

Appellant's Name: Robert Borland

Commissioner's File No: C.S.B. 643/81

*Single Payments
Capital rule
+ dependants
Savings*

Regulation 5 of the Single Payments Regulations imposes a capital limit of £350 (formerly £300). Capital in excess of that limit bars entitlement. (This is a coarse summary of a provision which is set out in full in the decision.)

Is the capital referred to that of the claimant only - or does it include that of his partner and dependants? My own view is, and has always been, that it is so inclusive. However, an eminent Commissioner, whose views on such issues command universal respect, has considerable reservations. He stresses that -

- (a) regulation 5 opens with the words "Where a claimant has ... " and not "Where a claimant and a partner and any dependant have ... "; and
- (b) there are many items the potential subject of a single payment (e.g. grandmother's funeral) in respect of which a parent could not "rob" his child's capital without committing a breach of trust and/or exerting undue influence.

It is clearly desirable that the Commissioners should present a united front (one way or the other) on this important issue. Fortunately (as can be seen from paragraph 11) I have been able to express my own view in the knowledge that, if it is wrong, this particular claimant will not, in the long run, suffer prejudice.

J M:

JM/JCB

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Robert Borland

Supplementary Benefit Appeal Tribunal: Norwich

Case No: 11/88

ORAL HEARING

1. This is a claimant's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 20 August 1981 which confirmed a decision of the benefit officer issued on 26 June 1981.

2. I held an oral hearing of the appeal. The claimant attended. The benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. The hearing was a short one. The claimant, with commendable good humour, readily conceded that his case could not stand in the light of a decision of a Tribunal of Commissioners which was promulgated after I had given to the claimant his leave to appeal. I myself raised a different point upon which it had seemed to me to be possible that the claimant might succeed. Having heard Miss Shuker, however, I have concluded that that point cannot be sustained.

3. The claimant is a married man with two dependent daughters. At the material time he was unemployed and had exhausted his unemployment benefit. He was in receipt of a supplementary allowance. On 15 June 1981 he claimed a single payment to meet the cost of repairs to his gas cooker which had developed a gas leak. In addition, the oven thermostat was not working. He later submitted an estimate in the sum of £46.72.

4. At the material time the claimant had an overdraft which was secured by way of a second charge on his house. He also owed £75 to the Legal Aid Fund. On the other hand, his wife had a credit of £1.06 in a Building Society account and his daughters had, respectively, credits of £156.01 and £199.15 in accounts with the National Savings Bank (total of credits: £356.22).

5. At the date of the claim regulation 5 of the Supplementary Benefit (Single Payments) Regulations 1980 S.I. 1980 No 985

provided as follows:

"5 Where a claimant has any available capital which is in excess of £300, any single payment which would, but for this regulation, be payable shall be payable only to the extent that its amount, or where more than one single payment falls to be made on the same day their aggregate amount, exceeds the amount by which that capital exceeds that £300."

Among the definitions set out in regulation 2(1) appeared:

"'available capital' in relation to a claimant means capital which falls to be disregarded under regulation 6(2) of the Resources Regulations;"

Regulation 6(2) of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] provided as follows:

"(2) Where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations is £2,000 or less, those resources shall, except in so far as any provision of the Act or regulations made pursuant to it provides otherwise, be disregarded."

6. I ought also to refer to the general principles of aggregation enshrined in sub-paragraphs (1) and (2) of paragraph 3 of Schedule 1 to the Supplementary Benefits Act 1976:

"(1) Where two persons are a married or unmarried couple, their requirements and resources shall be aggregated and treated -

(a) until the prescribed date, as those of the man;
and

(b)

(2) Where a person is responsible for, and is a member of the same household as, another person and they are not a married or unmarried couple, then -

(a) if the other person is a child or is excluded from entitlement to supplementary benefit by Section 6(2) of this Act; or

(b) if the circumstances are such as are prescribed,

their requirements and resources shall be aggregated and treated as those of the first-mentioned person."

7. The benefit officer decided that the claimant had "available capital" in the sum of £356.22. Since this was in excess of £300, he disallowed the claim. The claimant appealed to the appeal tribunal. He contended that it was unfair to assess his available capital in terms only of assets - i.e. without having regard to his liabilities. I need say no more in respect of this contention. The claimant accepts that it is untenable in the light of paragraph 14 of Tribunal of Commissioners' Decision R(SB) 2/83. Without the assistance of that decision, the appeal tribunal correctly disregarded the claimant's liabilities. It disallowed his appeal.

8. The point which troubled me was whether it was legitimate for the purposes of regulation 5 of the Single Payments Regulations 1980 to take account of capital resources other than those of the claimant himself. As a matter of principle there cannot, of course, be any objection to requiring a claimant's partner to expend his or her capital upon the requirements of the assessment unit. This is by no means so clear in the case of children. Is it equitable to treat a parent as having unfettered access to his child's capital? The Resources Regulations reflect a negative answer. Regulation 8(1) of the 1980 version read as follows:

"(1) Where -

- (a) a claimant's capital resources as calculated in accordance with these regulations exceed the sum specified in regulation 7; but
- (b) those resources would be reduced to or below that sum if the capital resources of a dependant were disregarded,

the capital resources of that dependant shall be disregarded as a capital resource, but shall be treated as producing a weekly income resource equal to the weekly requirements which would be applicable to that dependant under Parts II and III of the Requirements Regulations (normal and additional requirements)."

(It will be recalled, of course, that in this context "dependant" does not include a partner. It means "a person whose requirements and resources are by virtue of paragraph 3(2) of Schedule 1 to the Act aggregated with and treated as those of the claimant" - see regulation 2(1) of the Resources Regulations.)

9. Despite these reservations, however, I am driven to conclude that regulation 5 of the Single Payments Regulations requires account to be taken of the capital resources both of a partner and of any dependant. As appears from paragraph 5 above, the 1980 version of that regulation opens with the words "Where a claimant has any available capital which ...". "Available capital" means "capital which falls to be disregarded under regulation 6(2) of the Resources Regulations." The capital which "falls to be disregarded" under that regulation is categorically stated to include the capital resources of a partner or dependant. If the draftsman of regulation 5 of the Single Payments Regulations did not intend that account should be taken of the capital resources of a partner or dependant, I am at a loss to understand why he referred to regulation 6(2) of the Resources Regulations at all.

10. If the conclusion which I have expressed in paragraph 9 above is correct, it applies with equal force to the 1981 versions of the Single Payments Regulations and of the Resources Regulations. Regulation 5 of the Single Payments Regulations 1981 is identical to the equivalent regulation in the 1980 version, save that it opens with the words "Except in so far as regulations 16, 21, 25 and 30 provide otherwise, where a claimant has any disregarded capital which is in excess of £300 ". It will be seen that the phrase "disregarded capital" has replaced the phrase "available capital". In consequence, there is no definition of "available capital" in regulation 2(1) of the 1981 version. Instead, there is a definition of "disregarded capital", which definition is identical to the former definition of "available capital". The change is manifestly one of form and not of substance. Regulation 6(2) of the Resources Regulations 1981 repeats verbatim the wording of its equivalent in the 1980 version. It has, of course, subsequently been amended so as to raise the figure of £2,000 to £2,500; but that cannot affect the point of construction which I have canvassed in paragraph 9 above.

11. The claimant told me that his gas cooker is still in need of the repairs which gave rise to his original claim. He also told me that his daughters' capital has now been so eroded as to reduce the assessment unit's "disregarded capital" to a sum below £300. He is still in receipt of supplementary allowance. I advised him, accordingly, to make a fresh claim for a single payment forthwith. I cannot, of course, forecast the outcome of such claim. It will involve issues (e.g. the actual state of his cooker) which are beyond the purview of this decision.

12. The claimant's appeal is disallowed.

(Signed) J Mitchell
Commissioner

Date: 20 April 1983

Commissioner's File: C.S.B. 643/1981
CSBO File: 778/81