the applicable amounts plus unchanged housing costs. Therefore, by saying this is a major change affecting their ability to meet expenditure on housing costs it has to be accepted that the applicable amount paid for Richard is insufficient and the claimant needs to use part of her eligible costs to maintain him. I cannot accept this."

I think that this submission adequately deals with the point. The tribunal were right to conclude that the birth of Richard was irrelevant.

6. However, as regards the disappearance of the boyfriend, the position is more difficult. The tribunal made certain findings with respect to him eg.

- " (a) The mortgage was obtained by fraud with a view to a quick sale.
- (b) The mastermind was the appellant's boyfriend.
- (c) The boyfriend was to fund the mortgage.
- (d) He provided the sum of £7,000 prior to disappearing

(e) The agreement to support was not legally binding."

and later, in the reasons for their decision they further found that:-

- " 1. He was not a member of the family.
2. He had not assumed any legal obligation i.e. he had not guaranteed the mortgage.
3. He had not set any direct payment mechanism in operation [and].
4. He had not provided [the claimant] with any details of his location in Lebanon.!

However, having made all those findings of fact with reference to the claimant's boyfriend they then somewhat surprisingly went on to say:-

"In view of the inconsistencies in [the claimant's] evidence concerning his presence and mode of payment the tribunal were not convinced he existed."

Now, either he existed or he did not. If he existed, then it was open to the tribunal to make the findings they did with reference to him. However, if he never existed at all, then they simply could not have made the findings they did. There is, therefore, a clear inconsistency in making specific findings and then going on to doubt the existence of the boyfriend. Such inconsistency clearly renders the tribunal's decision erroneous in point of law. I must therefore on that ground set it aside.

7. I direct that the appeal be reheard by a differently constituted tribunal. The new tribunal will have to consider whether the boyfriend did exist, and, if he did, whether his disappearance was a major change in the circumstances of the claimant's family affecting her ability to meet expenditure on housing costs. They will have to determine as a fact whether the claimant could reasonably have expected the boyfriend to undertake the discharge of the mortgage payments. Moreover, I do not think it is decisive whether or not he entered into a legal commitment in this respect. It would be enough if the claimant honestly and reasonably believed that he would discharge the mortgage obligation. If she did, then I can well see that his disappearance could be said to be a major change in the circumstances of the family affecting her ability to meet expenditure on housing costs. Of course, if the tribunal consider that there never was a boyfriend, then clearly the claimant could not rely on paragraph 10(2)(b). These are matters for determination by the new tribunal who must, of course, give adequate reasons for their conclusions.

8. Accordingly, I allow this appeal.

(Signed) D.G. Rice
Commissioner

(Date) 1 March 1993