

SUPPLEMENTARY BENEFIT

Resources—valuation of land and buildings.

The claimant owned a property other than the home in which he lived and the District Valuer had valued it at £2,750. After applying regulation 5 of the Supplementary Benefit (Resources) Regulations 1980, the supplementary benefit officer decided that the claimant's capital resources exceeded the then limit of £2,000 and disallowed benefit. On appeal, the claimant produced a later valuation by an estate agent estimating the price "for a quick sale" as £2,000. He contended that this valuation should be preferred because the District Valuer was not aware of the property's internal condition, but the tribunal upheld the supplementary benefit officer's decision. The claimant appealed to a Social Security Commissioner.

Held that:

1. in regulation 5 of the Resources Regulations, the word "land" refers to both site and buildings on it (paragraph 8(1));
2. where an asset has both a current market value and a surrender value, regulation 5(1) does not indicate which value is to be taken. It is open to the determining authority to choose (paragraph 8(2));
3. the phrase "current market value" as used in regulation 5 in relation to an asset such as "land with buildings" means the price which the asset commands as between a willing buyer and willing seller in that market at a particular date (expressly identified, or implied). The date in point is the date of claim (paragraph 8(3));
4. in valuing "land" account should be taken of the extent of the owner's interest, e.g. whether freehold, or leasehold and if the latter the length of the lease; and whether available with vacant possession or subject to a sitting tenant's rights (paragraph 8(4)).

The appeal was allowed.

1. (1) This is a claimant's appeal from the majority decision of a supplementary benefit appeal tribunal ("the tribunal") dated 3 May 1983. It is brought by my leave and upon the contention that the tribunal's decision was erroneous in law. The tribunal's decision upheld a benefit officer's decision dated 20 12 82 that the claimant was not entitled to supplementary benefit from 19 9 81 to 26 11 82 inclusive. The sole point in issue was whether or not, upon a proper application of regulation 5 of the Supplementary Benefit (Resources) Regulations 1980, an identified property

owned by the claimant should be taken into computation as a capital resource of his in an amount in excess of the then applicable limit of £2,000 of capital resources, it being common ground that if so the claimant could not qualify for supplementary allowance in respect of such period.

- (2) The claimant has requested an oral hearing of this appeal; but I am refusing that request as I am satisfied that the appeal can properly be determined without such.
- (3) The appeal succeeds. I set aside the tribunal's decision as erroneous in law in the respect undermentioned and direct that the claimant's appeal from the benefit officer's decision be re-heard by a differently constituted tribunal. I do not consider it expedient in the circumstances of the case to seek to give myself the decision which the tribunal should have given, as in my judgment a proper determination of the appeal requires the investigation of materials not available to me as the case file now stands.

2. In the course of a home visit to the claimant on 13 10 82 it came to light that he owned a property other than the home in which he lived, the value of which other property had not hitherto been taken into computation when entertaining his claims for supplementary allowance. In the upshot, and in reliance upon a valuation obtained from the District Valuer that the (gross) current market value of the property in question was £2,750, (which figure was, pursuant to regulation 5, then abated by 10 per cent) a benefit officer concluded that the claimant's capital resources exceeded the prescribed limit and accordingly gave the decision of 20 12 82 above mentioned. The claimant appealed to the tribunal against that decision.

3. In support of the appeal the claimant furnished a valuation dated 17 February 1983 by a local firm of estate agents, auctioneers, surveyors and valuers—the material content of which was their intimation “we feel in the present market a realistic figure for a quick sale would be in the region of £2,000”.

4. It is apparent from the tribunal Chairman's note of evidence that before the tribunal it was contended on the claimant's behalf that the estate agents' valuation should be accepted in preference to that of the District Valuer (which had been dated 16 11 82), on several grounds. First it was said that the property was and had since 1981 been uninhabitable. Particulars were put in indicating that the claimant had on 11 5 82 made application for a local authority improvement grant in respect of the property in an aggregate sum of £13,450.93, of which £9,263.52 was attributable to improvements and £4,187.41 to repairs, and also that the application had been approved on 15 March 1983 in the aggregate sum of £6,375.00, representing 75 per cent of the eligible expense of £8,500.00. Next it was contended that whilst the estate agents had based their valuation upon information which included an internal inspection of the premises, the District Valuer had not gone inside the house and had he done so would have realised that the house was uninhabitable. Thirdly it was explained that the house as it stood was a Victorian terrace house of “2 down and 2 up” which had been bought for about £1,600 in 1974/1975, since when its condition had deteriorated.

5. The tribunal's findings of fact record the purchase date and cost above mentioned, indicate that a son of the claimant had lived in the property but that it had been unoccupied since 1981, and refer also to the two valuations and to the application for the improvement grant and its approval. The tribunal's (majority) stated reasons for decision were:—

“The District Valuer’s report was accepted as the proper indication of the capital value of” [the property] “for the period in question. The majority noted that” [the estate agents] “report was made 3 months subsequently and quoted a price for a quick sale.” The minority member is recorded as having considered that the estate agents’ valuation and the evidence of repairs set out in the improvement grant approval cast sufficient doubt on the District Valuer’s valuation “to prevent the benefit officer from proving the necessary capital value beyond the balance of probabilities.”

6. It is suggested by the benefit officer now concerned that the dissenting minority member of the tribunal is, from the reference in the statement of his reasons to “beyond” the balance of probabilities, to be taken to have regarded the burden resting on the benefit officer to prove a market value in excess of £2,200 being the amount necessary to sustain a reckonable value (current market value, abated by 10 per cent), in excess of £2,000 as more onerous than mere proof upon a simple balance of probabilities, and thus to have misdirected himself in law. I do not consider that this is necessarily a correct inference; but I find it unnecessary to reach a conclusion as to that as there are in my judgment compelling grounds upon which to set aside the majority decision, being grounds upon which that point has no bearing.

7. Regulation 5 materially provided as follows:—

“5. 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

8. (1) In the light of the long-established principle that buildings placed upon land are accretions to the land, I am in no doubt that the reference to “land” in regulation 5 bears upon both site and buildings thereon, so that in applying that regulation the benefit officer, and the tribunal, were concerned to arrive at the “current market or surrender value” of the property as a whole, less a 10 per cent abatement.
- (2) In the light of terms of regulation 5(a)(i) I would also observe that whilst some assets encountered as “capital resources” have a current market value but no surrender value (e.g. “ordinary” stocks and shares), whilst others have a surrender value but no market value (as, e.g. a non-assignable insurance policy), other kinds of asset have both a current market value and a surrender value—in particular, property held for a leasehold interest. Moreover it does not in such cases “follow as the night the day” that the two figures are the same. However, the regulation does not indicate whether market value or surrender value is to be taken where a choice exists; and I construe it as leaving that open to the determining authority.
- (3) It is convenient to indicate at this point also that in my judgment “current market value” is a phrase having an accepted “everyday” meaning, and that it is in my judgment in that sense that such phrase is used in regulation 5. So considered “market value”, in relation to an asset such as “land with buildings” for which a market does exist, carries in my understanding the sense

of the price which the asset commands as between a willing buyer and a willing seller in that market, and “current” market value predicates that what is referred to is the market value at a particular date (to be expressly identified, or implied) as “current”. So proceeding I find no difficulty in concluding that in the context of regulation 5 the date in point is that at which the asset falls to be taken into computation, namely the material claim date.

- (4) It is also a matter of common knowledge that the valuation of *land* (or “land with buildings”) takes close account of what constitutes the extent of the material proprietary interest in the subject matter to be valued as well as of its physical properties. Thus in the case of land with a house built upon it there may be a very substantial difference between its proper value if a freehold interest and its proper value if a leasehold interest with only a short period of the leasehold term still to run. In the case of residential property it is similarly of significance in valuing it to predicate whether the property is offered with vacant possession or subject to tenancy, as also whether, or leasehold, the laws as to leasehold enfranchisement, or rent restriction, are in point.

9. When bespeaking the District Valuer’s valuation in the present case the local office of the DHSS employed a “Form A64”. On its face that form starts with a request to the District Valuer “will you please complete this form below in respect of the property described overleaf and return the form to me as soon as possible ...”. Below that, and for completion by the District Valuer, there is written (and followed by a space for insertion of further text) “The estimated price at which the property described overleaf is likely to find a purchaser (subject to any existing tenancy) within a period of three months is:” On the reverse of the same form are listed a series of heads of information with regard to the property to be valued, with spaces left for completion (I infer, for completion by an official of the DHSS concerned in the case and submitting the request). Those heads start with “Description of property” (as to which in the present case the entry “house” has been inserted), its full address, the interest to be valued (whether freehold or leasehold) and if leasehold the period and commencing date and the owner of that interest (as to which in the present case the entry “N/K” appears as regards the interest and the identity of the owner has been left blank). “N/K” I infer to mean “not known”. There follow heads as to ground and head rent and other outgoings, all of which have in the present case been marked either “N/K” or left blank, then “If unoccupied, name and address of keyholder”—which has been completed—and a number of other heads some of which require completion only if the property is tenanted, but did not in this case so require since it was indicated “no” as regards “whether tenanted”. There are thereafter a further series of heads of information, with appropriate spaces for answers (or alternative answers printed) which appear below the legend “This side should be completed only where the property is a house or house and shop”. But, as I have indicated, the property was described as a “house” and—quite properly—none of those have been answered.

10. The opinion expressed by the District Valuer on the face of the form was “£2,750 (Valued with vacant possession)”.

11. I do not think it is putting the obligations of the tribunal too high to indicate that they might, in my view, faced with two valuations some £750 apart and in amounts critical to the permitted ceiling as to capital resources under the Resources Regulations, have thought it necessary to ascertain and find as facts first what was the nature of the interest of the

claimant in the material property and secondly what interest in the property the District Valuer conceived he was valuing, before accepting his valuation as a proper basis for their decision; but they do not appear to have done either.

12. Whilst this was clearly a matter for the tribunal, for my own part I also see no significant difference between a valuation in terms of “the estimated price at which the property is likely to find a purchaser (subject to any existing tenancy) within a period of 3 months”—the question asked of the District Valuer—and the estate agents’ formulation (also silent as to nature of interest being valued) of “in the present market a realistic figure for a quick sale would be in the region of”; though if there be any significant difference it strikes me that the latter follows the predication under regulation 5 of “current market value” more closely than the former (which embraces the possibility that within the stipulated period a greater price may be obtained than is currently obtainable).

13. The tribunal clearly comprehended that by reason of the difference in valuation dates they were not necessarily comparing like with like—but they do not appear to have appreciated that there were such other relevant considerations as those I have above indicated. However, whilst it will be for the tribunal re-hearing the case to consider all aspects of valuation afresh, there is to my mind a different but quite fundamental ground upon which I have no alternative but to set the tribunal’s decision aside.

14. (1) Technically expressed, that consists in a failure to comply sufficiently with the requirements of rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 as to sufficiently setting out the findings of fact material to their decision and the reasons for their decision, as that obligation falls to be implemented in the light of Decision R(SB) 5/82 and of the practical criterion that the record of the decision must contain sufficient material to enable a claimant to understand from it why it is that his contentions have been accepted, or rejected, as the case may be.

(2) The claimant had advanced a contention which, if accepted, would have entirely displaced any proper reliance upon the District Valuer’s valuation, namely that it was essential to a proper valuation of the property, having regard to its condition, that the valuer was aware of its internal condition—but that he was not, and indeed had not set foot inside the door. But the tribunal have made no findings of fact as to whether or not they accept that such was the case, and they have indicated nothing in their reasons for decision as to why, if it was the case, they considered the contention irrelevant, or on what, if any, other grounds they rejected it. And those are, to my mind quite fatal flaws.

15. I direct that the tribunal re-hearing the appeal be furnished with a copy of my present decision and that unless displaced by other authority they accept the proposition of law I have indicated in paragraph 8 above as correctly stating the law in point; and that they also pay close regard to paragraphs 11 and 14 above as indicative of pitfalls to be avoided.

16. My decision is not to be taken as expressing any criticism of the tribunal insofar as, faced with competing valuations at differing dates—neither specifically valuing “as at” the dates truly in point— they have made an election as to which is most relevant for their purposes. However, the tribunal re-hearing the appeal should be aware that, if so requested,

professional valuers are accustomed to give opinions as to value as at any predicated past date, but will unless otherwise instructed express their opinions by reference only to the date at which the opinion is given.

17. My decision is as indicated in paragraph 1(3) above.

(Signed) I. Edwards-Jones
Commissioner
