

SUPPLEMENTARY BENEFIT

Resources—the assessment of moneys owed to a claimant on mortgage.

The claimant sold a house, not occupied by himself and his family. Part of the sale price was applied to allow the purchaser a private mortgage of £4,500 (which was subsequently reduced to £4,000) and part was used to pay off his debts. The supplementary benefit officer took the view that the claimant had deprived himself of the £4,500 in order to reduce his capital below the level at which entitlement ceases, and discontinued benefit. On appeal, the tribunal confirmed the refusal of supplementary benefit. The claimant appealed to a Social Security Commissioner.

Held that:

1. the evidence supported the conclusion that the claimant granted a private mortgage not “for the purpose of securing supplementary benefit”, but in order to facilitate the sale of the property (paragraph 6);
2. the mortgage was a chose in action and therefore an actual resource falling within regulation 5 of the Resources Regulations, and not a notional resource under regulation 4(2)(b). The debt conferred a right to sue and had to be valued at the current market value less expenses (paragraph 12);
3. notional resources under regulation 4(2)(b) cover resources which have no market value e.g. a gratuity paid to a Government employee on retirement (paragraph 14);

4. the power to disregard a capital resource under regulation 6(1)(a)(iii) of the Resources Regulations only lasts until completion of the relevant sale. Only the actual premises fall to be disregarded under regulation 6(1)(a)(iii), not any loan secured on the property by way of a legal mortgage (paragraph 10);
5. the claimant's unsecured debts could not be deducted from his capital because capital resources falling within regulation 5 are *gross* capital resources (paragraph 17).

The appeal was allowed.

1. I grant leave to appeal. For the reasons set out below the decision of the supplementary benefit appeal tribunal given on 14 May 1982 is erroneous in point of law, and it must be set aside. I direct that the matter be re-heard by a differently constituted tribunal.

2. The claimant, a married man with 4 dependent children, hitherto the owner of 2 houses, only one of which was occupied by himself and his family, submitted to the local office on 6 April 1982 a solicitor's letter and statement of account as evidence that he had now disposed of the unoccupied property known as 216 Ayres Road. He had, up to that date, been in receipt of supplementary benefit. The sale price of 216 Ayres Road was £11,000, of which on completion the claimant only received in cash £115.86. However, at an earlier stage he had been paid the deposit of £1,000, which seemingly had in the intervening period been spent. The remainder of the sale price was applied in reduction of the claimant's indebtedness and in allowing the purchaser a private mortgage, initially of £4,500, subsequently reduced to £4,000. The benefit officer discontinued the claimant's benefit as from 7 April 1982.

3. The reason why the benefit officer decided to disallow benefit was that he took the view that the claimant had deprived himself of £4,500 by granting the purchaser of his property a private mortgage of that amount, thereby reducing his capital to less than £2,000. He sought to rely on regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527], which provides as follows:

“Any resource of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him.”

In the benefit officer's view, the claimant had deprived himself of £4,500 for the purpose of reducing his capital below £2,000, and thereby of securing supplementary benefit. He was therefore caught by regulation 4(1).

4. Thereupon the claimant appealed to the supplementary benefit appeal tribunal who, whilst correctly realising that the mortgage in question had been reduced from the £4,500, initially negotiated, to £4,000, nevertheless confirmed the refusal of supplementary allowance from 7 April 1982. They made the following findings of fact:

“The tribunal were presented with written evidence that at one stage there was an agreement to sell the house in question for £13,500 less £2,500 private mortgage. This eventually became £11,000 less £4,500 private mortgage. Whilst the appellant claimed to have been under pressure by his bank manager to sell the house quickly to reduce or redeem a Bank overdraft the claimant did receive £1,000 deposit in November 1981. This was not used to effectively reduce the overdraft but was almost immediately withdrawn in a series of comparatively small amounts. Evidence was given that on a number of occasions the

appellant successfully borrowed money from his father-in-law and various business friends and that similarly the purchaser of the house was able to guarantee to redeem the mortgage within six months because he in turn could readily borrow from his family and friends.”

It is to be noted that in their findings the tribunal refer to a private mortgage of £4,500, but this may well have been a slip, in that the chairman’s note of evidence clearly shows, what was an undoubted fact, that the original mortgage of £4,500 had been reduced to £4,000.

The tribunal gave as their reasons for their decision the following:

“The tribunal faced with conflicting evidence decided that the benefit officer had correctly applied Resources Regulation 4(1).”

5. The claimant applied for leave to appeal to the Commissioner, and asked for an oral hearing of the application, a request to which I acceded. At that hearing the claimant was represented by Mr S. Morris of the Manchester Law Centre, and the benefit officer by Miss L. Shuker of the Solicitor’s Office of the Department of Health and Social Security.

6. Miss Shuker very properly conceded that on any footing the decision of the tribunal was erroneous in point of law. She accepted that the tribunal had failed to give any reasons for the decision (see R(SB) 6/81 paragraph 14), and that in any event their findings of fact simply did not justify the conclusion that regulation 4(1) applied. On the contrary, their findings, and certainly the evidence on which they were based, supported the conclusion that the private mortgage accorded the purchaser was not “for the purpose of securing supplementray benefit”, but in order to facilitate the sale of the property. The tribunal were in breach of rule 7(2) of the Appeal Rules, and in any event on the evidence no tribunal properly instructed as to the law and acting judicially could reasonably have come to the conclusion reached by the tribunal on 14 May 1982.

7. At the oral hearing I agreed with the above submissions, and had no difficulty in deciding that the claimant should be granted leave to appeal. As Miss Shuker, on behalf of the benefit officer, and the claimant himself had previously consented to my treating the application for leave to appeal as the appeal itself, I then went on to hear the actual appeal. In the light of Miss Shuker’s submissions referred to above, with all of which I agree, I now have no hesitation in setting aside the decision of the appeal tribunal. The appeal must be re-heard by a differently constituted tribunal. However, before leaving the matter, I must also deal with other points of contention which were canvassed at the hearing, as these form the background to the directions which it is necessary for me to give to the new tribunal, so that they may consider the proper issues, and make appropriate findings on which to base their conclusions.

8. The difficulty that faces the claimant is that he granted a private mortgage of £4,500 (later reduced a £4,000), and the question immediately arises whether this constitutes a resource, which, being in excess of £2,000, serves to deprive him of entitlement to supplementary benefit (see regulation 7). Mr Morris contended that it was not such a resource.

9. The relevant provisions are as follows:

(1) Regulation 4(2) of the Resources Regulations, which provides as follows:

“Any resource which either—

(a)or

(b) is due to be paid to a member of the assessment unit but—

- (i) has not been paid to him, and
- (ii)

may if, in the opinion of the benefit officer it is reasonable in the circumstances to do so, be treated as if it were possessed by him”.

- (2) Regulation 5 of the aforesaid Regulations, which reads 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)

- (3) Regulation 6(1)(a)(iii), which provides as follows:

“In calculating a claimant’s capital resources the following shall be disregarded:—

- (a) the value of—
 - (iii) any premises which are for sale and the value of which it would be reasonable in all the circumstances to disregard for such period as the benefit officer may estimate as that during which the sale will be completed”.

10. Mr Morris contended that, as the £4,000 represented a mere indebtedness to the claimant and did not consist of cash-in-hand, it did not constitute a capital resource within regulation 5, but that, even if it did, it should be disregarded pursuant to regulation 6(1)(a)(iii). As regards the latter point, the power to disregard only lasts until completion of the relevant sale. In the present case, at the time of the mortgage’s creation the property at 216 Ayres Road had been sold and the transaction completed. This is quite apparent from the solicitor’s letter and statement of account. The property had been duly conveyed, and the purchase price satisfied, such satisfaction being in part in cash and in part by a loan secured on the property by way of a legal mortgage. The claimant was, of course, left with a loan, but, although this may well have been one of the results of the transaction, it did not affect the completion of that transaction. Moreover, in any event the loan could not be identified with the actual premises, and it is only the actual premises which fall to be disregarded under regulation 6(1)(a)(iii). In these circumstances, it was not open to Mr Morris to rely on that regulation. And, in fairness to him, I do not think that Mr Morris placed too great a faith on that particular provision.

11. The contention on which Mr Morris substantially relied was that there was not an actual resource within regulation 5, but a notional one falling within regulation 4(2)(b). The claimant was entitled to £4,000 in the following October, but not before, and in the circumstances it was reasonable for the benefit officer not to treat him as possessed of the money until October 1982. It was a notional resource, which owing to the circumstances ought not to be taken into account until payment had been received.

12. Against that Miss Shuker argued that the purchaser’s indebtedness to the claimant was simply a chose in action and as such was a resource in possession falling within regulation 5. The debt conferred a right to sue, and must be valued at the current market value less expenses. It might be less

than £4,000, but the value would be determined by what could be obtained for it on the open market.

13. I invited Miss Shuker to explain what kind of resources fell within regulation 4(2)(b), bearing in mind that loans made by a claimant constituted choses in action, with a current market value. She argued that debts which were adequately secured fell within regulation 5, but that those which were of a speculative nature, where there was no security and a strong possibility of default, fell within regulation 4(2)(b). I do not accept that distinction. Speculative or doubtful debts are just as much choses in action as debts which are amply secured, and the doubtfulness of debts goes only to the market value, and not to their essential nature.

14. Indeed, it is difficult to see what resources do fall within regulation 4(2)(b). A possible example might be a gratuity paid to a Government employee on retirement. He would not be entitled to sue for that gratuity, (hence there would be no market value), but nevertheless there would be no doubt about its ultimate payment. It might therefore be said not to be an actual resource, but rather a notional resource falling within regulation 4(2)(b). Another example might be the payment of a win arising out of a football pools entry, in that normally the contractual relationship between the parties precludes legal action. However, in the present case the claimant's entitlement to repayment of the sum of £4,000 was, at the date when supplementary benefit was discontinued, a chose in action with a market value, and as such an actual resource falling within regulation 5.

15. It follows from what has been said above that, when the tribunal come to re-hear the matter they must give a market value to the claimant's loan, less, of course, expenses. If the net value exceeds £2,000, or alternatively if such value, together with any other resources actual or notional, exceeds £2,000, the claimant will not be entitled to benefit.

16. Mr Morris pointed out that, at the time the loan was granted, the claimant was himself indebted to a certain Mr Chunara in the sum of £2,300, and argued that this should be a deductible sum from the net market worth of the loan. He stated that in the event the £4,000 was duly repaid to the claimant in the following October and that the latter forthwith discharged his indebtedness to Mr Chunara, with the result that his resources were then less than £2,000. In consequence he was thereafter entitled to supplementary benefit. Mr Morris contended that the claimant should not be prejudiced by the mere fact that he was unable to get in the loan before October. Had he been able to get it in earlier, he would immediately have discharged his own indebtedness of £2,300, and accordingly, he should all along be treated as having resources to the value of less than £2,000.

17. I see the force of Mr Morris's contention but it has been held by a Tribunal of Commissioners in R(SB) 2/83 that the capital resources falling within regulation 5 are *gross* capital resources. As was said at paragraph 14 of the decision:—

“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).”

18. Accordingly, my decision is as set out in paragraph 1.

(Signed) D. G. Rice
Commissioner
