

them and give an appropriate decision, bearing in mind the provisions of section 11(d) of the Matrimonial Causes Act 1973 and of *Hussain v Hussain* as explained above.

(Signed) V. G. H. Hallett  
Commissioner

30.3.84

R(SB) 18/84

### SUPPLEMENTARY BENEFIT

#### Single Payment—Funeral expenses: “gross value” of estate to be taken into account.

The claimant requested a single payment of £371.73 in respect of the funeral expenses of her late son. The supplementary benefit officer awarded a sum of £124.83, representing the balance of the funeral expenses less the value of the deceased's estate (£216.90) and the death grant (£30). On appeal, the tribunal confirmed the decision. The claimant appealed to a Social Security Commissioner on the grounds that (1) the value of the estate should be its net value after deduction of debts, and (2) there were persons at her appeal hearing to whose presence she would have objected had she known their status.

#### Held that:

1. the value of the deceased's estate to be deducted for the purpose of regulation 8(3)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 from the funeral expenses for which a single payment may be made is the gross value before deduction of unsecured debts (paragraph 8);
2. the “persons” to whom the claimant referred were the tribunal clerk and a presenting officer undergoing training. Under rule 6(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 the clerk was bound to be present at all hearings, and under rule 6(7) the chairman of the tribunal had jurisdiction to permit the trainee presenting officer to be present (paragraphs 4 and 5).

The appeal was dismissed.

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 5 September 1983 was not erroneous in point of law.

2. The claimant, who was at the relevant time in receipt of a supplementary pension, made a claim for a single payment to meet the expenses in connection with the funeral of her late son. The bill for such expenses as found by the appeal tribunal was £387.40, against which a discount of £15.67 was allowable in circumstances which materialised, leaving a balance of £371.73. A single payment of only £124.83 was awarded. The difference was accounted for, not by there having been any objection to the scale of the expenditure itself, but by deduction having been made under regulation 8(3)(a) of the Supplementary Benefit (Single Payments) Regulations 1981 [S.I. 1981 No. 1528] (the Single Payments Regulations) for the value of the estate of the son (found to be £216.90) and under regulation 8(3)(b) for the £30 death grant payable in respect of his death. The deduction of these amounts from £371.73 left a balance of £124.83.

3. The decision of the benefit officer that a payment of £124.83 be made was confirmed on appeal by the appeal tribunal and the claimant applied for leave to appeal to the Commissioner. In her application for leave to appeal she made (in substance) two points. First (and she had made this point to the tribunal) that the £216.90 treated as assets of his estate was money that had been paid to her son and frozen by the authorities and ought to have been paid to her, who had done all she could for him while he was in hospital; secondly there were present at the hearing a person to whose presence she had not objected, but would have objected if she had known that he was a "DHSS Observer"; and also an unnamed lady was present. I granted leave to appeal indicating that I considered the point of law that arose was whether the value of the estate of the son in terms of regulation 8(3)(a) was the value of the net estate or the value of the gross estate.

4. I will take first the claimant's point about the persons attending the hearing. I have reached the conclusion that there is no substance in it. The question who may attend a tribunal hearing is governed by rule 6 of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605]. Any interested person and any person representing an interested person is entitled to be present (see rule 6(5) and (6)). The benefit officer is an interested person and his representative may attend. The unnamed lady to whom the claimant referred must have been the tribunal clerk, who says that she was the only woman present apart from the claimant. The tribunal clerk is entitled (indeed bound) to be present at all hearings (see rule 6(8)).

5. This leaves the DHSS Observer. Under rule 6(7) the chairman is entitled to permit to be present any person who is genuinely engaged in research connected with appeals to tribunals or has other good and sufficient reason for being present at an oral hearing. This observer was present with a view to his learning about the work of a presenting officer with a view to his becoming such an officer and as part of his training. The chairman clearly had jurisdiction to permit him to be present. The claimant acknowledges that she was asked if she had any objection to his presence and said that she had none. But she says that she did so under a misapprehension. The clerk says that the chairman in fact explained to the claimant why the observer was there; but it seems that he may not have been understood. However the claimant's consent to his presence was not in strictness necessary and I am satisfied that the proceedings were entirely regular in this respect and I do not set the decision aside on this (or indeed on any) ground.

6. The second question relates to the fact that the claimant considers that the money held by her son at the date of his death ought to have been paid to her. The son's estate included as assets only the sum of £216.90 in his account at the hospital where he was being treated at the time of his death. As I understand the claimant's case she is not saying that the money in her son's account was never his at all but that it was due to her on account of her having provided goods and services for him for which she was entitled to be paid. In other words she contends that she was a creditor of the estate and that the value of the estate deducted under regulation 8(3)(a) of the Single Payments Regulations is the value of the net estate after deduction of the debts. If that contention represented the correct interpretation of regulation 8(3)(a) the claimant had sufficiently raised the point to make it obligatory for the tribunal to decide whether or not the claimant was a creditor of the estate.

7. But I have reached the conclusion that it does not represent a correct interpretation of the regulation; that it is the gross value of the estate that falls to be deducted and that the matter was in fact unaffected by the answer to the question whether the claimant was a creditor of the estate, so that it was unnecessary for the tribunal to make any finding on the point.

8. The benefit officer now concerned has submitted that the value of the estate in regulation 8(3)(a) is the net value; but then seems to modify the effect of this submission by pointing out that under section 34(1) of paragraph 1 of Part I of the First Schedule to, and section 34(3) of, the Administration of Estates Act 1925 a person's funeral and testamentary expenses are a first charge of the estate payable out of the estate in priority to anything else. He submitted therefore that a claimant entitled to claim the funeral expenses out of the estate in priority to the creditors, cannot claim a single payment for the funeral expenses on the ground that having regard to the liabilities of the estate the net estate is without value. I feel the force of this submission; but I have reached the conclusion (contrary perhaps to the benefit officer's submission) that the value of the estate falls to be computed for purposes of regulation 8(3)(a) before the deduction of the debts and liabilities payable thereout in the course of its administration, and subject only to the rights of incumbrancers, who can enforce their rights independently. I have reached that conclusion because I think that it is in conformity with the normal meaning of the word "estate" in this context, i.e. it comprises the totality of funds to be administered by the executor or administrator, out of which the various items have to be provided for (see section 34 of the Administration Act 1925 and, in Scotland, section 14 of the Succession (Scotland) Act 1964).

9. This conclusion may at first sight seem to be draconian. But its severity is counterbalanced by the priority given to funeral expenses. This of course means reasonable funeral expenses, and there is a question whether all the expenses that are allowed under regulation 8(2) of the Single Payments Regulations would be treated as reasonable expenses for the purpose of the priority given to such expenses in the administration of estates.

10. This priority is of course much older than the Administration of Estates Act 1925 and authority for it can be found as far back as Coke's Institutes. In Scotland I understand that a similar priority is accorded on grounds of decency and humanity and that it is there still necessary to look to the institutional writers for authority. I suspect that the position is very similar on either side of the border.

11. The conclusion that I have reached that it is the gross and not the net estate that falls to be valued is in harmony with the rule giving priority to funeral expenses if, and only if, it can be postulated that any funeral expenses for which a single payment can be made under regulation 8(2) of the Single Payments Regulations will also fall within the class of reasonable funeral expenses that have priority over the creditors of a deceased person's estate. And it is perhaps pertinent to enquire whether this is so. Different views may be taken in different ages of what expenses it is reasonable should be allowed to be met in front of the claim of a deceased person's creditors. In the case of *Edwards v Edwards* (1834) 2 C & M 613 Parke B (at page 615) referred to a judgment of Holt C J which was given in the 17th century in which he had said "that in strictness no funeral expenses are allowable against a creditor, except for the coffin, ringing the bell, parson, clerk and bearers, etc, but not for pall or ornament". And Parke B seemed to think that this strictness was now somewhat relaxed in the 19th century. I think that if the question of what was to be allowed as against creditors

came up in the late 20th century a Court would (in the unlikely event that its attention was drawn to regulation 8 of the Single Payments Regulations) consider that reasonable expenses included anything for which a single payment could be made out of public funds for the benefit of a recipient of supplementary benefit. My decision is not affected by the correctness of this view; but I derive some comfort from it. I realise that the claimant, who claims to be the principal or only creditor of the estate may not appreciate the conclusion. But it is the priority given by law to the funeral expenses over the claims of creditors and not my interpretation of the regulation that in reality has led to the position in which she finds herself. In a case where the claimant is not a creditor of the deceased's estate my conclusion more demonstrably does justice between a claimant and public funds.

(Signed) J. G. Monroe  
Commissioner

#### SUPPLEMENTARY BENEFIT

##### **Resources—treatment of a discretionary award from a local education authority.**

The claimant, who resided with his wife and children, was a student on a full-time course and claimed supplementary benefit at the start of his Christmas vacation. He was in receipt of a discretionary award from his local education authority. In computing the claimant's income resources, the supplementary benefit officer included £23.65 a week in respect of the grant, equivalent to the entitlement of a single person who was a non-householder. On appeal to the tribunal, the majority upheld the supplementary benefit officer's decision on the grounds that regulation 4(12) of the Supplementary Benefit (Resources) Regulations 1981 applied. The claimant appealed to a Social Security Commissioner.

##### *Held that:*

1. regulation 4(12) of the Resources Regulations was only relevant where a student was in receipt of "a mandatory grant or award by an education authority" (paragraph 7);
2. regulation 11(2)(1) of the Resources Regulations required a grant or an award made to a student as defined in regulation 2(1) of those Regulations to be taken into account as part of his income resources, subject to a £2 disregard in certain circumstances. It was immaterial whether the grant was mandatory or discretionary (paragraph 9);
3. the claimant, being "a partner with a dependant", was entitled to a £2 disregard under regulation 11(2)(1)(ii) (paragraph 9);
4. in identifying how much of the discretionary grant was applicable to the vacation period, it was necessary to have regard to the provisions of regulation 9 of the Resources Regulations (paragraph 10).

The appeal was allowed.

1. I grant the claimant leave to appeal against the decision of the supplementary benefit appeal tribunal given on 22 March 1983. I further decide that, for the reasons set out below, the tribunal's decision is erroneous in point of law and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal.