

**SUPPLEMENTARY BENEFIT**

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**Resources—value of an interest in an unadministered estate.**

The deceased claimant had received supplementary benefit from 18 July to 7 December 1980. Her husband had bequeathed to her his entire estate and this included a house which since 1951 had been occupied by her son who was responsible for all outgoings and who had made considerable improvements to the property. The husband died in 1968 but Letters of Administration were not granted until 23 June 1981, the claimant herself having died on 18 December 1980. The adjudication officer decided that at the material time the value of the house constituted a capital asset of the claimant and that as a result she had been overpaid supplementary benefit of £1,451.71 which was recoverable. On appeal the tribunal upheld that decision. The deceased's personal representative appealed to the Social Security Commissioner.

*Held that:*

1. the deceased had no property right in the house because her late husband's estate had not been administered. All that she had was an interest in an unadministered estate and such an interest did not confer entitlement to any beneficial interest in any specific property (paragraph 7);
2. consideration should have been given to whether the son, having expended considerable monies on the property in question, had acquired an interest in it. The extent to which he had done so would reduce the extent to which the house constituted part of the unadministered estate (paragraph 8);
3. the appeal must be re-heard by another tribunal which should also consider paragraph 27 of Schedule 1 to the Supplementary Benefits Act 1976 in relation to any payments made to the deceased up to 23 November 1980. That paragraph, which was repealed by the Social Security Act 1980, had enabled resources not specified by the Schedule to be treated as reduced.

The appeal was allowed.

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1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 22 December 1981 is erroneous in point of law, and accordingly we set it aside. We direct that the matter be re-heard by a differently constituted tribunal.

2. This is an appeal by the personal representative of Mrs. N. F. deceased ("the deceased") (brought with the leave of one of our number) against the decision of the supplementary benefit appeal tribunal of 22 December 1981. The question at issue is the extent to which supplementary benefit paid to the deceased from 18 July 1977 until 7 December 1980 is recoverable pursuant to section 20 of the Supplementary Benefits Act 1976. The appeal was first heard before a single Commissioner, but as important and far-reaching issues arose in the course of that hearing, the Commissioner concerned gave no decision, but referred the matter to the Chief Commissioner. The latter decided that there should be another oral hearing before a Tribunal of Commissioners, and this took place on 2 June 1983. This case was heard in conjunction with the appeal on Commissioner's File CSB 838/1982. At the hearing the personal representative of the deceased appeared in person and the benefit officer was represented by Mr. E. O. F. Stocker.

3. Since the hearing before the appeal tribunal the personal representative of the deceased (who is her son and sole beneficiary under her Will) has made a very full statement of the facts relating to this case. However, it must be remembered that we are not judges of fact, but are only concerned with whether the decision of the tribunal was erroneous in point of law, and accordingly we can take no account of evidence not before the tribunal.

4. However, the essential facts clearly emerged at the adjourned and final hearings before the tribunal. They can be summarised shortly. The personal representative resides at 28 Nangreaves Street, . . . . and has in fact been there since 1951. The house was originally bought in 1950 by his father for £350. However, since 1951 the personal representative has been responsible for all outgoings, and he has made considerable improvements to the property including the construction of an extension. The father of the personal representative died on 6 May 1968, and bequeathed his entire estate to his widow, the deceased. However, there was no administration of his estate until Letters of Administration were granted on 23 June 1981. In the meantime the deceased herself had died on 18 December 1980. By her Will she bequeathed her entire estate to the personal representative. In the course of the administration of the deceased's estate the house at 28 Nangreaves Street was included in the return of her estate made to the

Taxes Offices and the District Valuer was called on to give a value to the property as at various dates. He valued the property as follows:

|                 |        |
|-----------------|--------|
| At 18 July 1977 | £5,000 |
| At 18 July 1978 | £5,750 |
| At 18 July 1979 | £6,500 |
| At 18 July 1980 | £7,250 |
| At 18 July 1981 | £8,000 |

5. The relevance of all the foregoing is that the deceased had been in receipt of supplementary benefit from 18 July 1977 to 7 December 1980 on the basis that the house in question formed no part of her resources. She had failed to disclose any interest, direct or indirect, in the property, and when it came to light after her death that she was entitled to 28 Nangreaves Street under the Will of her late husband, the benefit officer made a calculation of the amount of supplementary benefit overpaid, which in the event amounted to £1,451.71. He sought to recover this sum from the estate of the deceased pursuant to section 20 of the Supplementary Benefits Act 1976.

6. The personal representative of the deceased appealed to the supplementary benefit appeal tribunal. The tribunal made the following findings of fact:

“The Tribunal found on the facts that, notwithstanding the sympathy felt towards [the personal representative] and his family for their predicament, the [deceased] was the owner of the property at 28 Nangreaves Street from 6th of May 1968 until 18th December 1980 and this was owned by her while she lived in rented accommodation ...”.

They confirmed by a majority the decision of the benefit officer and gave as their reasons the following:

“The majority of members found that [the deceased] was the owner of a property at 28 Nangreaves St in which she did not reside and under the Resources Regulations 1980 and bearing in mind Regulations 5 and 7 and also Section 20 of the Supplementary Benefits Act 1976, the value of such property should be taken into account in determining her entitlement to supplementary benefit”.

7. Quite clearly, the tribunal erred in various respects. First, they failed to record the reasons of the dissenting member for his dissent. Secondly, they erred in their findings of fact that the deceased was at the relevant time the owner of the property at 28 Nangreaves Street. The estate of her late husband had never been administered, and as a result all that she had was an interest in an unadministered estate. Such an interest was a chose in action and did not confer entitlement to any beneficial interest in any specific property. The suggestion that beneficiaries have any right at all in any particular item which goes to make up an estate is entirely erroneous (see *Commissioner of Stamp Duties (Queensland) v Livingston* [1965] A.C. 694 at pages 712 G, 713 A–B, 717 C–D). Accordingly, the deceased had no property right in the house.

8. Thirdly, the tribunal erred, inasmuch as they failed to consider, or if they did consider, failed to make appropriate findings of fact as to, the extent to which the property in question constituted part of the unadministered estate. Clearly, it was not enough merely to say that the deceased was the owner. The personal representative had expended considerable monies on the property, and the extent of his interest had to be determined as a matter of fact. Fourthly, the tribunal failed to consider all the provisions of section 20 of the Supplementary Benefits Act 1976 and to make appro-

priate findings of fact. Section 20 cannot operate unless there has been a misrepresentation or a failure to disclose a material fact, in consequence of which public money has been expended. Finally, the tribunal failed to consider paragraph 27 of Schedule 1 to the Act for the period prior to its amendment from 24 November 1980.

9. In the light of the foregoing there can be no question of our allowing the decision of the tribunal to stand. It is clearly erroneous in point of law, and we must set it aside. We direct that the matter be re-heard by a differently constituted tribunal.

10. However, in re-hearing the appeal the new tribunal must have particular regard to the following matters. First, they must consider whether on the facts—and it is clear from the statement subsequently made by the personal representative that they will have a great deal more evidence before them—the personal representative has in his personal capacity acquired title to an absolute interest in the property by reason of adverse possession. Moreover, if the tribunal are not satisfied that the property has passed to the personal representative in this way, they will have regard to the consequence of the equitable principle expounded in such cases as *Ramsden v Dyson* (1866) L.R. 1 HL 129 at page 140; *Inwards v Baker* [1965] 2 QB 29; *Ward v Kirkland* [1967] 1 Ch 194 at pages 240–241; and *E. R. Ives Investment Ltd v High* [1967] 2 QB 379. The effect of these authorities is that, where a person has expended money on the property of another with the latter's acquiescence, the former is entitled to appropriate protection. The relief which he will obtain from the Court will depend upon the circumstances of the case, but in the present instance the tribunal may take the view, on the evidence that, the effect of the equity was to reduce the interest of the deceased in the unadministered estate to a figure which allowed supplementary benefit to be paid at the rate actually received by her. These are, of course, all matters which are not the direct concern of us, but are for determination by the tribunal.

11. Finally, the tribunal will, in so far as is necessary, have regard to paragraph 27 of Schedule 1 to the Supplementary Benefits Act 1976, which was in force until 24 November 1980. The meaning of this paragraph has occasioned considerable difficulty, and was the reason why this particular case, as well as the appeal on Commissioner's File CSB 838/1982 to be reported as R(SB) 6/85, was heard before a Tribunal of Commissioners. In both appeals the question of the meaning to be attributed to paragraph 27 fell to be considered. It has proved more convenient to deal fully with this particular problem in our decision on the other appeal, and that decision is for convenience appended hereto. Suffice it to say that we are satisfied that paragraph 27 enables the tribunal to treat any resource not specified in the preceding provisions of the Schedule, which we understand to mean any resource not specifically catered for in the preceding provisions—and there is no specific provision dealing with an interest in an unadministered estate or, for that matter, a second house—"as reduced by such amount (if any) as may be reasonable". It may be—we express no opinion, since these are matters of fact—that, if the tribunal take the view that by 18 July 1977 title to the house had not passed absolutely to the personal representative by adverse possession and the equitable principle referred to above had not reduced the interest of the deceased in the unadministered estate below a figure which would have allowed entitlement to the amount of supplementary benefit actually paid, they will nevertheless consider that the powers conferred on them by virtue of paragraph 27 are sufficient to enable them to reduce the deceased's resources below £1,200. However, the tribunal will also need to bear in mind that paragraph 27 can only apply in respect of the period up to and including 23 November 1980. For the period thereafter

regard will have to be had to the relevant provisions of the Supplementary Benefit (Resources) Regulations 1980 in accordance with the principles expounded by a Tribunal of Commissioners in their decision on Commissioner's File CSB 531/1982.

12. Our decision is as set out in paragraph 1.

(Signed) I. O. Griffiths  
Chief Commissioner

(Signed) V. G. H. Hallett  
Commissioner

(Signed) D. G. Rice  
Commissioner

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