Resources

– Life Assurance Policies

C.S.B. 624/81 (OWEN)

// This decision is "starred" because it holds that the surrender value of a life assurance policy must be taken into account as a claimant's resource and is not merely a notional resource which may be taken into account.

MJG/AG

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the supplementary benefit appeal tribunal is not erroneous in law, with the result that the claimant is not entitled to supplementary benefit for such time as he and his wife possess life assurance policies, the combined surrender value of which exceeds £2,000 (or such sum as shall be substituted for that figure by regulations): Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980), Schedule 1 paragraph 1 and the Supplementary Benefit (Resources) Regulations 1980 /S.I. 1980 No 1300/, regulations 2(1), 4(2), 5, 6 and 7. The claimant's appeal against the majority decision of the supplementary benefit appeal tribunal is therefore dismissed.

2. The claimant is a married man aged 60, living with his wife (who is his "partner" within the meaning of the above-cited Resources Regulations, regulation 2(1)), with the result that his and his wife's resources are aggregated together for supplementary benefit purposes. Unfortunately in February 1980 the claimant became redundant and his subsequent claim to supplementary allowance was disallowed by the supplementary benefit officer on the ground that the claimant and his wife's combined capital resources exceeded the maximum figure for entitlement to supplementary benefit (currently prescribed as £2,000 - see regulation 7 of the above-cited Resources Regulations). Those resources would not have exceeded £2,000 had there not been included in the benefit officer's calculation the combined surrender value (of £6,556 approximately) of 3 life endowment insurance policies belonging to the claimant and/or him and his wife jointly (the exact ownership of the policies is not clear in the evidence before me). The claimant must have obtained particulars from the insurance companies concerned of the surrender values but he had not applied to those insurance companies for payment of these values. Indeed he later charged the insurance policies to his bank to secure an overdraft but at the date of the claim and the hearing before the supplementary benefit appeal tribunal the policies were not charged. Had they been, then under regulation 5(a)(ii) of the above-cited Resources Regulations the amount

of the charge, i.e. the current overdraft, could have been deducted from the surrender value. However on the figures as they are before me at present, the overdraft figure would not have reduced the policies below £2,000 in surrender value.

3. The claimant appealed to the supplementary benefit appeal tribunal against the benefit officer's decision. By a majority the tribunal rejected the claimant's appeal, holding that the surrender values of the 3 insurance policies were to be regarded as capital resources. In his appeal to the tribunal and to the Commissioner, the claimant emphasises that in his view it is uneconomic to surrender life assurance policies, in particular shortly before they are due to mature. For the purposes of this appeal, I am prepared to accept that it may well be a bad or uneconomic financial practice to surrender insurance policies rather than to leave them to mature (either "frozen" or by continuing to pay the premiums), or to assign them for a value which may well be more than the surrender value.

4. However, the question which I have to decide is whether on the law as to supplementary benefit the surrender values of the 3 life insurance policies should be taken into account as part of the claimant's resources. The legal starting point is Schedule 1 of the Supplementary Benefits Act 1976 (as substituted by the Social Security Act 1980), paragraph 1 of which provides that a person shall be entitled to supplementary benefit to the extent that his "resources" fall short of his "requirements". Paragraph 1 also provides that, if a person's resources exceed a prescribed amount, he shall not be entitled to supplementary benefit. As to "resources", paragraph 1(2)(b) provides that "a person's resources shall be calculated in the prescribed manner" and adds that regulations "may provide for a person to be treated as possessing resources which he does not possess and for disregarding resources which a person does possess". The relevant regulations are the Supplementary Benefit (Resources) Regulations 1980 /S.I. 1980 No 1300/. Those regulations have been superseded by the Supplementary Benefit (Resources) Regulations 1981 /S.I. 1981 No 1527/, consolidating the 1980 Regulations (which were in force at the time of the claim in this case), together with subsequent amendments. None of the subsequent amendments or the consolidation of the regulations in any way affect the law as it applies to this decision.

5. Neither "resource" nor "resources" are specifically defined in the 1976 Act or in the Resources Regulations. It is however in my view implicit in the Act and those Regulations that "resource" bears a meaning similar to that of "property" and is analogous to statutory definitions of "property", e.g. in section 205(1) (xx) of the Law of Property Act 1925, which provides that "property" includes "any thing in action, and any interest in real or personal property", (as to the meaning of "thing in action", see below). The Resources Regulations give specific examples of resources which are to be taken into account or which are to be disregarded (see regulations 5 and 6) but, subject to those, I consider that "resource" has much the same meaning as that of "property".

6. That is important in this case because the Resources Regulations do not in terms refer to insurance policies, including life

assurance policies. However, there is a general provision in regulation 5 which tends to suggest that the surrender value of a life insurance policy is to be regarded as a capital resource in possession. The Regulation (so far as is material) provides:-

> "Calculation of Capital Resources
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> 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 -
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> (a) at their current market or surrender value less -
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> (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
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> (ii) any outstanding debt or mortgage secured on them;" (my underlining)

The reference to surrender value points in my view to the Regulation contemplating that the surrender value of life insurance policies should be taken as a capital resource in possession. The expression "surrender value" must be designed to deal with insurance policies, though there are of course other items of property which have a "surrender value", e.g. a leasehold interest in land.

7. Regulation 6 of the Resources Regulations deals with a number of "capital resources to be disregarded". Regulation 6(1)(c) provides that the value of any "personal possessions" shall be disregarded but with a significant proviso, "except any which are in the nature of an investment". This again is some indication that any item which is in the nature of an investment is to be taken into account as a resource and a life insurance policy is undoubtedly to be regarded as an "investment" though not of course a "personal possession". I note that regulation 6(1)(a)(vi) excepts "any reversionary interest". In one sense it could be argued that a life assurance policy that has not yet matured, either on endowment or on death, confers only a "reversionary interest". However, in my view the expression "reversionary interest" (which is not defined in the Act or regulations) refers to the well-known and characteristic type of interest in property under a will, trust, or settlement which will not vest in possession until an event occurs, usually the death of e.g. a life tenant. It would be unduly to strain language in my view to regard a life policy as being a "reversionary interest" (cf. In re Fisher, Harris v Fisher [1943] ch. 377). In my judgment, a life insurance policy is a present interest. Indeed it is what is described in section 205(1)(xx) of the Law and Property Act 1925 as a "thing in action" (sometimes known as a "chose in action"), i.e. a right to sue (if needful) an insurer for such sums as the insurer under the terms of the policy undertakes to pay. Those sums include the surrender value of that policy. The right to sue for that value is a present "thing in action" (cf. In re Moore, Ex parte Ibbetson (1878) 8 Ch. D. 519).

8. The dissenting member of the tribunal and the claimant place great stress on regulation 4 of the Resources Regulations. Regulation 4 is headed "Notional resources" and is therefore clearly in pursuance of the provision of Schedule 1, paragraph 1(2) of the 1976 Act that regulations may provide for a person to be treated as possessing resources which he does not possess. Regulation 4 cannot therefore apply in my judgment to a present resource which a claimant does actually possess. I consider that a life insurance policy, even before it has matured, does come under the category of an actual resource and does not constitute, even in its surrender value, a "notional resource".

9. The point is important because regulation 4(2) of the Resources Regulations (so far as is material) provides:-

> "4 - (2) Any resource which -
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> (a) would become available to a person upon application duly being made, but which has not been acquired by him; or
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> (b) is due to be paid to a person, but which has not been paid to him,
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> may if, in the opinion of the benefit officer it is reasonable in the circumstances to do so, be treated as if it were possessed by him." (my underlining).

If I accepted the claimant's contention that, as he had not actually been paid the surrender value of the life insurance policies, the surrender values merely constituted a "notional resource", then in my view the decision of the tribunal would have to be set aside because there is no evidence that they or the benefit officer considered whether or not, to quote regulation 4(2), "it /was/ reasonable in the circumstances" to treat the surrender value as being possessed by the claimant. Moreover, if regulation 4(2) applied, the claimant would no doubt wish to argue to the benefit officer or to the tribunal that it was not reasonable in the circumstances to require him to surrender the value of the policies, e.g. to invoke the economic argument. It may not be easy to envisage to what type of resource regulation 4(2) does refer, bearing in mind that a right to sue is a "thing in action" and therefore a present and actual resource and not a notional resource. Presumably regulation 4(2) applies to sums of money, items of property or "things in action" which a claimant does not actually have in his possession but is due (legally or not) to acquire. An income-tax refund,

a social security benefit, a share in the residuary estate of a deceased person, or a large football pool win, might all come in this category. In such cases, only regulation 4 (notional resources) can apply and not regulation 5 (actual resources). If, however, a resource comes within regulation 5, it must be taken into account and I hold that the surrender value of a life assurance policy comes in that category.

(Signed) M J Goodman
Commissioner

Date: 6 October 1982

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