DGR/SH/4

**Commissioner's File:** CSIS/40/1989

**SOCIAL SECURITY ACT 1986**

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW**

**DECISION OF THE SOCIAL SECURITY COMMISSIONER**



**Name:**

**Social Security Appeal Tribunal:**

**Case No:**

1. My decision is that the decision of the social security appeal tribunal given on 4 August 1989 is not erroneous in point of law, and accordingly this appeal fails.

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 4 August 1989.

3. The facts of this case are not in dispute. In August 1987 the claimant and his wife decided to sell their previous house in West Chiltington, Sussex. The property was valued by their estate agent at £185,000 . However, after the expiry of a year, and in the absence any offer for the house, they decided to sell it to their son Christopher for the said figure of £185,000. Christopher obtained a mortgage from the Halifax Building Society in the sum of £60,000, and handed this sum over to his parents. This still left a deficiency of £125,000. The claimant and his wife gave their son £20,000 by way of a wedding gift, and £2,000 to cover his costs. The residue of £103,000 they left outstanding on a second mortgage charged on the property. The claimant and his wife purchased their new home in Scotland for £61,000.

4. On 19 December 1988 the claimant made a claim for income support. He stated on the claim form that he and his wife had a second mortgage on their previous home in Sussex, which they had sold to their son in October 1988. He also stated that he had £5,000 in the Halifax Building Society. Not surprisingly, on 7 July 1989 the adjudication officer decided that the claimant was not entitled to income support from 19 December 1988 because his capital exceeded the prescribed level of £6,000. In view of the fact that the claimant admitted to having £5,000 in the

building society, it was only necessary for the second mortgage on his former property, being a chose in action, to have a market value, after deduction of all appropriate costs, of something in excess of £1,000.

5. The claimant appealed to the tribunal who in the event upheld the adjudication officer. The tribunal gave as the reasons for their decision the following:-

> " 1. As the value of the property is agreed at £185,000 plus inflation and the first mortgage in the name of the Halifax Building Society amounts only to £60,000, it is manifest that there is adequate cover for the second mortgage of £103,000 and that the market value of this must be in excess of the capital limit for income support (£6,000) (Income Support [General] Regulations 1987, regulation 45).
>
> 2. At the date of claim it would only require to be worth £1,000 as he had capital of £5,000 in the Halifax Building Society Account.
>
> 3. In all the circumstances the tribunal did not consider it necessary to obtain a detailed valuation of the market value of the second mortgage as required in paragraph 15 of R(SB) 31/83."

I see nothing wrong with the tribunal's decision.

6. The second mortgage, which was for the sum of £103,000, was a chose in action. For the purpose of assessing whether the claimant had in all assets in excess of £6,000 it had to be valued. Its nominal value was £103,000, but in practice it would not command this figure in full. I say this because in practice a purchaser of such a chose in action would require some form of discount for the trouble and bother he was incurring. Moreover, there would be expenses involved. The second mortgage in the present case was secured on the property in Sussex. Subject to the terms of the mortgage deed, which were in common form, repayment of the capital sum so secured could be demanded by the mortgagee, and in the event of non-compliance the property could be repossessed and sold. Of course, if the property was worthless, this remedy would be ineffectual, although there would still be a claim against the son personally. But the evidence before the tribunal was that at the date of claim the property was valued at £185,000, which, if right, meant that not only was the £103,000 adequately covered, but there was a margin of some £22,000. There was no evidence, or indeed any suggestion, that the property had now become valueless or that it was significantly, if at all, worth less than the sale price. What is absolutely crucial to remember in this case is that, for the claimant to have assets in excess of the statutory minimum, the value of the second mortgage need be little more than £1,000. It defies all reason and commonsense to believe that this chose in action was incapable of being sold for less than that paltry sum. The tribunal realised that, and considered that a detailed valuation was in the circumstances no longer called for.

Manifestly, in their judgment, the claimant had capital resources in excess of £6,000, and that was the end of the matter.

7. In my judgment, the tribunal have approached this case in a thoroughly commendable fashion. The philosophy underlying the setting up of tribunals is that they should be informal and speedy in their operation. They are not to invite investigations into issues which involve expense and delay, but ultimately render no assistance in the resolution of the matter under consideration. In the present case, the tribunal exercised their commonsense and good judgment, a function for which tribunals are peculiarly qualified, and decided that no good purpose would be achieved by calling for a detailed valuation of the second mortgage, a matter of considerable complexity requiring professional expertise of a high order, when on any footing it was clear that the chose in action was worth well over £1,000. Any other view on the part of the tribunal would have had the effect of labelling them as pedants. They rightly conceived their duty to be that of disposing of the matter as quickly as possible, subject of course to the fulfilment of all legal requirements, and they correctly concluded that no further enquiry was called for, as, on the evidence before them, it had been established - and the standard of proof was merely the balance of probability - that the claimant had since the date of claim assets in excess of £6,000.

8. I should also mention, in passing, that, had it been necessary to consider the matter further, there would have been need to investigate the gift to the claimant's son of the sum of £22,000, and the possible application of regulation 42 of the Income Support (General) Regulations 1987 [S.I. 1987 No.1967].

9. Accordingly,I have no hesitation in dismissing this appeal.

(Signed) D.G. Rice
**Commissioner**

(Date) 19 July 1990