

## SUPPLEMENTARY BENEFIT

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### Resources—deprivation of capital.

The claimant was made redundant on 6 April 1984 and received sums totalling over £8,000 in connection with the termination of his employment. He claimed supplementary benefit on 10 July 1984 and his actual capital resources at that time were assessed at £4,104.06. On 19 July 1984 they had reduced to £2,004.06 after a withdrawal of £1,500 on 17 July 1984. The adjudication officer considered that the claimant had deprived himself of capital in order to receive supplementary benefit. He decided that the claimant should be treated as still in possession of capital resources, including notional resources, exceeding £3,000, the prescribed limit and rejected the claim. On appeal the tribunal confirmed the decision and the claimant appealed to a Social Security Commissioner.

*Held that:*

1. for the purposes of the application of regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 3 things must be established, viz (i) that the claimant has deprived himself of a resource; (ii) that he has done so for the purpose of securing or increasing supplementary benefit; and (iii) that it is appropriate to exercise the discretion to treat the resource as still possessed by the claimant (paragraph 4);
2. the word “deprive” is an ordinary English word whose meaning is not a question of law and does not change by reference to the consequences of deprivation. Any act, as a result of which a claimant no longer possessed the resource, whether or not he acquired another resource in its place, could be considered as a deprivation (paragraph 8);
3. whether its purpose is to secure or increase benefit is ordinarily a matter of inference from the primary facts and facts for or against that conclusion must be included; findings were essential on the reasons tendered by the claimant for various items of expenditure and, if in issue, on the extent of the claimant’s knowledge of the capital limits (paragraph 9);
4. affirming paragraph 22 of CSB 858/84 (reported as R(SB) 38/85), the purpose of securing benefit, or increasing the amount thereof need not be the sole purpose, but it must be a significant operative purpose (paragraph 10);
5. if it was found that a deprivation or conversion for either of the above reasons had taken place, it was necessary to consider first the effect of regulation 6(1)(c)(ii) of the Supplementary Benefit (Resources) Regulations 1981. Personal possessions would be included under regulation 5(a) at their current market value less any amount that would be attributable to the expenses of sale. It was then necessary to consider the exercise of the discretion in regulation 4(1) (paragraph 11);
6. the discretion should be exercised to put the claimant in the same position as is practicable had the transaction not been entered into, but not to penalise him further. If the inclusion of a notional resource would cause the claimant the hardship of living without supplementary benefit for a time, that hardship could not ordinarily be a ground for exercising the discretion in the claimant’s favour without nullifying the purpose of the regulation. (paragraph 12);

7. the discretion should not be exercised so as to count the resource twice. If the claimant has deprived himself of cash in the purchase of an item that was not disregarded, the discretion should be limited to the excess of the cash over the value of that item. The resource should also not be treated as possessed for all time; had the claimant retained the capital resource he would have had to meet his requirements out of that resource (paragraph 13).

The appeal was allowed.

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1. My decision is that the decision of the social security appeal tribunal dated 29 October 1984 is erroneous in point of law and it is set aside. The matter must be referred to another tribunal.

2. The claimant made a claim for a supplementary allowance from 10 July 1984. The claim was rejected on the ground that his resources (including those of his wife and including notional resources taken into account under regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No. 1527] (the Resources Regulations)) exceeded the maximum figure in regulation 7 of those regulations (then, as now, £3,000). This decision was confirmed on appeal by the appeal tribunal. The claimant now appeals to the Commissioner.

3. The salient facts in the present case seem not to be in dispute. The issue is what inferences ought properly to be drawn from them. The claimant was made redundant on 6 April 1984 and forthwith claimed unemployment benefit which was awarded to him. He claimed supplementary benefit on 10 July 1984. In connection with the termination of his employment he received sums totalling over £8,000. Some part of these payments probably constituted income resources at the time of their receipt, but if they were not spent as such may have become capital resources by or before 10 July 1984. On 19 July 1984 the claimant's bank statement showed a credit of £2,004.06, £1,500 having been withdrawn on 17 July 1984. This by itself indicates that there was more than £3,000 in the account down to 17 July; and it is perhaps not necessary to ascertain the correctness of the statement in the form AT2 that the claimant's actual resources at that time were £4,104.06. If those figures are correct the claimant had at the date of claim resources exceeding £3,000 and a supplementary allowance was not then payable to him. The claim was however a continuing claim and the tribunal had to deal with the matter down to the date of decision; and on the assumption that after the withdrawal of the £1,500 the claimant had resources of only £2,004.06 he could be refused an allowance by reference to regulation 7 of the Resources Regulations, only if he had notional resources, or he had other actual resources that had not been taken into account.

4. The benefit officer, and, on appeal, the appeal tribunal concluded that the claimant had notional resources. They reached their conclusion by reference to regulation 4(1) of the Resources Regulations, which provides as follows:—

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

As was pointed out in Decision R(SB) 38/85 three things have to be shown for the provision to be invoked; viz. (1) that the claimant (or other member of the assessment unit) has deprived himself of a resource; (2) that he has done so for the purpose of securing supplementary benefit or increasing the amount of such benefit and (3) that it is appropriate to exercise the dis-

cretionary power of treating the resource as still possessed by the claimant (or other member of the assessment unit). In the present case the adjudication officer points out that by 19 July 1984 the claimant had substantially reduced his capital, and the claimant has furnished full particulars of how it has been spent. In the form AT2 the adjudication officer indicated that he had concluded (without being specific about it) that the claimant was to be taken as still possessing assets in excess of £3,000. The appeal tribunal's decision was equally unspecific, but to the same effect as that of the adjudication officer.

5. There may be cases where a claimant is shown to have been in possession of substantial resources a short time before his claim and he fails to give any account of what has happened to those resources, in which it is appropriate to draw some such inference as seems to have been drawn in the present case. But this claimant has provided full particulars of how he has spent the money and in order to make out a case under regulation 4(1) the matter has to be very much more specifically shown to be within the regulation before it can be invoked. In other words the adjudication officer must point to a resource or to more than one resource (probably different sums of money) of which the claimant deprived himself; and then show the primary facts on which he relies for the inference that the claimant deprived himself of that resource for the purpose of securing, or increasing the amount of supplementary benefit. The main purposes of expenditure that might be subjected to scrutiny seem to have been expenditure on a holiday, and expenditure on furniture and furnishings and improvement to the claimant's house.

6. The adjudication officer now concerned makes what is to me a somewhat startling submission. He submits that it has been wrongly held that the claimant has deprived himself of any resource expended in the purchase of house items, as this is simply the conversion of a resource into a different form; and he submits that the question (I think the only question) that should have been for consideration was whether the provision for disregarding any resources consisting of personal possessions to be found in regulation 6(1)(c) of the Resources Regulations was excluded by virtue of regulation 6(1)(c)(ii) on the ground that the items in question, or some of them, were acquired by converting for the purpose of acquiring a right to supplementary benefit or increasing the amount of supplementary benefit, capital resources that would not have fallen to be disregarded under the paragraph. Personal possessions which are not to be disregarded under this provision form part of a person's actual resources; there is no discretion to disregard them. And no doubt because one should look at actual resources before going on to notional resources (Decision R(SB) 45/83), it would have been right for the adjudication officer in this case to have looked first at regulation 6(1)(c)(ii). But I do not consider that to be the only recourse in cases where a person is considered to have acquired personal possessions with a view to securing or increasing the amount of, supplementary benefit.

7. I recognise that the view expressed in the last sentence may be at variance with the view of the matter that has been taken by the compilers of the so-called "S Manual". In the second edition of the manual on Supplementary Benefit Legislation published by the Child Poverty Action Group the following appears in the commentary on regulation 4(1) at page 177:

"The concept of deprivation is not entirely straightforward. The S Manual (paragraph 6042) says "Do not treat a person as having deprived himself of a resource where he has spent the money or has changed it into another form in which it is still available to him".

Examples given of non-deprivation include buying an annuity, paying for a holiday, paying off a mortgage or buying a home for oneself, or making home improvements. They also include the buying of personal possessions, but regulation 6(i)(c)(ii) must be taken into account”.

The submission of the adjudication officer now concerned may be based on the foregoing, but I consider it to be wrong. Regulation 4(1) has been recently considered by the Commissioner in Decision R(SB) 38/85; and, though he does not specifically deal with the point, he uses language entirely inconsistent with the tenor of what is said in the S Manual.

8. At paragraph 21 of the last mentioned decision the Commissioner expressed the view that the word “deprive” is an ordinary English word whose meaning is not a question of law. In my judgment it does not change its meaning by reference to the consequences of deprivation. It is in my judgment perfectly proper for an adjudication officer or tribunal to conclude that a person has deprived himself of a resource if as the result of his own act he ceases to possess that resource whether or not he becomes possessed of some other resource in its place. He may thus be held to have deprived himself of a resource if he gives it away, if he uses it up in living frugally or prodigally, or to pay for a holiday or in any other manner that leaves no resource at the end of the day; or if he uses it to purchase a resource of equal value which will retain its value; or which will rapidly depreciate or which will fall to be disregarded for purposes of supplementary benefit.

9. The different practical consequences of these various circumstances emerges when one goes on to consider the next question, viz. whether the claimant deprived himself of the resource for the purpose of securing, or increasing the amount of, supplementary benefit. Thus if a claimant uses cash to purchase, say, saving certificates, he does not reduce the value of his overall resources at all, and it could not be suggested that he had deprived himself of the cash for the purposes of securing, or increasing the amount of, supplementary benefit. Other cases are more problematic, though in the end a claimant cannot be treated as still possessing a resource of which he has deprived himself without its also being established that he did so for one of the above purposes. It is not normally possible to ascertain a person’s purpose from direct evidence, as of contemporary letters written by him. Ordinarily the purpose is a matter of inference from primary facts found. The present case is one where there are facts which if they stood alone might lead to the legitimate conclusion that the claimant had deprived himself of cash resources for the purpose of securing, or increasing the amount of, supplementary benefit. But there are other facts which may be taken as pointing the other way. And it will be for the tribunal to indicate all the relevant facts (including both admitted facts and facts as to which findings need to be made) that they have taken into account in reaching their conclusion on the purpose of any transaction. Facts should be included whether they tell for or against the conclusion reached and some indication should be given of those to which weight has been attached. For instance the amount that the claimant received in connection with the termination of his employment and the manner in which he spent a substantial part of it will probably not be in dispute. The claimant has tendered reasons for various items of expenditure, such as his wife’s state of health, and the fact that he had booked the holiday before he was made redundant. Findings are essential on these matters. Again some question has been raised as to the state of the claimant’s knowledge of the capital limits and a finding will be necessary, though one might think that it was common knowledge that supplementary benefit was a means-tested benefit and that there must be some limit on one’s capital holding above which

supplementary benefit was not payable. It is certainly possible for a person without knowledge of the details of the restriction to have the purpose of depriving himself of resources with a view to securing, or increasing the amount of, supplementary benefit.

10. It is not necessary that the purpose of securing, or increasing the amount of, supplementary benefit shall be the sole purpose, though it must be a significant operative purpose. For instance one can visualise a case of a man possessed of say £1,000 over the statutory limit whose resources fall short of his requirements to an extent that this £1,000 would make up the deficiency for 12 months. He might conclude that if he forthwith spent the £1,000 on carpeting his home from wall to wall he could start drawing supplementary benefit at once and thus be no worse off incomewise and have the benefit of the carpeting. It would be legitimate to conclude that if such was his purpose he had deprived himself of the £1,000 for the purpose of securing supplementary benefit, notwithstanding that another purpose was to have the house carpeted. In practice the case is unlikely to be so clear cut, and a claimant with mixed purposes is unlikely to concede that the securing of supplementary benefit was an important purpose. Nevertheless if the evidence showed that the transaction had had the effect of securing this (apart from regulation 4(1)) and that this was the foreseeable consequence of it and there was nothing more, a tribunal could legitimately conclude that the person's purpose was to secure supplementary benefit. But there may well be other evidence, e.g. that the existing floor covering was worn out, or that a member of the assessment unit was allergic to dust to an extent that wall to wall carpeting was medically advisable. I draw attention to paragraph 22 of the above mentioned Decision R(SB) 38/85 in connection with the points made in this paragraph.

11. If the tribunal conclude that in no transaction in this case did the claimant deprive himself of or convert any resource for the purpose of securing, or increasing the amount of, supplementary benefit they will give a decision based on the actual resources of the assessment unit only, treating (among other things) all personal possessions as disregarded resources. If on the other hand they do find that there has been deprivation of or conversion of any resource for either of the above purposes they will, or may have to, assess the effect of first regulation 6(1)(c)(ii) and then regulation 4(1) of the Resources Regulations. They will consider regulation 6(1)(c)(ii) if they conclude that in terms of that provision the claimant had for the purpose of securing or increasing the amount of supplementary benefit acquired personal possessions by converting capital resources such as cash which would not have fallen to be disregarded. If so, they will include such personal possessions among the claimant's capital resources. They will include them under regulation 5(a) at their current market value less any amount that would be attributable to the expenses of sale. The figure arrived at may be less than the amount expended to pay for the items.

12. If further they conclude that the claimant has deprived himself of any resource (in this case cash) for the purpose of securing or increasing the amount of supplementary benefit they will have to go on to consider the exercise of the discretion to treat the claimant as retaining such resource or part thereof under regulation 4(1). This is a discretion which has to be exercised judicially in the light of the manifest intention of preventing persons from securing or increasing the amount of supplementary benefit by transactions having that purpose. The discretion should, in my judgment, ordinarily be exercised to put the claimant vis-a-vis supplementary benefit as nearly as is practicable in the position in which he would have been if the transaction had not been entered into, but not to penalise him further. This may mean that he suffers the hardship of having to live for

a time without supplementary benefit to which he would have been entitled if he had never possessed the resource of which he deprived himself. But the discretion arises only if he has been found to have deprived himself of a resource for the purpose of securing, or increasing the amount of, supplementary benefit, and I do not consider that such hardship of itself can ordinarily be treated as a ground for exercising the discretion favourably to a claimant without nullifying the whole purpose of the regulation. It will thus, I conceive, be normal for a tribunal where it finds the conditions for the exercise of the discretion are satisfied to exercise it so as to treat the resource of which the claimant has deprived himself for either of the above purposes as still possessed by him.

13. But I draw attention to at least two instances in which (in conformity with the above principles) it would be appropriate to temper the exercise of the above discretion, which are propounded in paragraph 23 of Decision R(SB) 38/85. These are first that the discretion should be exercised with due regard to the need to avoid in substance counting a resource twice over. This means that in the present case, if the tribunal finds that the claimant has deprived himself of cash now represented in his resources by an item that is not disregarded, the discretion should be used to limit the amount of such cash notionally still possessed to the excess of the value of the cash over that of the item. The second point is that it may be wrong to treat the resource as possessed for all time. If the claimant had retained a capital resource of which he deprived himself and as a result had been refused an allowance, he would have had to make good the inadequacy of his income resources to meet his requirements out of that capital resource. In the fullness of time he would start to qualify for an allowance. The discretion should be exercised so as to bring about something like the same result. It would not be unreasonable for instance to exercise the discretion for a period determined on the assumption that the claimant used up his notional asset by the weekly equivalent of the amount by which his weekly resources fell short of his requirements. When the notional resource was notionally depleted to an extent sufficient to allow the claimant to qualify for supplementary allowance, it would be appropriate for the discretion of the tribunal to be exercised in favour of the claimant.

14. The appeal is allowed.

(Signed) J. G. Monroe  
Commissioner

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