

CSB 31/1981

MJG/JCB

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Supplementary Benefit Appeal Tribunal:

Case No:

Decision C.S.B. 28/81

1. I allow the claimant's appeal and set aside the decision, dated 19 January 1981, of the supplementary benefit appeal tribunal. I refer the case to a differently constituted supplementary benefit appeal tribunal to determine it in accordance with this decision: Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, rule 10(8).

2. The claimant is a man, aged approximately 60 years, who has been unemployed since 1974 and in receipt of supplementary benefit for periods since then. In March 1980 he sold his house, bought a flat and paid the remainder of the proceeds of sale, amounting to approximately £6,200, into his bank current account. By 24 November 1980 (the date of changes in the supplementary benefit system), the claimant had left in the bank account only the sum of £1,227. Nevertheless, the supplementary benefit officer decided that the claimant should be treated as possessing a "resource" amounting to £2,000 or more and disallowed benefit from 24 November 1980. The significance of the figure of £2,000 arises from the Resources regulations referred to below.

3. The claimant appealed to the supplementary benefit appeal tribunal which, by its decision dated 19 January 1981, upheld the supplementary benefit officer's decision. The claimant appeals to the Commissioner with leave of a Commissioner. I decided that his appeal must be allowed. Consequently the case is remitted for re-hearing by a differently constituted supplementary benefit tribunal, as required by rule 10(8) of the above-cited Appeals Rules. The tribunal which hears the case afresh should of course take note of directions by me in the subsequent paragraphs of this decision (rule 10(8)).

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4. The claimant, in his written application for leave to appeal and in the appeal itself, makes complaints of a number of matters including an assertion that the assessing officer had attempted to exercise powers which "no judge or magistrate in the land possesses". He also alleged that an interviewing officer had physically assaulted the claimant. So far as the assertion as to the officer's powers, it is so general as not to give rise to an ascertainable or arguable point of law, and I therefore deal no further with it. So far as the allegation of physical assault by an interviewing officer is concerned, that cannot give rise to any point determinable by the Commissioner, as an appeal to the Commissioner lies only on a point of law. The claimant asserts that the interviewing officer tried to persuade the claimant to withdraw his claim to supplementary benefit, by means of physical assault. The claimant has not in fact withdrawn his claim to benefit, and therefore the issues before me are unaffected by the allegation of assault. Whether the claimant pursues that particular matter elsewhere is not a matter for me and I make no comment about it.

5. The only arguable point of law that appears from the papers is the question of whether the supplementary benefit tribunal properly applied the law relating to capital resources, now to be found in regulation 4(1) of the Supplementary Benefit (Resources) Regulations, 1980 [S.I. 1980 No 1300].

6. In the written submission (dated 22 June 1981) of the supplementary benefit officer now concerned (paragraph 5), that officer states -

"In my submission the tribunal's decision was erroneous in point of law in that there was no evidence before them on which they could properly have reached their conclusion. Although they found as a fact that [the claimant] had spent £3,000 in 9 months on living expenses there was no evidence nor finding of fact that the claimant had done this to "deprive himself" of a resource 'for the purpose of securing supplementary benefit'. Instead the tribunal applied an incorrect test in law, namely whether the said expenditure was 'reasonable'."

I accept that submission as being correct for the reasons set out below.

7. The relevant statutory provisions are now to be found in the Resources Regulations 1980, regulation 6(2) of which provides -

"6(2) Where the value of a claimant's capital resources is £2,000 or less, those resources shall, except in so far as any provision of the Act or regulations made pursuant to it provides otherwise, be disregarded."

8. However, regulation 4(1) of the Resources Regulations provides as follows -

"Notional Resources

4.--(1) Any resource of which a person has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him."

9. The question in this case is therefore whether, although the actual amount in the claimant's bank account on 24 November 1980 was considerably less than £2,000, he should nevertheless be treated as possessing a capital resource of £2,000 or more. That involves asking whether, under regulation 4(1) he had "deprived himself for the purpose of securing supplementary benefit" of the sums in his bank account which in the previous months he had spent in various ways, e.g. for living expenses, rewiring of his flat and payments to a builder for work on his flat. At the hearing before the supplementary benefit tribunal on 19 January 1981, the claimant was present and presumably gave evidence to the tribunal (although there are no notes of evidence as such - only findings of fact by the tribunal). The supplementary benefit officer was also present and presumably also gave evidence to the tribunal.

10. The tribunal made the following findings of fact,

"[The claimant] has been in receipt of supplementary benefit since 1975. In March 1980, he sold his house and bought his present one. On 6/3/80, he made a statement declaring a balance of £6,279 in the bank. Benefit was re-assessed taking a tariff income of £24.00 into account. At a visit in August it was noted that the capital was decreasing rapidly. [The claimant] has produced bank statements covering the period March - November 1980. His capital by 10 November was £1,227 and is now £112. [The claimant] has had his flat rewired, roof repaired and bought some furniture at a total cost of £1,322. During this period [the claimant] was in receipt of supplementary benefit of approximately £16 per week. From 24/11/80 it has been decided that [the claimant] is not entitled to benefit because it is considered that he has spent his capital at an unreasonable rate."

11. It also appears from the written observations of the supplementary benefits officer that, in August 1980, the claimant was "warned about" the notional resources provision of what is now regulation 4(1) of the Resources Regulations 1980. Despite that warning, he still continued to dispose of his capital by spending it on living expenses, though not (it appears from the bank statements) on further large payments, e.g. to a builder.

12. In their reasons for decision, the tribunal stated -

"The tribunal, having examined the evidence produced by the appellant, was satisfied that the decision that the appellant is not entitled to supplementary benefit from 24.11.80 was reasonable having regard to the fact that he had spent approximately £3,000 on living expenses in the period March-November 1980 after account is taken of the builder's charges, rewiring, removals and furniture bought. It is noted that the appellant's supplementary benefit had been reduced in March 1980 because of his capital and the tribunal considered that he must therefore have been aware of the effect of capital on supplementary benefit."

13. It is clear from that statement of reasons for decision that the tribunal misdirected itself as to the law. The wording of regulation 4(1) of the Resources Regulations (cited in paragraph 8 above) means that the regulation does not apply just because a claimant has deprived himself of a resource. There must also be evidence from which an adjudicating authority, e.g. a tribunal, can properly infer on a balance of probabilities that the claimant deprived himself of the resource "for the purpose of securing supplementary benefit, or increasing the amount of any such benefit" (regulation 4(1) - my underlining).

14. It is of course seldom that a claimant will admit in terms that he deprived himself of a resource for the purpose of securing supplementary benefit and in most cases it must be a question of proper inference by the adjudicating authority from the evidence available to it. It is therefore material to ascertain whether a claimant was aware of the provisions as to notional resources in regulation 4(1). Of course, it does not matter that he is not aware of the 'chapter and verse' if in fact he knows about the rules in general terms. If a claimant can establish that he genuinely did not know of the rules, then it cannot be legitimately inferred that he deprived himself of a resource for the purpose of securing supplementary benefit or an increase of it. In this context the normal rule that "ignorance of the law is no excuse" would not apply, since the test applicable under regulation 4(1) of the Resources Regulations is subjective. It requires the adjudicating authority to look at the intentions and motives of the particular claimant. Of course, an allegation by a claimant that he did not know of the notional resources rule or of the £2,000 limit, must be rigorously tested in view of the fact that this provision is properly described as "common knowledge".

15. In this context I note that this particular claimant was certainly made aware by the officer in August 1980 of the notional resources rule. However, I cannot altogether understand why the tribunal should have thought that, because he had had a notional income deduction of £24 per week by reason of notional interest on capital, that fact should have led him to understand the effect of the notional resources regulation. The two matters seem to me to be

entirely distinct, and not related to one another. At most, it might establish that the claimant knew about the £2,000 limit but does not assist on the "notional resource" point.

16. At all times during the month of August 1980 the claimant's capital, i.e. his credit balance in his bank account, exceeded £2,000. It may well be therefore that, after the warning given to the claimant in August 1980, continued diminution of the capital in the bank account can properly be inferred to have been effected by the claimant "for the purpose of securing supplementary benefit". Nevertheless, a person must incur expenses for food, residential accommodation, heating and lighting. It would then be a question of whether the claimant, after such a warning, was deliberately spending capital at an excessive rate in order to get his capital below £2,000 as quickly as possible. By 'excessive rate' I do not mean that an adjudicating authority can settle the matter by examining each item of expenditure out of capital and asking whether it was "reasonable", as this particular tribunal appear to have done.

17. The question still remains whether the claimant was making the expenditure out of capital "for the purpose of" securing supplementary benefit or an increase of it. That involves, in my judgment, asking what was the claimant's predominant motive. Was his motive genuinely to secure for himself food, residential accommodation, heat, light, etc, or was his predominant motive that of securing supplementary benefit as quickly as possible? The speed and amounts of spending on living, etc expenses are relevant, though not conclusive.

18. The tribunal in this case made a conscientious attempt to grapple with the problems posed by regulation 4(1) and made a careful note of their findings of fact and reasons for decision. Nevertheless, they did not deal with the evidential questions in the manner I have indicated above and which I consider is required by the wording of regulation 4(1). The new tribunal which re-hears the case should take as detailed evidence as possible from the claimant and from the supplementary benefit officer and should record notes of the evidence so taken. It is then up to the new tribunal to decide whether or not they can legitimately infer on a balance of probabilities that the claimant had reduced his capital resource below £2,000 with the predominant motive of securing supplementary benefit, i.e. "for the purpose of" securing that benefit, within the meaning of regulation 4(1).

(Signed) M J Goodman
Commissioner

Date: 6 November 1981

Commissioner's File: C.S.B. 31/1981
CSBO File: S.B.O. 34/81