

CSB 894/1982

JGM/BW

Reserve

*- investments, value of
- urgent need trap.*

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: Rachel Marsh (Mrs)

Supplementary Benefit Appeal Tribunal: Greater Birmingham

Case No: 5/178

ORAL HEARING

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 12 May 1982 is erroneous in point of law and is set aside. The matter must be referred back to another tribunal.

2. The claimant was refused supplementary benefit on the ground that she had resources in excess of the figure mentioned in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] (the Resources Regulations). The relevant figure at the time of the present decision was £2,000 which was increased to £2,500 with effect from 22 November 1982 and further to £3,000 with effect from 21 November 1983. As the claim is for a continuing benefit the tribunal to whom the matter is referred back will, in relation to any period for which the increases had effect, have to take account of them.

3. According to the form LT 205 the relevant resources possessed by the claimant were as follows:-

Invested in son's company	£2,000
Loan to son's company	£1,550
Loan to elder son	£2,000
	<hr/>
	£5,550.

The claim was made for an allowance alternatively under the Supplementary Benefit (Urgent Cases) Regulations 1981 [S.I. 1981 No. 1529] (the Urgent Cases Regulations) on the basis that the capital resources were not readily available to the claimant, but this too was rejected on the grounds mentioned

below. The claimant appealed to the appeal tribunal who dismissed the appeal. In their findings of fact they recorded that the claimant had notional capital resources of £5,550 but this was not readily available to her. Their reasons were in substance those of the benefit officer in connection with the Urgent Cases point; they gave them as follows:-

"Under Regulations 3 and 5(3) of the Urgent Cases Regulations the appellant was not entitled to short term urgent needs payment for the first 14 days of her claim and is thus subsequently excluded under regulation 5(7)(a) of the Urgent Cases Regulations. The Tribunal agreed with the view of the Regulations set out in the Chief Supplementary Benefit Officer's memo No 7 para 12."

4. The claimant now appeals to the Commissioner. She was represented at the oral hearing before me by Miss Janet Allbeson of the Child Poverty Action Group and the benefit officer was represented by Mr M N Qureshi of the Solicitor's Office of the Department of Health and Social Security. The memorandum of the Chief Supplementary Benefit Officer referred to in the decision is not before me, but Miss Allbeson and Mr Qureshi made clear to me the argument on the construction of the relevant regulations.

5. No question of an allowance under the Urgent Cases Regulations arose unless the claimant's resources exceeded the limit in regulation 7 of the Resources Regulations; and on a claim for an supplementary allowance this was clearly open in addition to the point under the Urgent Cases Regulations.

6. The claimant was not entitled to an allowance (apart from the Urgent Cases Regulations) for any week in relation to which her resources exceeded the figure currently in regulation 7. Thus if, as per the form LT 205, she had at all times resources of £5,500 she was never entitled to an allowance apart from the Urgent Cases Regulations. The LT 205 statement was not however by itself a satisfactory statement of resources because it indicated the amounts lent or invested, and the first question in issue was the value of the investments or loans, not the amount actually invested or lent. Money may be invested in a company in the form of shares or in the form of loans, and although I now have evidence that seems to show that the amounts involved in this case were all loans that does not mean that the claimant's resources were equivalent in value to the amounts lent. A person who lends money to another substitutes among his or her resources for the money lent the debt owed to him or her, which may or may not be of equivalent value. If a person pays money into a (not overdrawn) account with a recognised bank (thereby lending the money to the bank) it may be sensible to treat the debt of the bank as equivalent in value to the amount paid in. But with debts to individuals or their private companies this is far from necessarily so. Indeed

in the present case I now have some evidence that it was not so, although at least one of the debts owed to the claimant seems to have been secured by a mortgage on land.

7. The tribunal's finding on the point was that the claimant had notional resources of £5,500. In fact her investments and loans were actual not notional resources, which ought to have been valued as such. Regulation 4 of the Resources Regulations contains provision under which there is a discretion to treat as assets assets that the claimant does not actually possess. Amongst such assets are, under regulation 4(1), resources of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit. If a person lends money to another, thereby substituting among his resources the resulting debt for the money lent, that person no doubt deprives himself of the money lent, and if he does so for one of the purposes mentioned in regulation 4(1) the money lent could be included among his notional resources. But no suggestion had been made that the claimant had had any such purpose in investing or lending the money in question and there was no evidence on which such a conclusion could have been reached, and I am forced to the conclusion that the tribunal meant actual resources when they used the phrase notional resources. But the actual resources were not the moneys invested or lent but the resulting investments or debts. No attempt seems to have been made to adduce evidence on these values and in my judgment there was a clear error of law here. The new tribunal will receive evidence as to such values. If they find them less than the relevant figure from time to time in regulation 7 they can make an award of an allowance for that period without reference to the Urgent Cases Regulations. But if in relation to any period they find the value of the resources exceeds that limit the question of payment under the Urgent Cases Regulations will arise; and I now turn to that question,

8. An award of an allowance may possibly be made under the Urgent Cases Regulations notwithstanding the claimant's resources if (among other instances) the claimant's resources are not readily realisable (regulation 18). The appeal tribunal found that the claimant's resources were "not readily available"; but this conclusion will be open for reconsideration by the new tribunal. But even if the new tribunal conclude that the claimant's resources or a relevant part of them were not readily realisable, or that the claimant's case falls within one of the others of regulations 8 to 24 of the Urgent Cases Regulations, there are still other potential obstacles to overcome. Thus under regulation 3 a claim may fail on the ground that funds to meet the expenses in question are readily available to the assessment unit from its own resources or other resources (for example friends, relatives, credit facilities or a voluntary organisation); or it might turn out that on computing the allowance payable under regulation 5 nothing is in fact payable. This last was the ground on which the tribunal refused payment under the Urgent Cases Regulations.

9. Regulation 5 is long and I set out only those parts of it that are relevant on the present appeal:-

"5(1) The amount of any pension or allowance to which a claimant is entitled under these regulations shall, except in a case to which regulation 23 applies which relates to unmarried couples be the amount by which his resources fall short of his requirements.

(2) For the purposes of ascertaining that amount -

(a) the claimant's requirements shall be determined in accordance with paragraph 2 of Schedule 1 to the Act except in so far as it is modified by paragraph (3) of this regulation;

(b)

(c)

(3) The modifications mentioned in paragraph (2)(a) shall be as follows:-

(a) for 14 days beginning on the first day of the period to which paragraph (7) applies, and for any day thereafter falling before the first day of the benefit week beginning next after the 14th day, the weekly amount applicable for normal requirements shall be -

(i)

(ii) in respect of a claimant who is a householder or a person to whom paragraph 1 or 2 of Schedule 1 to the Supplementary Benefit (Requirements) Regulations 1980 (non-householders other than dependants) applies, the ordinary rate for the time being applicable to that householder or other person less 25 per cent,

(iii) to (ix)

any sum of 25 per cent which is not a multiple of 5 pence being rounded down to the nearest such multiple; (b) for the period to which subparagraph (a) applies no additional or housing requirements shall be applicable; (c) for any period subsequent to the period to which subparagraph (a) applies the claimant's requirements shall be determined in accordance with paragraph 2 of Schedule 1 to the Act except that -

(i)

(ii)

(4)

(5)

(6)

(7) The period for which any amount of pension or allowance is payable by virtue of any regulation in these regulations shall be -

(a) the period during which the conditions of entitlement applicable continue to be satisfied; or

(b) the period, if any, specified in that regulation.

whichever is the shorter, but in any case not to begin before the day on which the claim is made."

10. It is not in dispute that the claimant's normal requirements at the relevant time, computed as indicated in regulation 5(2)(a) but without reference to the modifications under regulation 5(3), amounted to £29.60 and that this amount if reduced under regulation 5(3)(a)(ii) by 25 per cent comes to £22.20. The claimant is entitled to a retirement pension of £28.42; it is therefore accepted that for 14+ days no allowance could be paid to the claimant because the effect of the modifications in regulation 5(3)(a)(ii) and (b) is that for that period her resources exceed her modified requirements. It is contended however that after the end of that 14+ days she is entitled (subject of course to the fulfilment of all the other requirements of the Urgent Cases Regulations) to a supplementary pension calculated by reference to her unreduced normal requirements and to any housing or additional requirements. The argument on behalf of the benefit officer is (stated loosely) that unless some allowance is payable during the 14+ days the period for payment of an allowance computed under regulation 5(3)(c) (the exceptions to which are not in this case relevant) never gets started. In other words it is contended that if the claimant is entitled for the 14+ days to a supplementary pension of the minutest amount that can be payable then after the end of those 14+ days she is entitled to the full amount; on the other hand if nothing is payable during those 14+ days she can never reach the point at which the full amount of her requirements is taken into account. This would undoubtedly be a bizarre conclusion but those who are familiar with what came to be known as the long term rate trap will be aware that it would not be unique.

11. Regulation 5(3)(a) and (b) take effect for a period of 14+ days starting with the first day of the period to which paragraph (7) applies, and regulation 5(3)(c) relates to the period thereafter. In order to interpret regulations 5(3)(a) one must notionally substitute in it for the words "the period to which paragraph (7) applies" the relevant words from regulation 5(7), which may be either "the period for which any amount of pension or allowance is payable by virtue of any regulation in these regulations" (viz the period (a) or the period (b) whichever is the shorter but in any case not to begin before the day on which the claim is made) or 'the period (a) or the period (b)' without the preceding words above.

12. Miss Allbeson submitted that it made no difference which was taken. If it was the former then, she submitted, an amount of pension or allowance was payable in terms of regulation 5(7) even if when it came to its computation the amount turned out to be nil (as in this case it was at least during the first 14+ days). I am unable to accept this submission. If in the alternative the latter substitution had to be made then, she submitted, the period (a) began when the conditions of entitlement were satisfied, and that the rules for the computation of the amount are not conditions of entitlement. This I find a more attractive submission, though I have some difficulty in stating rational grounds for classifying some conditions as conditions of entitlement and other conditions as not. The attraction of the submission is that it discloses a way out of the vicious circle into which one is involved if the contrary argument put by Mr Qureshi is correct.

13. The period in regulation 5(3)(a) begins with the start of the period in regulation 5(7) and therefore cannot be ascertained until the period in regulation 5(7) is ascertained. The period in regulation 5(7) cannot begin until all the conditions of entitlement are satisfied, and if the condition in regulation 5(3)(a) is a condition of entitlement one is in a vicious circle.

14. Miss Allbeson, however, put another argument which as it seems to me avoids this problem altogether. She pointed out that the basic rules on computation are in regulation 5(2) and that regulation 5(3) operates only to modify those rules during the period to which it applies. If Mr Qureshi is right that in the claimant's case the period of 14+ days never starts if her entitlement under the conditions of that regulation is nil; then the basic rules of computation in regulation 5(2) will apply until the period of 14+ days does start. In fact of course once the period before the 14+ days starts (for which the allowance is computed under regulation 5(2)), it will be instantly cut short by the guillotine effect of regulation 5(3); but there is a logical priority for the full entitlement followed, albeit instantaneously, by modified (or in this case eliminated) entitlement. This is enough to start the period of 14+ days; and as soon as they are completed the claimant can under regulation 5(3)(c) derive title to such pension

or allowance as that provision allows. Accordingly in my judgment the claimant if she can satisfy the other requirement of the Urgent Cases Regulations is not barred by regulation 5(3) from drawing an allowance after the end of the period of 14+ days.

15. The claimant's appeal is allowed.

Signed J G Monroe
Commissioner

Date 8 March 1984

Commissioner's File: CSB/894/1982
C SBO File: 905/82
Region: Midlands