

JM/MP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

CSB 739/1981

*was on a property to be regarded as for sale*

1. This is a claimant's appeal, brought by my leave, against a decision of the supplementary benefit appeal tribunal dated 31 July 1981 which confirmed a decision of the benefit officer issued on 2 June 1981.

2. At the material time the claimant was a single man aged 42. Apart from short periods of casual work, he had been unemployed and in receipt of supplementary benefit for several years. He was abroad on holiday from 23 April 1981 to 7 May 1981. Upon his return he re-claimed supplementary benefit. He disclosed that his mother had died on 26 March 1981 and that, in consequence, he had inherited a house which was valued at £12,250. The benefit officer disallowed the claim upon the ground that the claimant's capital resources exceeded the limit of £2,000 then imposed by regulation 7 of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300].

3. The claimant appealed to the appeal tribunal. He relied upon the provisions of regulation 6(1)(a)(iii) of the Resources Regulations 1980:

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

(a) the value of -

(i) .....

(ii) .....

(iii) any premises which are for sale and the value of which it would be reasonable in all the circumstances to disregard for such period as the benefit officer may estimate as that during which the sale will be completed,".

His case was that, although the house had not been put upon the open market until 8 June 1981, it had prior thereto been offered for sale to a neighbour of his deceased mother.

4. The note of evidence taken by the chairman of the local tribunal contains the following passage:

"[The claimant's] mother's dying wish was that the house should first be offered to the next door neighbour. Letter from neighbour shown to Tribunal. Mr Allan [the claimant's representative] said that valuation had to be made before the house could be up for sale and so it was in fact earlier than 8/6/81. The delay took place because the house was offered to the next door neighbour and he did not make an offer straight-away."

5. A copy of the letter from the neighbour is in the papers. It is dated 23 June 1981 and addressed to the claimant. I quote therefrom:

"Thank you for giving me the first opportunity to purchase what is now your property .....

I feel that £12,250 quoted by your valuers for your property is a little more than I had in mind. However the figures I had thought of for No 97 was between £10-10½ thousand.

I trust you will be able to get the price you are looking for in the not too distant future."

6. The findings of fact as recorded by the appeal tribunal were as follows:

"The representative said that the delay in putting the house up for sale was caused because [the claimant's] mother had requested that first offer on the property be offered to the neighbour. This neighbour did not make a firm offer and so [the claimant] proceeded with the sale arrangements. The Tribunal noted that the Benefit Officer in his observations did say that Benefit would be paid when the house was for sale."

7. The appeal tribunal confirmed the benefit officer's decision. Its reasons were expressed thus:

"The Tribunal find that in accordance with Regulation 5(a) of the Supplementary Benefit (Resources) Regulations 1980, the value of the property should be taken into account until such time as it is for sale. [The claimant] commenced arrangements for the sale on 8 June 1981."

8. The benefit officer now concerned submits that the conclusion reached by the appeal tribunal is not supported by adequate findings of fact or by adequate reasoning - and I agree with him. Moreover, the appeal tribunal, although sitting on 31 July 1981, does not specify unambiguously the date from which the property is to be

regarded as having been "for sale". I do not wish to sound over **ensorious** of the appeal tribunal. These were still relatively early days in the administration of the new system which came into effect on 24 November 1980. We have all learnt a great deal since then. It must be stressed, however, that there is a clear distinction between a note of evidence and a finding of material fact. Entries such as "The representative said that ...." fall into the former but not the latter category.

9. The benefit officer now concerned has also, and very properly, drawn attention to an apparent misconstruction by the appeal tribunal of the phrase "for sale". A distinction seems to have been drawn between an attempt to sell privately and the attempt to sell on the open market. Only the latter was accepted as falling within that phrase. In my view, the regulation affords no warrant for such a distinction. It is by no means unusual for a neighbour or a friend to ask to be given first refusal of a particular property. There is no reason at all why that property should not be regarded as being "for sale" whilst negotiations with such neighbour or friend are in progress. The rationale of the regulations is clear. Prima facie, a man is not to be entitled to supplementary benefit so long as he owns premises, other than his home, the value of which (when assessed in accordance with regulation 5(a) of the Resources Regulations) brings his capital resources above the prescribed limit. An exception is made, however, for a man who has bona fide set about selling those premises. There is neither rhyme nor reason in insisting, as a matter of principle, that the exception shall not apply until the premises have been put on the open market. An approach to an interested neighbour or friend may well result in a speedier sale than would be obtained on the open market. It is to the bona fide aspect that attention should be primarily directed. The determining authorities should satisfy themselves that private negotiations are not a mere delaying sham.

10. From what date is a property to be regarded as having been "for sale"? In my view the rationale of the regulation calls for a non-technical approach. Three processes are normally involved in bringing real property into the "for sale" category:

- (a) The owner reaches the decision to sell.
- (b) The owner takes overt action in furtherance of that decision. This will normally take the form of putting the sale in the hands of a solicitor or estate agent. It may, however, take the form of communicating with a prospective purchaser who has already expressed an interest in the property.
- (c) Where there is no specific prospective purchaser in mind, or when negotiations with such purchaser have proved abortive, the property is advertised on the open market.

I consider that, for the purposes of regulation 6(1)(a)(iii), the property should be regarded as being "for sale" as soon as step (b)

above has been taken. I see no good reason why a bona fide vendor should be deprived of supplementary benefit during the period (usually brief) when the professionals are valuing his property and composing the panegyrics which will feature in the particulars of sale.

11. As appears from the foregoing, the appeal tribunal did not investigate the "for sale" issue in adequate depth. There is not sufficient material before me to enable me to perform that exercise myself. Moreover, I am in no position to estimate the period appropriate to the completion of the proposed sale. The case must be reheard.

12. My decision, accordingly, is as follows:

- (1) The claimant's appeal to the Commissioner is allowed.
- (2) The decision of the appeal tribunal dated 31 July 1981 is erroneous in law and is set aside.
- (3) The case is remitted to a differently constituted appeal tribunal for rehearing in accordance with the principles of law set out in this decision.

(Signed) J Mitchell  
Commissioner

Date: 24 May 1983

Commissioner's File: C.S.B. 739/1981  
CSBO File: 906/81