SUPPLEMENTARY BENEFIT

Resources—computation of capital resources.

When he claimed supplementary benefit the claimant was closing down his business. He declared that he had capital assets in excess of £2,000 in a building society account. Accordingly the supplementary benefit officer decided that the claimant was excluded from receiving supplementary benefit by virtue of regulation 7 of the Supplementary Benefit (Resources) Regulations 1980 (S.I. 1980/1300). The claimant produced a letter from his accountant indicating that as at the date of claim he had tax liabilities of about £2,000 and argued that this sum should be disregarded in computing his capital resources. The supplementary benefit officer rejected the claimant's argument. On appeal the tribunal upheld the benefit officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. on the evidence before them, the tribunal were correct to proceed upon the basis that the monies were a capital resource and were not business assets (paragraphs 6 to 8);

2. the tribunal has an inquisitorial function to perform and is not adversarial in nature. They are not expected to question the facts presented where there is no suggestion that the claimant is unsure of the facts presented by him. The primary duty for making out his case falls on the claimant and the tribunal would not err if they failed to identify an uncanvassed point in favour of the claimant save in the most obvious and clear cut of circumstances (paragraphs 10 and 11);

3. under regulation 5 of the Supplementary Benefit (Resources) Regulations 1980 capital resources are to be treated as constituting the gross assets of a claimant. No deduction can be made for indebtedness except in the circumstances mentioned in regulation 5(a)(ii) (paragraph 14).

The appeal was dismissed.

---

1. Our decision is that the decision of the supplementary benefit appeal tribunal dated 16 February 1981 is not erroneous in point of law, and accordingly this appeal fails.

2. On 30 December 1980 the claimant claimed supplementary benefit because he was then in the process of closing down his business as a toolmaker and was unemployed. When he was interviewed at the local office, he declared that he had capital assets of £2,118.98 in his Birmingham Building Society account, £27 in his Midland Bank deposit account, and £300 in his National Westminster Bank business account. Furthermore, he declared that his wife had a Midland Bank current account, but that he did not know how much it contained. On 19 January 1981 he was again interviewed, when he stated that he now had £1,945.83 in his Birmingham Building Society account, approximately £60 in his National Westminster Bank "business account", and that he had closed his Midland Bank deposit account. He still did not know how much his wife had in her Midland Bank current account. Later that day, he withdrew £1,000 from his building society account and paid part of his outstanding tax liability. At some stage the claimant produced a letter from his accountant indicating that as at the date of his claim he had tax liabilities of approximately £2,000.

3. In the light of the evidence the supplementary benefit officer decided that during the inclusive period from 30 December 1980 to 19 January 1981 the claimant had capital resources in excess of £2,000 and as a result was not entitled to supplementary benefit; regulation 7 of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980/1300].

4. The claimant appealed against this decision to the supplementary benefit appeal tribunal, which in the event upheld the supplementary benefit officer. At that hearing, in addition to referring to regulation 5(a)(ii), the claimant appears to have relied on regulation 6(1)(a)(v), contending that the money in the Birmingham Building Society account represented assets of his business, and that it was appropriate that this sum should be disregarded in computing his capital resources for the purposes of a claim to supplementary benefit. The tribunal rejected this argument, and gave as their reasons the following:

> "The tribunal had regard to the paragraphs of Supplementary Benefit (Resources) Regulations 1980 as quoted by the appellant, and they were satisfied these did not apply to the circumstances of the appeal.
>
> The money in question was held in a personal account and could be drawn upon at any time and for any purpose. It was considered therefore that the appellant held capital assets available to him in

excess of £2,000 at the time of his claim for supplementary benefit on 30/12/80. (Paragraph 7 of Resources Regulations 1980)."

5. The claimant sought leave to appeal against this decision, and, amongst other grounds, contended that he had a tax liability in excess of £2,000, and that this liability should have been taken into account in determining the true extent of his resources. Leave to appeal was granted because of this particular contention; and in view of the importance of it, the Chief Commissioner decided that the matter be heard orally by a Tribunal of Commissioners. At that hearing the claimant was represented by Mr M. Rowland of Counsel, instructed by Mr R. Smith, a Solicitor of the Supreme Court, and the supplementary benefit officer was represented by Mr R. Birch of the Solicitor's Office of the Department of Health and Social Security.

6. It is perhaps a little surprising that the difficulty to which the present case has given rise was ever allowed to come about in the first place. In most cases capital resources arise out of income resources. They represent savings out of past earnings. However, before they undergo the metamorphosis from income to capital all relevant debts, including, in particular, tax liabilities, are first deducted. Indeed, Regulation 10(3)(a)(i) specifically provides that income tax shall be deducted from a person's earnings. However, we do not know the source of the monies in the Building Society, and it is quite clear that the claimant and the tribunal, and in fact Mr Rowland in his submissions to us, have all proceeded on the basis that such monies are a capital resource. Manifestly, we too must proceed on the like basis.

7. Mr Rowland submitted that the sum in the building society account was a business asset, and that, in computing capital resources, it should have been disregarded. Had the members of the tribunal properly directed their minds to this issue and carried out the appropriate investigation, they would have reached this conclusion, and in so far as they failed so to do, they were erroneous in point of law.

8. The facts, as set out above, appear to have been accepted by the claimant at the hearing before the tribunal, nor do they appear to be in dispute now. No more evidence, over and above that received by the benefit officer, seems to have been presented to the tribunal. On those facts and that evidence the tribunal came to the conclusion that the money in the building society account did not constitute part of the claimant's business assets. In our judgment, such a finding was wholly justified. The members of the tribunal were entitled to reach that conclusion on the facts and evidence before them.

9. However, Mr Rowland went on to contend that the real failure on the part of the tribunal was that the members omitted in discharge of their inquisitorial function to investigate fully the nature of the sum in the building society account. They should have posed a series of questions directed to ascertaining what had happened to the original business assets and to discovering whether there was any link between such assets and the monies in the building society account. We do not accept that there was any such duty on the tribunal.

10. It is, of course, accepted that in this jurisdiction a tribunal has an inquisitorial function to perform. Proceedings are not adversarial in nature. It is open to a tribunal, and indeed it is the members' duty, whenever they identify a point in favour of the claimant, notwithstanding that it has not been taken by the claimant, to consider it and to reach their decision in the light of it. (Moreover, exactly the same principle applies in the case of a

Commissioner, or, for that matter, a Tribunal of Commissioners, and not infrequently Commissioners do of their own volition discover points, which were never put forward by the claimant, but which are instrumental in giving rise to a decision favourable to the claimant.) However, although the members of a tribunal must investigate any matter which occurs to them as having any relevance to the appeal before them, they are not expected to question the facts presented to them in case after further investigation they might prove (to the advantage of the claimant) to be materially different, especially when, as here, there has been no suggestion on the part of the claimant that he is unsure of the facts as presented by him. We reach this conclusion irrespective of the fact that in the case of supplementary benefit appeal tribunals the chairman is often not legally qualified. Indeed, exactly the same principle applies whether the chairman is or is not legally qualified.

11. Of course, in a particular case it may be that a particular factual point was so obvious and self-evident that any tribunal ought to have considered it, irrespective of whether it was specifically made by the claimant. Everything will depend upon the circumstances in any given instance. However, the primary duty for making out his case falls on the claimant, and he must not expect to rely on the tribunal's own expertise. We would be slow to convict a tribunal of failure to identify an uncanvassed factual point in favour of the claimant in the absence of the most obvious and clear-cut circumstances. There were certainly no such circumstances in the present case. We do not think the tribunal were under any duty to identify the building society investment with the claimant's business assets and thereby to make out the entirety of the claimant's case *ab initio*. They heard the evidence presented to them and on that evidence reached the conclusion that the relevant monies were not business assets. No mistake of law was made, and as far as that issue is concerned there are no grounds for our interfering with the tribunal's decision. Indeed, in the grounds given for applying for leave to appeal the claimant himself specifically stated that "there were no assets directly attributable to the business".

12. The point which has given us more difficulty is whether or not, in computing the extent of the claimant's capital resources, account should be taken of liabilities, i.e. over and above the extent to which this is specifically allowed by regulation 5(a)(ii) of the Supplementary Benefit (Resources) Regulations 1980. Mr Rowland did not initially direct his remarks to consideration of this issue, but when invited so to do, he did make some helpful submissions in support of the view that liabilities are invariably deductible. Mr Birch, on the other hand, contended that under the Supplementary Benefit (Resources) Regulations 1980 capital resources meant gross resources, and not net resources. If a claimant had assets in excess of £2,000, but liabilities, which if paid, would diminish his assets below the £2,000 figure, then his remedy was to discharge his indebtedness, at least to the extent necessary to bring his resources below this statutory limit. It is unfortunate in the extreme that the regulations do not define in unequivocal terms the meaning of capital resources. In the commercial world it would be regarded as the height of folly for anyone to compute his assets without taking into account his liabilities. Indeed, in the bankruptcy jurisdiction such a course of conduct might well give rise to criminal liability. Moreover, if the man in the street were asked what his capital resources were, he would, in our judgment, have regard to his net worth and not to any artificial figure which takes no account of his liabilities. Accordingly, it is something of an affront to commonsense to construe "capital resources" without regard to liabilities. However, we are concerned solely with what Parliament has, in fact, decreed, or must be taken to have decreed, in the relevant statutory provisions.

13. Some relief in computing capital resources is accorded by Regulation 6, but this has no real bearing on the computation of the base figure, from which the deductions permitted by Regulation 6 are to be made. In our judgment, the crucial regulation is Regulation 5. This provides as follows:

> "Except in so far as regulation 6 provides that certain resources shall be disregarded, 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) in the case of land, 10 per cent, and in any other case, any sum which would be attributable to expenses of sale, and
>
> (ii) any outstanding debt or mortgage secured on them;
>
> (b) in the case of a National Savings Certificate—
>
> (i) if purchased from an issue the sale of which ceased before the 1st July preceding the date of assessment, at the value which it would have had on that 1st July had it been purchased on the last day of that issue;
>
> (ii) in any other case, at its purchase price".

14. Now, there is nothing to indicate in the above regulation that capital resources are anything other than the gross capital resources. Indeed, this would seem to be reinforced by paragraph (a)(ii) which makes specific allowance for a debt secured on a particular asset. Moreover, that asset might be a home and the home is itself disregarded in any event under regulation 6(1)(a)(i). It would seem from this that the draftsman had considered the question of indebtedness and had provided for deduction only in the circumstances mentioned in regulation 5(a)(ii).

15. Accordingly, we have reached the conclusion, albeit with some reluctance, that Parliament must be deemed to have intended that, for the purposes of the Supplementary Benefit (Resources) Regulations 1980, capital resources are to be treated as constituting the gross assets, not the net assets of a claimant. The tribunal were, therefore, right to disregard the claimant's indebtedness to the Inland Revenue, and to conclude that he had at the relevant time resources in excess of £2,000, and that in consequence he was not entitled to supplementary benefit. Their decision is not erroneous in point of law, and accordingly we dismiss this appeal.

(Signed) I. O. Griffiths
Chief Commissioner

(Signed) J. G. Monroe
Commissioner

(Signed) D. G. Rice
Commissioner