

Social Fund Funeral Payments - *copy*

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Commissioner's File: CIS/450/1994 16m

SOCIAL FUND MATERNITY AND FUNERAL (GENERAL) REGULATIONS 1987

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 allow the claimant's appeal against the decision of the social security appeal tribunal dated 9 May 1994 as that decision 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 married woman born on 15 May 1932, against the unanimous decision of a social security appeal tribunal dated 9 May 1994, which dismissed the claimant's appeal from a decision of the adjudication officer issued on 11 January 1994 as follows,

"The claimant is not entitled to a social fund funeral payment. This is because she has received a contribution for the expenses and the amount of contribution exceeds the cost of any funeral expenses."

3. The circumstances in which this arose were as follows. On 10 December 1993 the claimant claimed a social fund funeral payment in respect of the funeral of her late husband (from who she was separated). He died on 2 December 1993. On that form she answered the question in Part 5 "Is there any money available to pay for the funeral?" "Yes - collected from relatives - £989." However, there was before the tribunal a letter from her Solicitor dated 18 February 1994 reading as follows,

"You will no doubt be aware that [the claimant] is illiterate, as are most of her family. She states that the £989 was not 'collected from relatives' as stated on her application form, but was in fact borrowed from her son..."

expressly for the purpose of paying the funeral bill. It was not a contribution ..."

4. The claimant did not attend the hearing on 9 May 1994 before the tribunal but was represented by her Solicitor. The claimant should attend the rehearing that I have directed, with or without the Solicitor, because evidential questions may arise on which the tribunal will wish to make enquiry of the claimant. It would no doubt be useful if her son could also attend.

5. The tribunal do not appear finally to have decided whether or not in fact the payment of £989 to the claimant by her son was a loan and if so on what conditions (if any). The new tribunal ought to make positive findings on this point. Nor did the original tribunal, as the adjudication officer now concerned has pointed out, make a finding as to whether the cost of two limousines amounting to £90 was or was not allowable under regulation 7 of the Social Fund Maternity and Funeral Expenses (General) Regulations 1987, S.I. 1987, No. 481 i.e. whether or not in fact the bearers travelled in one or both of the limousines (see regulation 7(2)(c) and Commissioner's decision CSIS/40/93). For these reasons, I have set the tribunal's decision aside. The new tribunal will need to make the appropriate findings as to the limousines.

6. There has been raised before the Commissioner a question of law namely whether, if the payment by the son to the mother was in truth a loan, it could be taken into account as a "contribution" under regulation 8(c) of the 1987 Regulations. That regulation provides that there shall be deducted from the amount of any social fund award "the amount of any contribution which has been received by the responsible person or any other member of his family from .. a relative of his or of the deceased, but only to the extent that that amount ... exceeds the cost of any funeral expenses other than those specified in regulation 7(2)." The regulations do not define the word "contribution". The effect of regulation 7(2), as I understand it, is that if there were funeral expenses which are not payable in any event out of the Social Fund, because of the limitations in regulation 7, then it is perfectly open to a member of the family to make a contribution to those unreimbursable expenses. Only after those have been defrayed out of the contribution is the balance, if any, of the contribution to be deducted from the amount of a social fund award. That is why of course, among other reasons, it is important to find out the position about the limousines (see above).

7. On the question of whether a "contribution" can be constituted by a loan under regulation 8, it has to be borne in mind that under regulation 9(3)(a) of the same Regulations it is provided, in reckoning the amount of a claimant's capital (since capital over a certain amount also has to be taken into account quite separately), that "any sum acquired by the claimant (whether as a loan or otherwise) on the express condition that it is to be used to meet the funeral expenses in respect of which the claim is made shall be disregarded" (my underlining). There

has been some confusion about this. Regulation 9(3)(a) is relevant only in deciding whether or not a claimant has capital in excess of the specified figure. It has therefore no direct relevance to the status of a contribution from a relative to be taken into account, not as capital but as a contribution under regulation 8.

8. In my judgment if it is shown by cogent evidence that a payment by a relative was genuinely by a legally repayable loan, whether or not subject to a stipulation that it should be used for funeral expenses, then it cannot be said to be a "contribution which has been received by the responsible person ... from .. a relative of his or of the deceased .." Clearly in the circumstances of urgency surrounding a funeral there is nothing wrong in a relative lending money to the responsible person to defray the funeral expenses on the understanding that when a social fund grant is received it will be used to repay the loan. Equally, however it is not possible to disguise as loans what are in truth absolute contributions in order to throw the burden of a funeral payment upon the State.

9. To the above extent, I disagree with the tribunal's view that a loan must necessarily be regarded as a contribution. However, I direct the new tribunal that there must, if the payment is not to be regarded as a "contribution", be cogent evidence that the payment to the claimant was a loan that is legally repayable. Some transactions between relatives are of course not deemed to be intended to have legal effect (see Balfour v Balfour [1919] 2K.B.571,C.A.), with the result that repayment of a so-called 'loan' could not in fact be sued for if it were not repaid. In that situation such a payment would in my judgment have to be regarded as a "contribution".

(Signed) M.J. Goodman
Commissioner
(Date) **17 JUL 1995**