

SUPPLEMENTARY BENEFIT

Resources—sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home.

The claimant had sold his previous home and joined with his son and daughter-in-law to buy a house next door to theirs and to modernise and convert it into 2 flats, one of which was intended for his own use. After paying his share of the purchase price of the new house he banked the balance of the proceeds of the sale of his former home to meet the costs of conversion and renovation. The adjudication officer decided that the money banked fell to be treated as a capital resource and that because its value exceeded the prescribed limit the claimant was not entitled to supplementary benefit. On appeal the tribunal upheld this decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. the disregard allowed by regulation 6(1) of the Supplementary Benefit (Resources) Regulations 1981 is limited to the proceeds of sale of a home which are intended for the purchase of another home. It does not extend to proceeds from such a sale put into an investment account for later use on necessary renovations to the newly purchased home (paragraph 8(1));
2. any proceeds of sale used to purchase another property where the vendor was converting or refurbishing the property, having agreed to being paid by instalments as the work progressed, might fall to be disregarded under regulation 6(1)(b) (paragraph 8(4));
3. money paid for chattels sold with the home and passing by delivery form no part of the proceeds of the sale of the home for the purposes of regulation 6(1)(b) (paragraph 9);
4. in terms of regulation 6 the proceeds of sale are the gross proceeds before deducting the Solicitor's costs. But in deciding the amount to be disregarded as the sum *attributable* to such proceeds which are intended to be used for the purchase of a new home legal expenses may be deducted from the gross proceeds if there is evidence that the claimant's intention is to use for the purchase of his new home the sum received after the deduction of legal expenses (paragraph 9);
5. the onus is on the claimant to show that any, and if so how much, of his capital resources fall to be disregarded by virtue of regulation 6(1)(b) (paragraph 11(4));
6. no money spent on repairs, improvements, renovations, refurbishment or conversion should be treated as a sum "to be used in the purchase of another home" for the purposes of regulation 6(1)(b) unless it is shown that such expenditure was part of the agreement to purchase from the vendor and the work involved was carried out by or at the expense of the vendor (paragraph 11(13));

The appeal was allowed.

Decision

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 23 November 1983 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

Representation

2. I held an oral hearing of this appeal. The claimant, who appeared, was represented by Mr. T. Owen of Counsel, instructed by Southall Rights Legal Advice. The adjudication officer was represented by Mr. C. A. M. E. d'Eca of the Solicitor's Office, Department of Health and Social Security.

Nature of the appeal

3. The question before the supplementary benefit appeal tribunal was the extent to which the proceeds of sale of the claimant's home were "to be used for the purchase of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances", in terms of regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527] ("the 1981 Resources Regulations").

The relevant law

4. The 1981 Resources Regulations as amended and in force at the date of claim in the present case provide, so far as relevant—

"2.—(1) In these regulations, unless the context otherwise requires—

.....
"home" means the accommodation, with any garage, garden and out-buildings, 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 impractical or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft;
.....

6.—(1) In calculating a claimant's capital resources the following shall be disregarded:—

.....
(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances;
.....

(g) for a period not normally exceeding 6 months from the date of receipt, any sum which—

(i) has been paid to the claimant or his partner in consequence of damage to, or the loss of, the home or any personal possession and which is to be used for its repair or replacement, or

(ii) has been given or loaned to the claimant or his partner on the condition that it is to be used for effecting essential repairs or improvements to the home and which is to be used for that purpose,

and which, in the opinion of the benefit officer, it is reasonable in all the circumstances to disregard;

....."

Supplementary benefit officer's decision

5. By a decision dated 12 September 1983 a supplementary benefit officer decided that the claimant was not entitled to supplementary benefit as he had capital in excess of £2,500. The claimant appealed against this decision.

Supplementary benefit appeal tribunal's decision

6. The claimant appeared before the supplementary benefit appeal tribunal. He was unrepresented. There is no chairman's note of evidence in the case papers. But in the space for such note on form LT 235 there is a statement:

“This will be provided if needed for an appeal or for deciding whether to appeal.”

This has not been done and I do not know what oral evidence was given before the tribunal. The record of the tribunal’s decision is in these terms:

“Findings of Tribunal on question of fact material to decision

In the Autumn of 1982, [the claimant] who is 83, decided to sell the house he lived in and to join with his son and daughter-in-law to buy a dilapidated house next door to theirs, to modernise it and to convert it into two flats: the ground-floor flat for [the claimant’s] use and the upper flat for the mother of his daughter-in-law. An improvement grant was applied for and the house inspected in November 1982. In January the builders’ estimates were forwarded to the council who have said throughout that if the Andrews family are to get a grant no work must be done on the house before it is made. It has not yet been authorised or refused.

On the 8th March [the claimant] wrote the attached letter to the Department. It had not been answered. On the 25th March [the claimant] received £29,294.29 for his former house. He paid £22,178.64 as his 60% share of the cost of the new property and banked the balance in an investment account where he kept and keeps it intact to spend on the necessary building work and amenities once the council grant is obtained or refused. The house that he left (on the 25 March) was in good order and the sale price included heaters, gas fires, carpets, a cooker and other fittings. The ground floor that he now occupies has no hot water system, inside lavatory, heaters, etc. [The claimant’s] share of the builder’s costs was estimated in January at £3,842.51, if a grant be obtained. He gave to the Department a total figure of £6,300 for fitting up the new flat which the Presenting Officer concedes is unexceptionable. The property is held on trust for sale until the conversion is completed when the flats will be leased with consequent legal costs. The investment account at the date of appeal contained £8,100.

Tribunal’s majority decision:

That at the date of the appeal [the claimant] had £205.00 more than the limit of £2,500 in capital and was therefore not entitled to supplementary benefit.

Reasons for decision (including Acts and Regulations and reported Commissioners’ Decisions considered by the Tribunal)

There are two issues in this appeal. We are agreed on the first but not on the second. The first issue is whether or not any part of the £8,100 in [the claimant’s] Barclays’s investment account was exempt from computation as capital under Regulation 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 No 1527 at the date of appeal, ie as ‘attributable to the proceeds of sale of a home which is to be used for the purchase of another home within ... such period as is reasonable in the circumstances’. There is no doubt in the minds of the Tribunal that the whole sum is so attributable and that the period is reasonable in the circumstances. It is less easy to say whether it is money to be used for the purchase of another home because the words are not very apt. However we are all of the opinion, on balance, that £6,300 of this money is within the section because the facts bring [the claimant] within the intention of the Regulations and the use of the word “home” imports a completed home and not a mere shell. The majority limit the sum within Regulation 6(1)(b) to £6,300. The Chair-

man, dissenting, considers that increases in building costs, and provision for legal fees and then contingencies bring the whole sum of £8,000 within the Regulation. We all advise [the claimant] to apply for benefit again now the capital limit is £3,000."

Was the decision of the supplementary benefit appeal tribunal erroneous in law?

7. The decision of the supplementary benefit appeal tribunal was clearly erroneous in point of law on two grounds.

8. (1) First, they misconstrued regulation 6(1)(b) of the Resources Regulations. The regulation provides that in calculating a claimant's capital resources there shall be disregarded "any sum attributable to the proceeds of sale of a home which is to be used for the purchase [my underlining] of another home within 6 months of the date of sale or such longer period as is reasonable in the circumstances". This disregard is limited to proceeds intended to be used, within the prescribed time, for the purchase of another home. It does not extend to proceeds put into an investment account for later use by the purchaser on "necessary building work and amenities" or costs for "fitting up" a flat.
- (2) Sums to be used for building work, amenities or fitting up may be "essential repairs or improvements to the home" in terms of regulation 6(1)(g)(ii) (set out, together with regulation 6(1)(b) in paragraph 4 of this decision). But in order to qualify under regulation 6(1)(g)(ii) the sum must have been "given or loaned" to the claimant or his partner. Proceeds of sale received by such a person are accordingly not within that prescription.
- (3) Counsel for the claimant sought to support the tribunal's conclusion that "home" imported a completed home and not a mere shell. In his submission, regulation 6(1)(g)(ii) was not exhaustive and it must have been intended that "purchase", in regulation 6(1)(b), should include the cost of the works done after the shell has been acquired, in order to make a completed home. There could, he submitted, be a two-stage purchase under which (1) the shell was bought and (2) the home was completed.
- (4) I accept that a claimant might contract to purchase a flat from a vendor once that flat had been converted or refurbished, paying the purchase price to the vendor who had agreed to carry out the conversion or refurbishment, in two (or more) stages as work proceeds. Proceeds of sale intended to be used for such a purchase might (depending on the exact nature of the intended transaction) fall within regulation 6(1)(b). But the facts found by the tribunal are contrary to any such conclusion in the present case. The tribunal found that the claimant had bought a 60 per cent share of a house and had banked the balance of the money received from the sale of his former house to spend on conversion of the new property. It is clear from their findings that it was the claimant and his son and daughter-in-law who were undertaking the conversion, not the vendor, and that the purchase was completed and the claimant went into occupation before the conversion took place. This finding was supported by evidence which both the claimant's representative and the adjudication officer's representative (who agreed that a previous written submission by the adjudication officer to the contrary was in fact incorrect) accepted was before the tribunal, namely a Trust Deed dated 27 January 1983 under which the claimant and his son and

daughter-in-law mutually agreed to carry out the conversion works.

9. Secondly, the material facts have not been found and recorded as required by rule 7(2)(b) of the Supplementary Benefit (Appeals) Rules 1980 (now replaced by regulation 19(2) of the Social Security (Adjudication) Regulations 1984). It was essential, for the purpose of determining whether regulation 6(1)(b) applied or not, to find:

- (1) the date of sale of the former home of the claimant
- (2) the date of purchase or intended purchase of the new home
- (3) the amount of the proceeds of sale of the old home
- (4) the sum attributable to such proceeds which was intended to be used for such purchase.

There are no findings on the first two points. There are no adequate findings on the third point or the fourth point. (As to the fourth point, see paragraph 11(10) below). As to the third point, form LT205, which was before the tribunal, gave the sale price for the old home as £30,500. The solicitor's account of the proceeds of sale, which was produced at the hearing before me and was before the tribunal, enclosed £29,294.29, the sum to which the claimant was stated to be entitled, after deduction of their costs. The £29,294.29 included £500 for the sale of "carpets etc". The tribunal reached a conclusion that no tribunal properly instructed as to the law could have reached as to the amount of the proceeds of sale. "The home" is defined in regulation 2(1) (see paragraph 4 above). It clearly does not include a claimant's chattels. Carpets and other items passing by delivery are no more part of the accommodation normally occupied by the claimant than would garden tools (spades, forks, lawnmower) form part of his garden! Money paid for chattels passing by delivery form no part of the proceeds of sale of the home, in terms of regulation 6(1)(b). On the other hand, solicitor's costs should not be deducted in ascertaining the proceeds of sale of the old home. The proceeds of sale, in terms of regulation 6(1)(b), are the gross proceeds (i.e. the purchase price—technically called "consideration"—which will usually be stated in the transfer or conveyance—or other agreement—to the purchaser), not the net sum handed by the solicitors to the claimant after deducting their costs. Assuming that there is evidence that the claimant only intended to use, for the purchase of his new home, the net proceeds of sale after deduction of his legal expenses, in finding the sum *attributable* to such proceeds which was intended to be *used* for such purchase, legal expenses will be, however, deducted from the gross proceeds.

Is it expedient to give the decision that the tribunal should have given?

10. It is neither expedient nor possible to give the decision that the tribunal should have given because, as already explained, the material facts have not been found and I have no jurisdiction to find fresh facts. The decision of the tribunal must accordingly be set aside and the case referred to a social security appeal tribunal which should, in accordance with the usual practice, be entirely differently constituted.

Directions to the social security appeal tribunal

11. The social security appeal tribunal to whom the case is now referred should in ascertaining whether the claimant is precluded from supplementary benefit on the ground that he had capital in excess of the limit specified in regulation 7 of the Resources Regulations:

- (1) ascertain the date from which the supplementary benefit officer's decision of 12 September 1983 took effect. This is nowhere in evidence. There should be an express finding on this point;

- (2) since the benefit officer's decision was an "open-ended" one, that is to say a decision without a terminating date, examine the claimant's position, week by week, applying the then current capital limit prescribed under regulation 7 (as from time to time amended) in order to determine whether the claimant was disentitled to benefit for the week in question on the ground that his capital exceeded the current limit (£2,500 at the date of the benefit officer's decision; £3,000 from 21 November 1983): compare the directions in the decision on Commissioner's file C.S.B. 1120/83, a copy of which should be supplied to the tribunal;
- (3) the tribunal should consider what reckonable capital assets, taking into account the provisions of regulation 6 (which provides for disregards) and other relevant provisions of the Resources Regulations, the claimant was possessed of, week by week, down to the date of their decision, for the purpose of determining whether the claimant was disentitled to benefit for that week on the ground mentioned in (2) above. In so doing, they should take into account the progressive reduction in the claimant's reckonable capital as the work on the home is paid for: compare the directions in the starred decision on Commissioner's file C.S.B. 1120/83;
- (4) the onus is on the claimant to show that any, and if so how much, of his capital resources should be disregarded in respect of any particular week by virtue of regulation 6(1)(b) of the Resources Regulations;
- (5) the claimant, or his representatives should be asked to produce evidence as to the amount of the proceeds of sale and the date of sale of the property sold by the claimant and that it was "the home" of the claimant in terms of that regulation ("home" is defined in regulation 2(1) of the same Regulations);
- (6) findings should be made as to the amount of the proceeds of sale. This is explained in paragraph 9 above;
- (7) the date of sale requires careful investigation. The transfer or other assurance relating to the property should be asked for and inspected and so should the contract. According to form LT 205 the old property was sold on 27 January 1983. According to the previous tribunal, the proceeds of sale were received on 25 March 1983. What was the date when the purchase price was handed over to the purchaser's solicitors? "The date of sale" will be required to be determined in the light of the actual facts as to the sale of the old property and express findings on these are required;
- (8) the amount of the sale price is in doubt. Was it £30,500 or £30,000 or some other and what sum? In ascertaining the sale proceeds, solicitors' costs met out of the purchase price as the result of an agreement between the vendor and his solicitors, or estate agents' commission, should not be deducted. But money received for the sale of chattels should be excluded, as explained in paragraph 9 above;
- (9) the nature of the purchase transaction relating to the new property also requires careful investigation. Enquiry should be made as to the contract for purchase, which should be inspected if available;
- (10) what *were* the financial arrangements for the payment of the purchase price of the *new* property? According to the Trust Deed of 27 January 1983 the transfer of the *new* property to the claimant and his son and daughter-in-law is dated 15 December 1982 and the register, if the copy produced to me is correct, shows that

registration of their title took place on 7 February 1983. When was the purchase price for the new home handed over? If the purchase price for the new property was handed over on 15 December 1982, (the date when the new property was apparently transferred) how was the purchase price received for the old property used to finance the purchase of the 60 per cent share in the new property? For the purchase price for the old property did not reach the claimant until 25 March 1983, if the findings of the previous tribunal are correct, and the sale of the old property did not take place until 27 January 1983 if the statement on form LT 205 is correct;

- (11) when the tribunal has found the amount of the proceeds of sale of the claimant's old home, and the date of sale, they should find what part of that sum (if any—see (10) above) was intended to be used for the purchase of another home;
- (12) I direct that the purchase of an undivided share in the home, although technically only a share in the net proceeds of sale and the net rents and profits until sale, can and should, as a matter of construction of regulation 6(1)(b) be regarded as a purchase of a "home", provided that the evidence establishes that the intention was that the claimant should normally reside in the property which was the subject matter of the purchase and regulation 2(1) (set out in paragraph 4 above) is satisfied in other respects. If the tribunal find, as did the previous tribunal, that the claimant went into occupation of the ground-floor of the new property on 25 March 1983, and that this was the part intended to be converted into a ground-floor flat for the claimant, they should find that the sum used by the claimant in the purchase price of another home, in terms of regulation 6(1)(b), was the amount spent in purchasing the undivided share in the entire house;
- (13) no money spent on repairs, improvements, renovation, refurbishment or conversion of the ground-floor of the new home should be treated as a sum "to be used in the purchase of another home" in terms of regulation 6(1)(b) unless it is shown that those repairs, improvements, refurbishment or commission were part of the agreement to purchase from the vendor and were to be carried out by or at the expense of the vendor. If the agreement to carry out these works was, as is stated in the Trust Deed, one made between the purchasers themselves only, those moneys cannot be treated as a sum "to be used for the purchase of another home". This is explained in paragraph 8(2) above;
- (14) the tribunal's findings of fact and reasons for decision should be recorded by the chairman as required by regulation 19(2) of the Social Security (Adjudication) Regulations 1984.

12. My decision is set out in paragraph 1. Before parting with this case, I draw attention to the absence of the chairman's note, or any copy of it, from the case papers. In view of the obvious errors of law occurring on the face of the record, I have been able to give my decision without the unnecessary delay and expense of an adjournment to obtain it. But in many cases, an adjournment would be essential, while the note was obtained, thus occasioning avoidable delay and expense.

(Signed) V. G. H. Hallett
Commissioner