

DGR/BR

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Decision CSB 16/82

R(SB)18/82

1. My decision is that the decision of the supplementary benefit appeal tribunal given on 26 August 1981 was erroneous in point of law, and accordingly I set it aside. I direct that the matter be reheard by a differently constituted tribunal in accordance with the principles here set out.

2. The claimant became redundant in 1979. He then sold his bungalow for £23,000, and applied £12,000 out of the proceeds of sale in the purchase of the good-will and stock-in-trade of a business known as "the Dairy Box". Some two years later he sold the business for £7,260.93. The proceeds of sale were put into his building society account, which on 17 June 1981 stood at £18,331. The claimant had previously surrendered 2 insurance policies for £857.20 and £116.84 respectively. He claimed supplementary benefit, stating that he intended to use his capital to buy a house for £22,500 and that to facilitate the purchase he would be obtaining a mortgage of £3,500. Initially, the claimant was awarded £5.87 weekly from 28 May 1981, but when subsequently the benefit officer discovered that the claimant had capital which exceeded £2,000, the original award was in accordance with a revised decision withdrawn with effect from 13 August 1981. However, there is no question of the claimant's being required to repay benefit, the overpayment having arisen through a pure administrative error on the part of the Department.

3. But, before the error was discovered, the claimant had lodged an appeal against the amount of the award. On hearing the appeal the supplementary benefit appeal tribunal by a majority reversed the benefit officer's revised decision. Their reasons were as follows

"The majority of the tribunal considered that [the claimant's] capital resources (excluding the surrender value of the insurances) are attributable to the proceeds of the sale of his bungalow in 1979 and that it is reasonable in the circumstances to allow a longer period than 6 months (as in Regulation 6(1)(b) Resources Regulations 1980). The circumstances which make it reasonable are that his business and home were as one for all practicable purposes".

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4. The benefit officer applied to the Commissioner for leave to appeal against that decision, and the necessary leave was given. He also asked for an oral hearing of the appeal, a request to which I acceded. At that hearing the benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security and the claimant by Mr P Jones, a solicitor from the Nottingham Citizens' Advice Bureau. I am grateful to them both for their submissions.

5. The regulations relevant to this appeal are the Supplementary Benefit (Resources) Regulations 1980 S.I. 1980 No 1300 of which regulations 2 and 6(1)(b) are apposite. These two regulations have been re-enacted in identical terms apart from certain immaterial verbal amendments as regulations 2 and 6(1)(b) of the Supplementary Benefit (Resources) Regulations 1981 S.I. 1981 No 1527 and for convenience I set them out in their re-enacted form.

Regulation 2 defines "Home" as meaning

"the accommodation, with any garage, garden and out-buildings, normally occupied by the assessment unit and any other members of the same household as their home and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft".

Regulation 6(1)(b) provides as follows:

"6(1) In calculating a claimant's capital resources the following shall be disregarded

(a)

(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within six months of the date of sale or such longer period as is reasonable in the circumstances".

6. Miss Shuker argued that the claimant had received £7,260 for the sale of a business and accordingly on no footing could he rely on Regulations 6(1)(b). This sum constituted part of the claimant's capital resources, and as it exceeded £2,000, the claimant was simply not entitled to supplementary benefit (Regulation 7). The majority of the tribunal had, therefore, erred in law.

7. Mr Jones, however, argued that in purchasing the business the claimant had as part of the transaction acquired the lease of a home. Conversely, when he sold the business, he had at the same time disposed of a home. The good-will could not be severed from the shop or the shop from the flat above. He could not sell the home independently of the shop, as the home and the shop were part of the same building and,

for that matter, were included in the same lease. Admittedly, the stock-in-trade had nothing to do with the home, but if this was valued independently of the good-will, its knock-down value might well be minimal, far below £2,000, even if the proceeds of the surrender of the insurance policies were added to it. Mr Jones argued that the definition of 'home' contained in Regulation 2 was wide enough to cover the present case. It would be impracticable to sell the shop independently of the living accommodation over the shop, and likewise impracticable to sell the good-will without also assigning the lease of the shop. In other words, the transaction could not be dissected, and the effect of the wide definition in Regulation 2 was that the proceeds of sale should be treated as the proceeds of sale of a home.

8. Moreover, according to Mr Jones, the residue of the original £23,000 which the claimant had received for the sale of his bungalow in 1979 was manifestly identifiable with a home, and it was reasonable in the circumstances that this sum together with the proceeds of sale of "the Dairy Box" should be disregarded for the purposes of calculating the claimant's capital resources, notwithstanding that more than the statutory six months' period had elapsed. At the time the insurance officer made his decision the claimant was intending in the very near future to purchase a new house, and there was nothing improper in the tribunal's decision to extend time.

9. In answer to this Miss Shuker submitted that the essential nature of the transaction was that the claimant had sold a business. Admittedly, it included the assignment of a lease of domestic premises, but this was very much a matter incidental to the fundamental character of the transaction. The claimant therefore could not rely on Regulation 6(1)(b).

10. The difficulty surrounding this case is that the subject matter of the disposal consists partly of residential accommodation and partly of a business. The fact that the claimant purchased good-will and stock at valuation and subsequently disposed of these two items, without any sum being assigned to the acquisition or disposal of the lease, suggests that the predominant character of that subject matter was the business rather than the domestic accommodation. However, the fact still remains that the purchaser of the business also obtained residential accommodation. Accordingly, it may be that part of the sum paid for the good-will represented the benefit of such accommodation. I say "may be", because there are no figures to support or repudiate this possibility. There is nothing in the papers to show what rent was paid for the shop or the living accommodation. For all I know, it may be that the rent payable in respect of the living quarters was so high as to cause the value of the good-will of the business to be less than it would otherwise have been, in which event the value of the living accommodation was nil, or, more accurately, a negative quantity. Alternatively, the rent for the living accommodation may have been sufficiently low for the transfer of the lease to represent a considerable benefit to the transferee and to constitute a substantial part of the consideration for the purchase price of the business. There is simply no evidence on these matters.

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11. In my judgment, neither Miss Shuker nor Mr Jones are correct in their submissions. The subject matter of the original purchase by the claimant and of his subsequent disposal consists of two elements, the business in its strict sense and the living accommodation which went with it, and these must be separately valued. I am not, of course, suggesting that any professional valuation is called for, I consider that the tribunal should merely use their endeavours to assess the position as best they can on the evidence before them.

12. In practice a claimant will not be entitled to supplementary benefit if his capital resources exceed £2,000 and the very modesty of this figure will probably prevent any undue difficulty. In the present case it must be borne in mind that the claimant has assets representing £974.04 from the surrender of his insurance policies, which on any footing have nothing to do with the sale of a home, and he undoubtedly received something for the stock. It may well be that these two items in themselves exceed the £2,000 but at the moment there is insufficient evidence for a determination to be made.

13. However, the majority of the tribunal were erroneous in point of law, in that they failed to consider the value of the stock, and whether or not, when taken with the proceeds of the surrender of the insurance policies, it exceeded £2,000. Moreover, irrespective of this consideration, the tribunal also failed to consider how much of the proceeds of sale of "the Dairy Box" represented the value of the good-will of the business and the assignment of the shop lease. They were not entitled, in my judgment, to treat the entirety as attributable to the claimant's home. The definition in Regulation 2 is not sufficiently wide to take in a transaction, which at least on the face of it partakes of the nature of a sale of a business.

14. The decision of the tribunal is erroneous in point of law, and it must be set aside. I direct that the matter be reheard by a differently constituted tribunal in the light of the principles here set out.

15. I allow this appeal.

Signed D G Rice
Commissioner

Date: 27 April 1982

Commissioner's File: C.S.B. 696/1981
C SBO File: SBO 944/81