

SUPPLEMENTARY BENEFIT**Resources: treatment of loan secured by a charge on the home.**

The claimant had more than £2,000 invested in a building society account, being the balance of a loan from his father-in-law to enable him to rebuild and improve the bungalow in which he lived. The loan was secured by a legal charge on the bungalow in favour of his father-in-law. Benefit was refused by the supplementary benefit officer because the claimant's capital exceeded £2,000, but the Appeal Tribunal decided that the loan should be treated as an outstanding debt secured on the bungalow and should be disregarded under regulation 6 of the Supplementary Benefit (Resources) Regulations 1980.

Held that:—

1. For a debt to be deductible from resources it must be "secured on" capital resources within the meaning of regulation 5(1) of the Resources Regulations 1980 (paragraph 7);
2. The phrase "secured on" means that the actual resource must be charged or mortgaged. The balance of the loan was entirely at the claimant's disposal free of charge or other security, and must therefore be treated as a capital resource (paragraph 8).

The appeal by the supplementary benefit officer was allowed.

1. I set aside the decision of the supplementary benefits appeal tribunal dated 9 March 1981. I refer the case to another supplementary benefits appeal tribunal with a direction to determine that the claimant is not entitled to supplementary benefit from 9 December 1980 and for such time thereafter as his capital resources exceed £2,000 (such resources to be determined in the manner set out in this decision): Supplementary Benefits Act 1976 sections 2 and 15A and Schedule 1, paragraph 1; Supplementary Benefit (Resources) Regulations 1980, S.I. 1980 No 1300, regulations 5, 6 and 7; and the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980, S.I. 1980 No 1605, Rules 10 and 11.

2. On 9 March 1981 a supplementary benefits appeal tribunal unanimously decided as follows:

"The tribunal direct the loan from [the claimant's father-in-law] be treated as an outstanding debt secured on the property and not as a capital asset."

That decision followed an appeal by the claimant from a decision of the supplementary benefit officer on 18 December 1980 that the claimant was not entitled to supplementary benefit from 9 December 1980 onwards. The reason for the officer's decision was that, on the claimant's application for supplementary benefit, it transpired that the claimant had the sum of £3,430 approximately invested in a building society account. On the face of it that sum would appear to be a capital resource exceeding £2,000 and therefore

disentitling the claimant to supplementary benefit—see the above-cited Resources Regulations, regulations 5–8.

3. However, the evidence shows that that £3,430 was the balance of a loan of £5,000 made to the claimant by his father-in-law to enable the claimant to rebuild and improve a corrugated-iron and timber bungalow which the claimant had bought with his own money. The arrangement was that the £5,000 loan should be repaid over 5 years by monthly repayments of £83.33. The loan was secured by a Legal Charge on the bungalow in favour of the claimant’s father-in-law. In his grounds of appeal to the local tribunal, the claimant speaking of this loan states, “This money is totally committed to rebuilding the rest of the bungalow. We have nowhere near enough money to do this even with the loan but we had hoped that once the granite shell had been built we would be able to raise a Building Society mortgage to repay anything outstanding on the loan from my father-in-law and to finish off the interior works”.

4. The question therefore is whether the supplementary benefit appeal tribunal were correct in holding that the balance of the £5,000 loan, i.e. £3,430 approximately, was not to be treated as a capital resource of the claimant. Regulation 6(1)(a) of the 1980 Resources Regulations states,

“6(1) In calculating a claimant’s capital resources there shall be disregarded—

- (a) the value of—
 - (i) the home.”

Dealing with this particular exception, the Supplementary Benefits Handbook (7th Edition 1981) published by the Department of Health and Social Security states (at page 35)

“Owner-occupied home

The value of an owner occupied home . . . is disregarded . . . If, however, the claimant chooses to raise a loan on the home, the sum thus raised counts as a resource”.

5. The question is whether this statement is a correct statement of the law for which one must of course look at the Acts and Regulations. The inclusion of a statement in the Handbook does not of itself give the statement any legal force. If the statement is correct it does mean of course that the money in effect raised by the claimant in this case as a loan on the home would count as a capital resource.

6. There appears to be no general provision in the supplementary benefit legislation providing for the deduction of debts in ascertaining a claimant’s capital or income resources. So far as capital resources are concerned, the only relevant provision is contained in regulation 5 of the Resources Regulations, reading as follows:

“5(1) Except in so far as regulation 6 provides that certain resources shall be disregarded, [e.g. in this case the value of the claimant’s home] the amount of a claimant’s capital resources to be taken into account shall be the whole of his capital resources assessed where applicable—

- (a) at their current market or surrender value less—
 - (i)
 - (ii) any outstanding debt or mortgage secured on them;”

7. The potential resource to be considered in this case is of course not the bungalow but the sum of money derived from the loan from the father-in-law

and invested in the building society. It would make no difference if it were not invested but were merely held in cash. One has therefore to ask whether there is "any outstanding debt or mortgage secured" on the sum of money, i.e. £3,430 approximately. It is true that that money is only borrowed and has to be repaid. If there were any general provision in the legislation as to deduction of debts then no doubt the amount of the debt could be deducted from the money in the building society, giving a nil net result, but there is no such general provision. For a debt to be deductible in this way, it must be, as regulation 5(a)(ii) (cited above) states, "secured on" the resource.

8. That phrase "secured on" means that in some way the actual resource must be charged or mortgaged. It is possible to charge or mortgage a sum of money, thus creating a security in favour of a third person who is given a prior claim over that money, but in my judgment that has not happened in this case. What was subject to a mortgage or charge and was therefore the security was the bungalow. The net balance of the loan from the father-in-law of £3,430 was entirely at the claimant's own disposal and was not subject to any charge or other security. A mortgagee has no right to demand the mortgage money under the security given by his mortgage. His is simply an unsecured right to demand repayment of the loan. The security consists in the mortgagee's right in certain circumstances e.g. to sell the land (in this case the bungalow) on which the sum is secured.

9. Nor in my judgment would it make any difference if there were in the Legal Charge on the bungalow a provision that the amount of the loan must be used in the making of improvements to the bungalow. No doubt such a provision (if there is one—there is no evidence on the point) would 'tie up' the money but it still would not create any security in favour of the father-in-law over the money lent. It would merely give him a right to sue the claimant for damages if the promise to use the money in a particular way were not fulfilled, but the money would still be uncharged and subject to no security.

10. Consequently, I hold that the appeal of the supplementary benefit officer against the decision of the supplementary benefit appeal tribunal succeeds. The differently constituted tribunal which re-hears this case must therefore find in accordance with my direction that, so long as any of the loan from the father-in-law remains in the claimant's hands, that must be treated as a capital resource of his and consequently if it and any other capital resources of the claimant in total exceed £2,000, it will preclude his obtaining supplementary benefit.

(Signed) M. J. Goodman
Commissioner
