

SUPPLEMENTARY BENEFIT

Resources: value of a life interest in trust property held on "protective trusts".

The claimant was a beneficiary under her mother's Will to a pecuniary legacy and a half share of a Residuary Trust Fund. The Will directed that the Trustees hold the income arising from investments upon protective trusts for the claimant's benefit during her lifetime and that the trustees had an absolute discretion to pay all or part of the capital to the claimant. The trust fund comprises investments valued at £12,000 and the right to recover £18,000 lent by the trustees to the claimant. The supplementary benefit officer disallowed benefit on the ground that the claimant's capital resources exceeded the then limit of £2,500. On appeal, the tribunal upheld the decision on the ground that the claimant's interest in the trust fund fell to be dealt with under regulation 4(6) of the Supplementary Benefit (Resources) Regulations 1981. The claimant appealed to a Social Security Commissioner.

Held that:

1. actual resources, valued under regulation 5 of the Resources Regulations, should be considered before *notional resources* under regulation 4, as held by a Tribunal of Commissioners in R(SB) 45/83 (paragraph 5);
2. the claimant's life interest held on "protective trusts" terminates immediately she attempts to dispose of it and an immediate discretionary trust arises as to the income. It is thus unsaleable and has no market value in terms of regulation 5(a) of the Resources Regulations (paragraph 5);
3. the claimant's prospects of being awarded income payments under such discretionary trusts are also unsaleable (paragraph 5);
4. a possible interest in the capital of a trust fund exists in that the absolute gift of a life interest would take effect if all protective trusts engrafted onto it failed. However, in this case, the trusts were *unlikely to fail*, there being two children now living, so there was a negligible market value to the absolute interest of the claimant (paragraph 6);
5. as debtor to the trust fund, the claimant could assign her interest but the existence of the debt would be reflected in the value of her share (paragraph 6);
6. as a negligible value is attached to the claimant's actual interest under the Will, the tribunal will have to determine what value, if any, is to be attached to the claimant's notional interest by virtue of regulation 4(6) and (8) of the Resources Regulations, applying the principles laid down in R(SB) 25/83 (paragraph 7).

The appeal was allowed.

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 21 January 1983 was erroneous in point of law and the decision is set aside. The matter must be referred back to another tribunal.

2. The claimant's application for a supplementary allowance was refused by the benefit officer on 10 June 1982 on the ground that her capital resources (actual or notional) exceeded the then limit of £2,500 laid down in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] as amended (the Resources Regulations). The real point at issue was the value, if any, to be put on the claimant's interests under the Will of her mother, who died on 27 April 1981. The benefit officer took the view that as the capital of the relevant trust fund (excluding a loan of £18,000 that has been made to her out of the trust fund to enable her to purchase her home) was over £12,000, her resources must be treated as being of that value. The decision was confirmed on appeal by the appeal tribunal and the claimant now appeals to the Commissioner.

3. The claimant's mother gave to her daughter, the claimant, a pecuniary legacy by clause 4(b) of her Will and a half share of her "Residuary Trust Fund" by clause 6 of her Will. Clause 8 of the Will provides so far as I need quote it, as follows:—

"(a) PROVIDED FURTHER that the legacy given to my said daughter [the claimant] by Clause 4(b) hereof and the share of my Residuary Trust Fund given to her by Clause 6 hereof shall not in case my said daughter shall survive me vest in her absolutely but shall be retained by my Trustees and invested in their names in any of the investments hereby authorised and my Trustees shall hold the income arising from such investments upon protective trusts for the benefit of my said daughter during her life And after her death shall hold the capital and income of the said investments upon trust for all her children living at her death and the children then living of any of her children who are then dead.....

(b) Notwithstanding anything contained in sub-clause (a) of this clause my Trustees may if they in their uncontrolled discretion think fit at any time and from time to time raise and pay to my said daughter [the claimant] any part or parts of the whole of the capital of the said investments and my Trustees shall incur no liability whatsoever by exercising their discretion as aforesaid."

4. I understand that it was by the exercise of the power last mentioned that the Trustees lent to the claimant £18,000 for the purchase of her present home, but that they have indicated that they are not prepared to exercise the power any further. The relevant trust fund comprises investments valued at over £12,000 and the right to recover the £18,000 lent to the claimant (on what terms I know not) as aforesaid. It was by reason of the existence of this power that the appeal tribunal confirmed the decision of the benefit officer. They expressed their reasons as follows:—

"It appeared to the Tribunal that the facts of this case had to be dealt with under Regulation 4(6) of the Resources Regulations and that it was mandatory to take into account the Trust Fund as a resource notwithstanding the wording of paragraph 7.28 of the [Supplementary Benefits] Handbook, which implied that there was some discretion upon the Tribunal."

On the same day as that decision was given a Tribunal of Commissioners in Decision R(SB) 25/83 gave a decision on how regulations 4(6) and (8) of the Resources Regulations should be operated and (as the benefit officer now concerned submits) it is clear that the appeal tribunal's approach to the regulation was erroneous and that their decision must be set aside. The matter must be referred to another tribunal.

5. It is necessary that I endeavour to give some guidance to the new

tribunal on their approach to the questions in issue. I must point out first that in a later Decision R(SB) 45/83, it was indicated that actual resources, valued under regulation 5 of the Resources Regulations, should be considered before notional resources under regulation 4, in case it is possible to resolve the matter by reference to them alone. In Decision R(SB) 25/83 the claimant had, like the claimant in the present case, a life interest in the trust fund and the Tribunal of Commissioners (at paragraph 24(9)) left it to the appeal tribunal to whom the matter was referred back to consider whether the life interest of the claimant should be valued and included as an actual resource. I understand that they took this course (instead of deciding the point themselves) because no argument had been addressed to them at the hearing on the point. For myself I can see no reason why a life interest should not fall to be so valued; but the point is of no significance in the present case because the claimant's life interest in this case is directed to be held "on protective trusts", a reference to section 33 of the Trustee Act 1925. The effect is that if, for instance, the claimant attempts to dispose of her life interest it will immediately terminate and there will be an immediate discretionary trust as to the income. Her life interest is thus unsaleable and as such has no market value in terms of regulation 5(a) of the Resources Regulations. Furthermore the claimant cannot sell her prospects of being awarded income payments under the discretionary trusts that would arise if she attempted to dispose of her life interest, as it would be a fraud on the trustee's discretionary power of distributing the income to exercise the power directly or indirectly in favour of an assignee (see *Re Crawshaw* [1948] Ch 123 at pages 143–144).

6. This is not quite the end of the claimant's actual resources, as her mother gave the claimant an absolute interest in the legacy under clause 4(b) of the Will and in the share of residue under clause 6; and cut the interest down to a protected life interest by clause 8(a). In the decision of *Hancock v Watson* [1902] AC 14 the House of Lords affirmed a long standing rule of construction that, where there is an absolute gift in the first instance, on which trusts are engrafted or imposed and those trusts fail, the absolute gift takes effect subject only to those engrafted trusts which do not fail. It follows that if the gifts over on the claimant's death were to fail, the absolute gift to the claimant would take effect. She has thus a possible further interest in the capital of the fund. It may be that this is a reversionary interest which falls to be disregarded under regulation 6(1)(vi) of the Resources Regulations, though I am not sure whether a persons' interest which, if it matures at all, can mature only on the termination of a life interest of that same person constitutes a reversionary interest for this purpose. I do not think it necessary to determine this question, (on which I have received no submissions) on the present appeal, because it is relatively unlikely that the trusts will fail, the claimant having two children now living. The value of the chance that the engrafted trusts may fail is thus very small; and it is unlikely that anything significant would be assigned to the value of the interest. Further, the claimant is a debtor to the trust in the sum of £18,000 (whether presently payable or not) and she can assign her interest in the trust fund only subject to equities, so that a purchaser would take subject to the obligation to repay (see *Re Rhodesia Goldfields, Ltd* [1910] 1 Ch 239 at page 247). Thus even assuming that the claimant's debt to the trust fund is not secured on the fund, the existence of the debt would be reflected in the value of the claimant's share. The position is in this respect no different from that of a claimant who is owed money by some other person (e.g. a bank) on one account and owes money to that same person on another. If that other person is entitled to set-off the money owed to him against the money owed by him, the claimant can assign the debt owed only subject to equities (see Law of Property Act 1925 section 136(1)) and the

right of the other person to set-off the amount will be reflected in the market value of the debt owed to the claimant. This does not conflict with the rule that in general unsecured debts are not deductible (see Decision R(SB) 2/83).

7. In view of the above it is virtually certain that only a negligible value will be attached to the claimant's actual interests under her mother's Will. The tribunal will thus have to consider what value is to be attached to her notional interests by virtue of regulation 4(6) and (8) of the Resources Regulations. On this matter I cannot do much more than refer the tribunal to the full consideration of this question that was given by the Tribunal of Commissioners in a similar case in Decision R(SB) 25/83 especially subparagraphs (1) to (8) of paragraph 24. I draw attention also to the point made by the Tribunal of Commissioners that the trust referred to in regulation 4(6) and (8) is the whole of the trust and not just clause 8(b) of the Will, and to the more general approach to the problem advocated in paragraph 18 of the Decision.

8. The appeal is allowed.

(Signed) J. G. Monroe
Commissioner
