

MJG/JAJ

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

22/12/1981

*Reg 4 Resources Regs - departmental
purpose of section 15A
reg 4*

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 27 March 1981, is not erroneous in law and the claimant's appeal against that decision is therefore dismissed: Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980), section 15A and the Supplementary Benefit and Family Incomes Supplement (Appeals) Rules 1980, [S.I. 1980 No 1605 (as amended by S.I. 1982 No 40)] rule 10(8).
2. This appeal by the claimant was the subject of an oral hearing before me on 1 September 1982 at which the claimant was represented by Mr R G Morfee, Solicitor, and the Secretary of State was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. I am indebted to Mr Morfee and Miss Shuker for their assistance to me at the oral hearing.
3. The claimant is a married man in his late 50s living with his wife. He has been unemployed since 1975. His supplementary benefit, which had been his only income, was withdrawn from 2 February 1981 because the claimant and his wife had each received from the estate of a deceased relative a legacy of £3,500 making a total of £7,000. The same day that these sums were received by cheques, the claimant and his wife gave the £7,000 to their daughter (presumably by endorsement of the cheques) to enable the daughter to meet pressing costs connected with the purchase of land and the building of a house on it. The supplementary benefit appeal tribunal in its decision dated 27 March 1981 held that the £7,000 was to be regarded as a "notional resource" under regulation 4(1) of the Supplementary Benefit (Resources) Regulation 1980 [S.I. 1980 No 1300] - see below - and therefore upheld the supplementary benefit officer's decision that as from 2 February 1981 the claimant was not entitled to supplementary benefit.

4. The law on the matter is as follows. Schedule 1 of the Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980) provides in paragraph 1 as follows:-

"1 (1) The amount of any supplementary benefit to which a person is entitled shall, subject to the following provisions of this Schedule, be the amount by which his resources fall short of his requirements.

(2) For the purpose of ascertaining that amount -

(a) [relates to requirements]: and

(b) a person's resources shall be calculated in the prescribed manner;

and without prejudice to the generality of paragraph (b) of this sub-paragraph, regulations in pursuance of that paragraph may provide for a person to be treated as possessing resources which he does not possess and for disregarding resources which a person does possess.

(3) Regulations may provide that a person whose resources as ascertained in pursuance of paragraph (b) of the preceding sub-paragraph or a prescribed part of them exceed or exceeds a prescribed amount shall not be entitled to a supplementary pension or allowance."

5. In pursuance of paragraph 1(3) the above-cited Resources Regulations 1980 provide (by regulation 7) that where the value of a claimant's capital resources (including those of a partner or dependant) exceeds £2,000 the claimant shall not be entitled to supplementary benefit. Regulations 5 and 6 deal with the calculation of actual capital resources and regulation 4 deals with what it describes as "notional resources" i.e. those in respect of which (to quote Schedule 1, paragraph 1(2) of the 1976 Act) a person is "to be treated as possessing resources which he does not possess". That imperative wording of paragraph 1(2) casts light on the construction of regulation 4 as to notional resources. That regulation is not, as Mr Morfee contended, related to the ascertainment or relief of poverty (the Urgent Cases Regulations 1981 [S.I. 1981 No. 1529] deal with that). Regulation 4 as to notional resources contains in effect "deeming provisions." The relevant sub-regulation in this case is regulation 4(1), which 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."

The regulation applies equally to a situation where a person deprives himself of a resource before a first claim for supplementary benefit or to a situation where a claimant is already receiving supplementary benefit and then deprives himself of a capital resource which he would otherwise acquire in order to secure the continuance of payment of supplementary benefit.

6. The first question on the construction of regulation 4(1) is what evidence is needed to show that a person has not only deprived himself of a resource but that he has done that "for the purpose of securing supplementary benefit". Both Mr Morfee and Miss Shuker adopted as correct a statement of the law on this point by me in the numbered Decision C.S.B. 28/81 (not reported). Because of that agreement, I repeat the relevant passages here. They occur in paragraphs 13 and 14 of Decision C.S.B. 28/81 and the relevant portions are as follows:-

"The wording of regulation 4(1) of the Resources Regulations .. 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'. 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 the £2,000 capital limit in regulation 6(2) and 7 and 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'."

7. In the present case, the supplementary benefit appeal tribunal had before them a letter dated 26 January 1981 by the claimant's wife to the manager of the local office reading,

"My husband and I have each received a cheque for £3,500 from the estate of J-L-.

It was our wish that our daughter S- should have this £7,000 as a gift from us, and this is what we have done."

The tribunal found as a fact,

"The appellant had on several occasions since claiming supplementary benefit signed declarations of his circumstances, and the supplementary benefit officer had issued to the appellant explanatory leaflets in respect of the Supplementary Benefits scheme."

and gave as their reasons for decision,

"The tribunal finds firstly that the appellant had deprived himself of a resource as the legacies have been given away to his daughter and son-in-law, secondly that he had knowledge of the Supplementary Benefit scheme and would therefore be aware that a resource would affect the rate of benefit payable, and thus the tribunal considers that the overriding consideration of giving the legacies away was for the purpose of securing supplementary benefit."

8. The Departmental literature which the tribunal held the claimant to have received does contain a statement of the £2,000 capital limit but does not appear to contain a statement of the notional resources rule. Nevertheless in my view this is a case where (as indeed almost all cases must now be) where the notional resources provision can properly be described as "common knowledge". The tribunal were perfectly entitled to come to the conclusion from the evidence that the claimant and his wife deprived themselves of the £7,000 legacies "for the purpose of securing supplementary benefit" (regulation 4(1)). Mr Morfee contended that the reasons for decision given by the tribunal contained a series of illegitimate leaps from one conclusion to another, but in my view the evidence before the tribunal was perfectly adequate for them to arrive at their ultimate conclusion and their reasoning is logical.

9. The onus of proof is of course on the benefit officer to show on a balance of probabilities that deprivation of a resource was "for the purpose of securing supplementary benefit". But in my view that is a light burden in a case like this where very substantial sums have been given away by the claimant and his wife. Up to the date of receipt of the legacies the claimant and his wife were in a financially parlous state. The gifts were to a daughter and son-in-law who were being pressed for payments due for the land on which they were building. The net result of the transfer of the legacies to the daughter and

son-in-law was that the £7,000 was in a sense retained in the family and the claimant and his wife would have, but for the notional resources rule, continued to be entitled to supplementary benefit, so that the family's total financial resources would have been increased. In my judgment this is a clear case where the deprivation of the resource must have been for the "purpose of securing supplementary benefit". That was the predominant motive of the claimant and his wife in giving away the legacies.

10. The next question arises out of the fact that regulation 4(1) of the Resources Regulations does not say that a resource of which a person has deprived himself for the purpose of securing supplementary benefit must be treated as if it were still possessed by that person but uses instead the word "may". Both Mr Morfee and Miss Shuker agreed that the word "may" conferred a discretion on the adjudicating authorities. After consideration, I agree with those submissions though initially I was inclined to the view that this might be a situation where "may" really meant "must" or "shall." The language of Schedule 1 paragraph 1(2) of the 1976 Act (see paragraph 4 above) is mandatory and I do not therefore consider that if regulation 4(1) is to be intra vires it could confer any wide discretion on the adjudicating authorities to overlook or disregard the deprivation of a resource which was found to be for the purpose of securing supplementary benefit. Public money is involved and there must be an element of certainty in the administration of a scheme which, certainly in this particular instance, is involved with legal rights and duties and is not simply concerned with discretionary payments for the relief of poverty.

11. However, I have concluded that there is the necessity for a very limited discretion in regulation 4(1). For example it cannot be the position, if a claimant is once found to have deprived himself for the purpose of securing supplementary benefit of a resource of over £2,000, that that disentitlement to supplementary benefit shall then endure permanently. If a claimant had retained such a capital resource he might well eventually have brought it below the £2,000 limit by legitimate spending on himself or his family. He cannot do that if he has transferred it e.g. to his daughter and it has thus become a notional resource. There must be a time when the supplementary benefit officer has the discretion to treat the 'deprived' resource as no longer possessed by the claimant, in that if he had kept it he might well have brought its limit below £2,000 or spent it altogether.

12. However I do not accept the submission of Mr Morfee that a relevant factor in the exercise of the discretion is whether the claimant can in fact recover a resource which has been transferred to another. Probably in this case the claimant could not recover from his daughter and son-in-law the £7,000 gifts made to them as they would constitute perfected gifts but that in my view is no reason why the money should not be regarded as a notional resource and taken into account under regulation 4(1). Nor do I consider it relevant in the exercise of the discretion, as Miss Shuker contended, that the benefit officer can for example take into account whether the claimant

has other means of support e.g. by donations from members of his family (as apparently happened for a time in this case). Such matters are considered under the express terms of the Urgent Cases Regulations but in my view are irrelevant to the exercise of the very limited discretion under regulation 4(1) of the Resources Regulations.

13. I will not attempt to limit the discretion of the adjudicating authorities by further defining it in this decision. Suffice it to say that I do not consider that either of the matters mentioned by Mr Morfee and Miss Shuker are relevant factors in exercising the discretion and moreover that I regard it as very limited discretion. In particular I would consider that a benefit officer or other adjudicating authority would have to have reasonable and objective grounds (cf. regulation 4(2) of the Resources Regulations) for not treating a notional resource as being still possessed by a claimant and that the matter in no sense depends on the personal views of a benefit officer or of members of a tribunal. The discretion must be exercised judicially.

14. In this particular case the supplementary benefit appeal tribunal clearly gave thought to the exercise of the discretion by reason of the sentence in their reasons for decision, "The tribunal gave due regard to the circumstances of the case and are of the opinion that the resource is to be treated as if it were still possessed by the appellant". I do not accept Mr Morfee's contention that there is no evidence either from those reasons for the decision or from the detailed and careful notes of evidence made by the chairman of the tribunal that the tribunal did not properly exercise its discretion.

(Signed) M J Goodman
Commissioner

Date: 8 October 1982

Commissioner's File: C.S.B. 199/1981
C SBO File: 231/81