

DGR/SH/24/MD

Commissioner's File: CSB/965/1986

C A O File: AO 1056/SB/1986

Region: Wales & South Western

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: -----

Social Security Appeal Tribunal:

Case No: .

IDENTIFIABLE DECISION
NOT TO BE TAKEN OUT OF
THE DEPARTMENT

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal (now the social security appeal tribunal) given on 30 November 1982 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal, who will have regard to the matters mentioned below.

2. This is an appeal by the claimant, brought with the leave of a Commissioner, against the decision of the supplementary benefit appeal tribunal (now the social security appeal tribunal) of 30 November 1982.

3. The question at issue before the tribunal was whether the claimant had capital in excess of the then statutory limit of £2,000. She had a half share in a small-holding known as "Tan Farm" and lived with her daughter in a council house. The small-holding does not adjoin the house, but is reached "by road or walking through two fields". The issues that fell for consideration before the tribunal were -

- (i) whether the small-holding constituted 'premises not... occupied which it would be impracticable or unreasonable to expect to be sold independently' of the occupied accommodation within regulation 2(1) of the Supplementary Benefit (Resources) Regulations 1981 [S.I.1981 No.1527], and was therefore to be disregarded as a resource, pursuant to regulation 6(1)(a)(i), but if it did not, then
- (ii) whether it should be treated as a business asset owned in part by the claimant which might for a period be disregarded under regulation 6(1)(a)(v).

If the small-holding was not to be disregarded as a resource, then it was incumbent on the tribunal to determine the value of the claimant's interest therein, and to decide whether such value exceeded the statutory limit. Unfortunately, the tribunal did not consider these matters adequately, if at all.

4. Regulation 2(1) provides as follows:-

"home means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land, where, in Scotland, the home is a croft."

The claimant's contention is that her home is in effect analogous to a croft, and the small-holding to croft land. She relies in this connection on paragraph 11 of decision R(SB)13/84, which reads as follows:

"11. Another issue which was not dealt with by the tribunal is the claimant's submission that a small-holding should be regarded in the same way as croft land where, in Scotland, the home is a croft. The presenting officer merely submitted that the land cannot be classed as a croft. In the Shorter Oxford English Dictionary, one meaning of 'croft' is given as:

'A piece of enclosed land used for tillage or pasture: in most parts a small piece of arable land attached to a house'

The introduction of 'croft land' in the definition of 'home' in regulation 2(1) by the words 'in particular' does not confine the definition as applying exclusively to Scotland. The preceding language used in the meaning of 'home' and the example of croft land in Scotland permits of a similar consideration being given to land elsewhere than in Scotland. It is, of course, a question of fact as to whether or not subjectively it should be so regarded but there is no reason in law on the construction of the regulations why it should not be so regarded in considering 'any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately'. The regulation thus permits of a comparison being made in the case of a small-holding with croft land in Scotland."

5. I see the force of the claimant's contention, although I am not sure that the analogy holds up where, as in this case, the home is actually separated from the land but, be that as it may, the adjudication officer now concerned seeks to dispose of the matter by contending that both (i) the accommodation normally occupied and (ii) any premises which are not so occupied, ie in the present case the small-holding, "must be owned by the claimant before the definition may be satisfied". I think there is force in this submission. The words "any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately" imply that what is in contemplation is whether such premises could be sold independently of the sale by the claimant of the occupied accommodation, and such accommodation will not be capable of being sold unless it is actually owned by the claimant. In other words, the provision proceeds on the basis that at least the occupied accommodation is owned by the claimant, and if it is not, the definition of 'home' cannot be extended to take in premises not normally occupied.

6. In the present case, the claimant does not own her accommodation. It is council property. The tenancy has no commercial value, and there is nothing for the claimant to sell. Accordingly for the purposes of regulation 2(1) the small-holding, which is owned by the claimant, cannot form any part of her home, so as to be disregarded under regulation 6(1)(a)(i).

7. The reality of the position is that the small-holding constitutes a business asset, and accordingly consideration must be given to whether or not the claimant can take advantage of head (v) of regulation 6(1)(a). For that head embraces:-

"The assets of any business which is owned, in whole or in part, by a member of the assessment unit, for such a period as in the opinion of the benefit officer [now adjudication officer] it would be reasonable to disregard them."

Now, it is clear from the terms of that provision that the assets of a business will only be disregarded for a period, albeit there is a discretion as to how long that period shall be. I am aware that the claimant's contention has been all along that she had no intention of selling those assets. She intended on the contrary to build up the business, which if successful, would, of course, have the effect of preventing her from continuing to be a burden on public funds. But, be that as it may, she was at least entitled to have the assets disregarded for a period, and accordingly it was incumbent upon the tribunal to consider the period for which she should be allowed to retain such assets unrealised. This they failed to do.

8. Further, even on the basis that it was thought appropriate that the value of the small-holding should still continue to be disregarded under regulation 6(i)(a)v, consideration also had to be given to the final words of regulation 6(1)(a), which read as follows:-

"Except in relation to any part of premises which, having regard to all the circumstances, it would be practicable and reasonable [prior to 9 August 1982 "practicable or reasonable"] to regard as a property which could be realised separately."

Manifestly, the tribunal had to consider whether any part of the premises could be sold off separately. As regards the period up to 9 August 1982, clearly the claimant was caught by this provision, in that it was obviously practicable to realise part of the land separately. However, from 9 August onwards the criterion was whether or not it was practical and reasonable to dispose of part. Unfortunately, the tribunal did not consider this particular aspect of the case, and on this score also they erred in point of law.

9. It follows from what has been said above that I must set aside the tribunal's decision, and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

10. I allow the appeal.

(Signed) D.G. Rice
Commissioner

Date: 15 March 1988