

SUPPLEMENTARY BENEFIT

Resources—assets in a limited company.

The claimant closed his business, ceased to trade and claimed supplementary benefit. When interviewed he declared that he had a personal bank account and two business accounts, namely a deposit and current account. These business accounts were assets of a limited company whose shareholdings were owned entirely by the claimant and his wife. He also declared that he held a life policy with a surrender value. The supplementary benefit officer decided that the claimant's capital resources included the business accounts and awarded benefit from the date when the resources so calculated first fell below the statutory maximum limit of £2,500. On appeal, the claimant contended that the business accounts belonged to his company, but the tribunal upheld the supplementary benefit officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. a limited company is a legal person separate and distinct from its members (*Salomon v Salomon & Co* (1897) A.C. 22(HL)). Its assets cannot be directly attributed to its members (paragraph 6);
2. members of a limited company have shares in the company and it is the value of this shareholding which should be included in the calculation of the claimant's resources, not the bank accounts of the company (paragraph 6);
3. neither the claimant nor his wife owned the assets of the business and there was no question of such assets being disregarded pursuant to regulation 6(1)(a)(v) of the Supplementary Benefit (Resources) Regulations 1981 (paragraph 9).

The appeal was allowed.

1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 5 April 1983 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal.

2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 5 April 1983.

3. On 25 November 1982 the claimant made a claim for supplementary benefit. The previous October he had closed his gift shop and he had ceased to trade. He was interviewed at the local office on 5 January 1983, and at that date he declared that he had three bank accounts, namely his personal account containing £194.95, his business deposit account containing £1,787.99 and his business current account overdrawn by £43.03. He also declared the existence of a life policy, the surrender value of which was subsequently found to be £414.20. On the basis of this information the benefit officer concluded that the resources of the claimant and his wife amounted to £2,397.14. As this was less than £2,500 he awarded supplementary benefit from the pay day 1 January 1983. But, the claimant complained that benefit should have been paid from the date of claim, namely from 25 November 1982. However, he was met with the rejoinder that, as at the date of claim, the resources of himself and his wife came to £3,460.70, and as this exceeded the statutory maximum of £2,500, he was not at that stage entitled to benefit. The earliest time when entitlement arose was the pay day 1 January 1983.

4. Of course, the above figures are only correct if the so-called business accounts are included in the resources of the claimant and his wife. However, these accounts do not belong directly to the claimant or his wife, but are the assets of a limited company whose shareholding was owned entirely by the claimant and his wife. On appeal to the tribunal the claimant

contended that the business accounts belonged to his company, that such company was a separate legal entity, and that its resources had no necessary connection with those of himself and his wife. On eventual liquidation the company's net assets would pass to himself and his wife, but until then they could claim no proprietary interest therein.

5. The tribunal did not accept this approach but upheld the benefit officer. They gave as the reasons for their decision the following:—

“The tribunal are satisfied that the assets of the limited company were available to the appellant and should be taken into account when calculating the capital resources. These capital resources exceeded £2,500 until 30.12.82.”

6. A limited company is a legal person separate and distinct from its members (*Salomon v Salomon & Co* (1897) A.C. 22(H.L.)). Accordingly its assets cannot be directly attributed to its members. What its members have are shares in the company, and these are, of course, resources of such members. Accordingly, in the present case the relevant resources were at the date of claim the shareholding of the claimant and his wife in the company, and such shareholding had, of course, a value. It is this value which should have been included in their resources, not the bank accounts of the company. The failure of the tribunal to appreciate this distinction renders their decision erroneous in point of law, and accordingly I must set it aside. Further I must direct that the matter be re-considered by a differently constituted tribunal.

7. The new tribunal will have to give a value to the shares. Such value will be determined by the price which a willing buyer would pay for them to a willing seller. As the company was at the date of claim in liquidation, no one would be prepared to pay more than the value of the net assets on realisation, and in practice they would pay rather less than this in view of the trouble and bother involved in seeing the liquidation through to its end. The new tribunal will have to determine whether at the date of claim or at any time thereafter before 1 January 1983 the resources of the claimant and his wife computed as above fell below £2,500. If they did, the claimant will be entitled to supplementary benefit from the relevant date.

8. The benefit officer in his submissions points out that the record of the proceedings is silent on whether regulation 6(1)(a)(v) of the Supplementary Benefit (Resources) Regulations 1981 was ever considered, argues that on this ground also the decision of the tribunal was erroneous in point of law. I do not accept this submission. In my judgment, regulation 6(1)(a)(v) is irrelevant in the present circumstances. The regulation in question provides as follows:—

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

(a) the value of—

(v) the assets of any business which is owned, in whole or in part, by a member of the assessment unit, for such a period as in the opinion of the benefit officer it would be reasonable to disregard them.”

9. As the claimant has rightly pointed out, the company was always a separate entity from himself and his wife. The business in question was owned by that company. It was not owned by the claimant or his wife. Accordingly, the claimant is unable to rely on regulation 6(1)(a)(v). Neither he nor his wife was the owner of the assets of the business, so that there could be no question of such assets being disregarded pursuant to that particular provision. Accordingly, the tribunal did not err in point of law

in failing to refer to regulation 6(1)(a)(v). The provision simply had no relevance.

10. However, the tribunal's decision must be set aside on the earlier ground referred to above, and accordingly my decision is as set out in paragraph 1.

(Signed) D. G. Rice
Commissioner
