

Ref CIS/368/94

SOCIAL SECURITY ACT 1986

SOCIAL SECURITY ADMINISTRATION ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that this appeal by the adjudication officer must be dismissed. The capital of the Plaintiff calculated in accordance with Regulation 46 and Schedule 10 of the Income Support (General) Regulations does not exceed the prescribed amount of 8,000, and he is therefore not disqualified on that ground from receiving income support.
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4. On 3 August 1992 a claim for income support was made on behalf of the claimant by his father ("the father"). The application stated that there was a sum of about 27,000 which was invested in shares with the approval of the Court of Protection. This amount was the balance of a settlement of monies paid to the claimant in respect of a claim for damages for personal injuries following a very serious accident. One consequence of that accident was that the claimant was thereafter unable to manage his own affairs, his father has been

appointed by the Court of Protection to act as a Receiver in accordance with the practice of that Court, and the assets are apparently held in the name of the Public Trustee. Some questions of fact are not entirely clear on the papers in the case, although there is no substantial matter in dispute. For example the date of the accident is not given, but this is not material to the present case. There are no details of the form in which the amount of approximately 27,000 is held, and it is no more than a matter of inference that insofar as they are shares or other material assets, they are held in the name of the Public Trustee. The Order of the Court of Protection dated 13 May 1983 makes it clear that the broad provisions included in it are that the income of the capital covered by the Order is to be paid to the father as Receiver for the claimant, but that no capital is to be available without the express leave of the Court. In fact, in 1984 an Order was in due course made by the Court authorising the payment of 16,500 towards the purchase of a house jointly owned and occupied by the claimant and the father at all material times.

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7. The only question at issue in this case from the occasion of the claim being formally made is whether the sum of 27,000 is or is not to be taken into account for the purpose of seeing whether the claimant has capital in excess of the prescribed amount. At the material time, the prescribed amount was 8,000 in accordance with Regulation 45 of the Income Support (General) Regulations. The only ground on which it has been suggested that the amount of 27,000 should not be taken into account rests on whether it is within the terms of paragraph 12 of schedule 10 to the Income Support (General) Regulations 1987 (as amended). The amendment was made in 1990, and accordingly in the present case it is only necessary to consider such amended version. The heading to the Schedule is “capital to be disregarded”. In considering the approach to the interpretation of the various parts of the Schedule, regard should be had to the comments of Sir R. Gibson, a member of the Court of Appeal, in the case of *Chief Adjudication Officer v. Palfrey and Others* (Draft Judgment, page 28) as follows:-

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10. “For my part, I have found it impossible to perceive any consistent policy for the disregarding of capital assets set out in the 43 paragraphs of Schedule 10 by reference to which any clear assistance can be derived upon the meaning of paragraph 5. It is apparent from the print of the regulations provided to us that the relevant form of the Schedule is the result of amendments, by deletion and addition, made by some 15 separate Statutory Instruments in the years 1988 to 1993. The nature of the subject-matter of the regulations, and of this Schedule in particular drew serious difficulties in achieving a just uniformity of decision throughout the administration of income-related benefits and, no doubt, such difficulties are most speedily solved by additional specific provisions. It has not been argued that any assistance can be derived from consideration of the original unamended form of the Schedule or in the sequence of amendments to it.”

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12. Paragraph 12 of Schedule 10 referred to, as amended, reads:-

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14. “12. Where the funds of a trust are derived from a payment made in consequence of a personal injury to the claimant, the value of the trust fund and the value of the right to receive any payment under that trust.”

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16. The course of the entire case has derived from a letter written on 12 August 1993 by the Adjudication Officer to the Court of Protection, and, in particular, the reply dated 27 August 1993 from an official in the Public Trust Office. That letter was signed, by a Miss S. Passingham of the Protection Division of the Public Trust Office. The letters were in apparent confirmation of a telephone conversation

held shortly beforehand. The material parts of the letter of 27 August reads as follows:-

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19. “In answer to the points raised in your letter:

(1) The Court of Protection is an office of the Supreme Court and the function is to manage and administer the Property and affairs of people who, through mental disorder, are incapable of managing their own financial affairs. The Protection Division of the Public Trust Office provides the administrative backup to deal with the day to day services of many “patients” currently under the Court’s Jurisdiction.

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21. (2) This point is partly covered in (1) above, but the Court does not act as a bank although some patients monies are invested with the Court Funds Office which is the position in Mr. case. A Receiver is appointed by the Court to deal with the day to day management of the patient’s financial affairs and is authorised to receive all Social Security benefits, pensions, rents, annuity dividend and interest and any other income and if this income is insufficient the Receiver may apply to the Court for a resort to capital.

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23. (3) The Court does not set up trust funds for patients although the patient’s share of the property (the house referred to in paragraph 2 above) is vested in the name of a trustee.

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25. (4) The Receiver, the father, has been appointed for the claimant and monies are held in the Court Funds Office.

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27. Paragraph number 4 was in reply to the question in the letter of the adjudication officer of the same number which read -
“In the case of the claimant, no trust has been set up, and monies are held by the Court and a Receiver has been appointed as in paragraph 2 above.”

In due course I held an oral hearing, at which I was informed by Mr. Latter, appearing for the adjudication officer, but he was not able to tell me the status of Miss Passingham, but he did not seek to put forward her letter as a statement of policy by the Public Trustees Office but simply as a series of answers to questions that have been posed in the letter to that Office. However since receipt of the letter of 27 August, the position of the adjudication officer has been that, in view of the answers received, the fund involved does not come within paragraph 12 of Schedule 10, and therefore cannot be disregarded for calculating the prescribed amount of capital.

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29. This was the only matter in dispute when the case came an appeal from the adjudication officer's refusal of benefit before the Middlesbrough Social Security Appeal Tribunal, which heard the case on 24 February 1994. After making findings of fact in relation to the matters set out above, which were, as stated, not in dispute, the material part of the reasons for the decision holding that the capital involved should be disregarded for income support purposes:-

30. “Monies deposited with the Court of Protection
The tribunal considers that the Court of Protection responsible for the management and protection of the property belonging to the appellant, any funds held for the appellant by the Court of Protection are to be treated as capital and funds held in trust by the Court of Protection are a capital asset of the beneficiary and are to be disregarded as capital for income support purposes.”

31. The adjudication officer appealed by leave of the Commissioner. I held an oral hearing of the appeal, at which the adjudication officer was represented by Mr. Latter of Counsel, and the claimant was

represented by Mr. B. Kennedy of the Cleveland Welfare Rights Office.

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36. The only issue on this appeal before me was whether the fund involved fell within the terms of paragraph 12 of the Schedule. In particular, the only dispute was whether they should be regarded as “the funds of a trust” since it was beyond doubt that they were a payment made in consequence of personal injuries to the claimant. Mr. Latter submitted in the first place, that the letter from the Court of Protection referred to above established that they were not a trust; he went on to refer me to various passages in the Mental Health Act 1983 dealing with the organisation of the management of affairs of “patients” by the Court of Protection. In my view, the purpose of paragraph 10 seems to me to relate to a situation where a person receiving a lump sum for personal injuries is not able to have direct access to any part of that capital. It can happen that a injured person not yet of full age can have a sum of damages paid into a trust fund established particularly for that purpose, although he will need the approval of the Judge before whom the case is heard. I see no reason why the paragraph involved should not extend to the situation where assets otherwise belonging to a “patient” are in fact held and administered by a combination of the Public Trustee and the Court of Protection. Where there is no restraint upon access to trust funds, as, for instance, where the capital may happen to be held by a solicitor on behalf of his client without any restraint, then it would clearly fall outside the terms of this paragraph, just as if it were a sum held in a bank account.

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39. Mr. Latter went on to argue that in the present case there had been no specific finding by the appeal tribunal that the funds were held on a trust within the terms of paragraph 10. However, since, as pointed out above, the only question of issue in this case turns on that very question, I see no ambiguity or difficulty in the terms of the material part of the decision of the tribunal, set out above.

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42. I need not set out Mr. Kennedy's submissions at great length, since I am in favour of the case presented by him. He did refer me to various passages in the adjudication officer's guide, and Pointed out that there was no definition of trust either in the relevant regulations or indeed under any statutory provision.

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45. In my view the use of the word "trust" should be understood in simple terms, used to cover the situation where the legal estate of property is in one person, but the beneficial estate is in another person. With regards to paragraph 10, it does not seem to me material whether there is a particular trust deed which has been set up to define the extent and limits of a particular trust, or a statutory scheme involving, for example, the Court of Protection, and giving a discretion as to the administration of any particular funds to the discretion of that Court. The capital can only be paid out to the Receiver in the present case with the approval of the Court, and for the benefit of the beneficiary. It is entirely in accord with similar provisions in a discretionary trust set up by deed.

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48. Accordingly I am satisfied that the funds held by the Public Trustee Office at the direction of the Court of Protection are within the terms of paragraph 12 of Schedule 10, and accordingly the appeal of the adjudication officer must be dismissed.

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53. In the light of my decision above, it will now be for the adjudication officer to consider the other conditions of the claimant's entitlement to income support. I have no doubt that the father will give him any necessary assistance in the resolution of any queries. In the event of any difficulty arising, there will be liberty for such question to be referred to me.

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(Signed) M Heald

Commissioner

Date: 31 August 1995

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