

ATH/SH/12/MD



Commissioner's File: CSB/598/1987

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

**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:

DECISION
NOT TO BE PUBLISHED
THE DEPARTMENT

1. I allow this appeal by the claimant. The decision of the social security appeal tribunal dated 24 February 1987 was erroneous in law and I set it aside. I substitute my own decision which is that between 9 October 1986 and 15 October 1986 the capital resources of the claimant and his wife jointly did not exceed £3,000 and that the claimant was entitled to supplementary benefit for the period from 13 October 1986 to 19 October 1986.

2. In 1986 the claimant was in receipt of supplementary benefit as a married householder under pension age. However, by a decision issued on 14 October 1986 the adjudication officer decided to refuse payment to the claimant of supplementary benefit from 13 October 1986 to 19 October 1986 "as the savings of the claimant and his wife jointly, exceed the capital limit of £3,000". The claimant appealed and on 24 February 1987 the social security appeal tribunal disallowed the appeal. The claimant now appeals with my leave.

3. I have issued two directions, one dated 15 March 1988 directed to the claimant, and one dated 8 June 1988 directed to the adjudication officer, and as a result of the responses to those directions by the claimant and by the adjudication officer respectively, I have been able to reach my decision.

4. The Facts

In September 1986 the claimant and his wife had the following assets:

- (i) A caravan used as a holiday home and valued at £600.
- (ii) £13.39 to the credit of the claimant in his current account at Barclays Bank.
- (iii) £347.18 to the credit of the claimant's wife in her current account at Barclays Bank.

They had the following debts:

- (a) A Barclaycard debt of approximately £300.
- (b) A Barclaycard debt of approximately £800.
- (c) A bank loan to the claimant's wife of £30.12.

5. The wife had formerly been a teacher and on or about 8 October 1986 she received from her former employers a gratuity. The gratuity was paid to her by cheque in the sum of £2,696.67. On 9 October 1986 that cheque was paid into her account and the amount of the cheque, £2,696.67, was credited to her account on that date. On 15 October 1986 the cheque was cleared. On the same date, 15 October 1986, the Barclaycard debts were paid by two cheques, one for £200 (or £250) and the other for £500. I assume that the cheques were drawn by the claimant's wife since, as I understand it, it was her account that was debited on that date in the sum of £700 (or £750). (I should explain that there is a discrepancy in the figures. In Form AT2 it is stated that the Barclaycard debts were "approx £300" and "approx £800". In Form AT2 it was also stated that on 15 October 1986 there was a "payment of £200 of [the claimant's] Barclaycard debt and £500 of [the claimant's wife's] Barclaycard debt". In his letter dated 30 April 1987 the claimant has stated: "On 15 October we issued cheques to Barclaycard of £500 and £250". The adjudication officer, in response to my direction, has conceded that for the purposes of this appeal the claimant's wife's account was debited in the sum of £700 on 15 October in respect of payments by cheque of her Barclaycard debts and it is not necessary for the purpose of the present appeal to determine whether the wife's bank account was debited in the sum of £700 or £750).

6. When the cheque for £2,696.67 was credited to the wife's account on 9 October 1986, the sums credited to her and to the claimant in their bank accounts less the bank loan of £30.12 but together with the value of the caravan, namely £600, totalled more than £3,000. On 15 October 1986, when the claimant's wife's account was debited in the sum of £700 (or £750), the sums credited to her and to the claimant in their bank accounts less the bank loan but together with the caravan totalled less than £3,000. The question to be decided is whether or not for the period from 9 October to 15 October 1986 their capital resources, taken jointly, exceeded £3,000.

7. Regulation 7 of the Supplementary Benefit (Resources) Regulations 1981, as amended, and so far as is relevant, provides:

"7. ... where the value of a claimant's capital resources including those of a partner or dependant) as calculated in accordance with these regulations exceeds £3,000, the claimant shall not be entitled to pension or allowance."

The adjudication officer, according to Form AT2, decided that from 9 October 1986 to 14 October 1986 "the capital resources exceeded the prescribed level and that as a result no supplementary benefit is payable to [the claimant] in the week commencing with pay day 13.10.86." In their reasons for their decision, in Form AT3, box 4 the appeal tribunal stated:

"... The fact that money is owed elsewhere cannot be taken into account until it is properly paid. As a result for the short period the capital limit of £3,000 was exceeded and so supplementary benefit could not be paid."

8. The adjudication officer refers to and relies upon CSB/296/1985. In that case the claimant instructed a solicitor to act for him in a claim for damages for personal injuries. The solicitor received £12,000 damages on behalf of the claimant and placed this money on deposit pending negotiations for the purchase of a house. In paragraph 3 the Commissioner said that the question was "whether the £12,000 should be treated as the claimant's capital

resource during the time it was on deposit i.e. presumably in the solicitor's client's account. If it is to be so treated when the claimant was not entitled to the supplementary benefit ..." The Commissioner held, in paragraph 7, that the £12,000 "whilst in the solicitor's hands, was nevertheless an actual resource of the claimant". He said:

"It was an actual resource because there was no difference in principle, in my view, between monies being held by a solicitor on behalf of a client and for example monies held by a bank or building society on behalf of a customer (when the bank or building society balance undoubtedly is to be regarded as an actual resource)."

In that case the money was on deposit "i.e. presumably in the solicitor's client's account" for some months before it was used for the purchase of a house and there can be no doubt, in my judgment, that as it was the claimant's money, it was an actual resource of the claimant.

9. In the present case, however, it is accepted by the adjudication officer that the cheque for £2,696.67, although "paid" into the claimant's wife's account on 9 October 1986 was not in fact cleared until 15 October 1986. As the Commissioner said in CSB/110/1987 at paragraph 12:

"... As a matter of law it seems to me inescapable that whenever a person draws a cheque he embarks, whatever he may think or wish, upon a complex and technical transaction involving, at the very least his bankers, the payee and the payee's bankers, and it would seem to follow that the date upon which a cheque is regarded as paid may, as a matter of fact and law, vary in relation to the various parties involved."

The claimant has produced a specimen paying-in slip for an account in Barclays Bank which reads:

"Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account."

That is no doubt intended to indicate to the customer that he/she is not entitled, before a cheque has been cleared, to draw upon any money credited to that customer's account on the paying-in of a cheque: see Capital and Counties Bank Ltd v Gordon [1903] A.C. 240 at page 249 per Lord Lindley. The relationship of a bank with its customer is, of course, the relationship of debtor and creditor and it is clear from the terms of that paying-in slip, that Barclays Bank do not accept the relationship of debtor and creditor on the mere paying in of a cheque. The reason is quite simple. When the cheque is paid in to the local branch, that branch does not receive the money until the cheque has been cleared. That is to say, it must be sent to and accepted by the bank upon whom the cheque was drawn and then passed through the Clearing House, and it is only upon the conclusion of those administrative arrangements that the money will be notionally transferred to Barclays Bank and the claimant will then become the creditor of Barclays Bank in relation to the sum in question. The point can be made clearer by considering what would happen if a person opened a new account and paid in a cheque; if that cheque were dishonoured it would mean that he had no money in his account and any cheques drawn by him must either be dishonoured by his bank or, if paid, will necessitate his account going into overdraft.

The steps taken in regard to clearance of cheques is set out in In re Farrow's Bank Ltd [1923] 1 Ch. 41 at page 41-42. It follows, therefore, in my judgment that the sum of £2,696.67 did not become a capital resource of the claimant until 15 October 1986, the date when the cheque was cleared.

10. The sum of £700 (or £750) debited to the claimant's wife's account on 15 October 1986 represented, of course, payment out of the claimant's wife's account in Barclays Bank to Barclaycard. I imagine that the two cheques by which that payment was made did not go

through the Clearing House system. In other words, the debit will have been immediate or almost immediate. In any event, the adjudication officer has conceded that her account was debited in the sum of £200 on 15 October 1986 (see paragraph 5 above). Be that as it may, however, I am concerned only with the period with which the adjudication officer was concerned namely from 9 October 1986 to 14 October 1986: see Form AT2 at paragraph 14; and on 14 October 1986 the sum of £2696.67 had not, in my judgment, become a capital resource.

11. My decision does not affect the position of a claimant who deliberately refrains from paying into his account a cheque drawn in his favour. In such a case, regulation 4 of the Resources Regulations will be likely to apply and he will be likely to be found to have "deprived himself for the purpose of securing supplementary benefit" of a resource.

12. In the result, therefore, my decision is that the claimant's capital resources, including those of his wife, did not exceed £3,000 from 9 October 1976 to 14 October 1986. The decision of the appeal tribunal was erroneous in law in that it contained a false proposition of law: R(A) 1/72 at paragraph 4. Accordingly, I set aside that decision. It is expedient that I should give the decision which I consider to be appropriate: section 101(5)(a)(ii) of the Social Security Act 1975. My decision, therefore, is that the claimant is entitled to supplementary benefit from 13 October 1986 to 19 October 1986 (see paragraph 2 above).

(Signed) A.T. Hoolahan

Commissioner

Date: 20 September 1988