Reasons (Notional Res)

DGR/BC

Commissioner's File: CSB/1030/1984

C A O File: AO 2088/85

Region: London North

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Rosina Mary Kemp (Mrs)

Social Security Appeal Tribunal: Barking

Case No: 29/05

[ORAL HEARING]

1. Save to the extent that the tribunal failed to give reasons for their refusal to exercise their discretion in favour of the claimant, the tribunal's decision of 28 June 1984 is not erroneous in point of law. However, by reason of the aforesaid defect I must set aside the decision. But, it being expedient that I give the decision the tribunal should have given, I reinstate the tribunal's decision with the addition of reasons for the refusal to exercise discretion in favour of the claimant. The reasons are that there are no special circumstances (such as those set out in paragraph 14) justifying the relief of the claimant from the normal consequences of her action, so that she must be treated as being still in possession of the property given away by her to her son.

2. This is an appeal by the claimant, brought with my leave, against the decision of the social security appeal tribunal of 28 June 1984. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was not present, was represented by Miss Sally Bigwood, welfare rights officer of the Basildon Council, whilst the adjudication officer was represented by Mrs A M Stockton of the Solicitors' Office of the Department of Health and Social Security. I am indebted to them both for their submissions.

3. The claimant, whose husband had been in receipt of supplementary benefit since 1969, was widowed in September 1973. She started receiving benefit in her own right from April 1974, by which time her son, Colin had left home. She lived in a bungalow in Wickford. However, by a conveyance dated 6 December 1981, when she was 67, she made an absolute gift of the property to her son "in consideration of the natural love and affection of the Grantor for the Grantee". On 18 January 1982 she moved from the property to a local authority flat which constituted sheltered accommodation. Immediately prior to the move she was in receipt of a combined payment of £39.63 a week, consisting of £30.03 by way of retirement pension and £9.60 by way of supplementary benefit. From the date of her move until July 1982 she

received £46.05 a week. However, on 1 July 1982 the benefit (now adjudication) officer decided that the claimant was not entitled to supplementary benefit and on 19 July 1982 her combined order book was recalled. From that date onwards she received payment by way of retirement pension only.

4. In due course, the claimant appealed to the supplementary benefit appeal tribunal (now the social security appeal tribunal), but the benefit officer's decision was upheld. She then appealed to the Commissioner, who allowed the appeal and directed that the matter be remitted to a fresh tribunal for re-hearing. On 28 June 1984 the re-hearing took place, and once again the original decision of the benefit officer was upheld. It is against that further rejection of the claimant's claim that the present appeal lies.

5. Miss Bigwood contended that the tribunal were in breach of regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 [SI 1984 No 451] and in particular had failed to comply with the directions laid down by the Commissioner who had set aside the tribunal's earlier decision. Moreover, she was supported by Mrs Stockton. However, although the representatives of the claimant and the adjudication officer were at one in their contention that I ought to set aside the tribunal's decision, nevertheless, as this is an inquisitorial, not an adversarial, jurisdiction, I have to be satisfied that such a joint approach on the part of the parties is correct.

6. Regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No 1527] provides as follows:-

> "4.-(1) Any resource 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, may be treated as if it were still possessed by him".

Accordingly, the question at issue in the present case is whether the claimant is caught by the above provision, and as a result is to be treated as being in possession of property of which she has deprived herself. The property is, of course, the bungalow which by a conveyance she gave to her son.

7. The tribunal made the following findings of fact:-

> "The basic material facts of this case are contained in the submission dated 4 July 1983 by the S.B.O. to the Commissioner and the Commissioner's decision dated 27 September 1983 (reference VGHH/JW). It is accepted by the parties (ie the presenting officer and the appellant representative) that prior to the deed of gift the appellant owned the property outright and that there was no mortgage debt attaching to the property. It is similarly accepted by the parties that the appellant was not involved in any expenses attaching to the conveyancing property to her son as all legal costs were paid by him. It is similarly agreed, and the tribunal find as a fact, that the value of the property as at the date of transfer of ownership was £26,000".

8. The tribunal gave the following reasons for their decision:-

"(i) The tribunal, having considered all the evidence, find that the appellant deprived herself of the capital asset of her property at 34 G_____ G_____, W_____, E____ for the purpose of securing or increasing her entitlement to supplementary benefit.

(ii) The tribunal do not accept the reasons given by the appellant for giving away the property.

(iii) The tribunal find that the appellant's true purpose in disposing of her property by gift to her son was to assist her eligibility for placement in local authority sheltered accommodation, although the tribunal are prepared to accept that this decision was influenced to some extent by financial and other difficulties which she was experiencing prior to making the decision. The tribunal do not find her state of health, in support of which there is only one medical statement and that dated more than twelve months after the appellant's move, to be conclusive or major contributory factor in her decision.

(iv) Having reached the decision that the appellant deprived herself of a capital asset for the purpose of securing or increasing her entitlement to supplementary benefit, the tribunal do not consider it to be in the public interest that the discretion conferred in regulation 4 of the Resources Regulations should be exercised in her favour and that she should be regarded as still possessing the asset which it is agreed by both parties was to the value of £26,000 (regulation 5 of Resources Regulations)."

9. The first matter which the tribunal were required, in accordance with the directions of the Commissioner, to determine was whether or not the claimant deprived herself of the bungalow "for the purpose of securing supplementary benefit, or increasing the amount of any such benefit".

So long as she retained ownership of the bungalow and it was her home, its value was disregarded pursuant to regulation 5(1)(a)(i) of the Resources Regulations for the purposes of determining her entitlement to supplementary benefit. However, on 6 December 1981, when she conveyed the property to her son, it ceased to fall within regulation 5(1)(a)(i) and constituted a resource of which it might be said, pursuant to regulation 4(1), that she had deprived herself. Had she disposed of the property for cash, which it was conceded would have amounted to about £26,000, less costs, she would no longer have been entitled to any supplementary benefit at all. In the event, on the basis that she no longer possessed either the bungalow or the monetary equivalent she was paid supplementary benefit, and in view of her move to sheltered accommodation, such benefit was in fact at a higher rate than she was receiving when the bungalow was her home and therefore disregarded. The crucial question is whether or not the claimant disposed of the bungalow for the purpose of securing supplementary benefit or an increase thereof. In her letter dated 18 July 1982 she explained her motive in the following terms:-

"... I made the bungalow over to my son, because I just couldn't do the garden or decorating, I have a bad ulcerated leg, and also the rates and bills were getting too much for me, I can't ask my son to help me because he has got enough to pay out".

Now, one could readily see that to a woman of the claimant's age and health the strain of undertaking gardening or decorating might have been too much. Furthermore, one can readily see that the expenditure on rates and other bills might be too oppressive. However, the obvious course in those circumstances was, not to give away the property, but to sell it. All the difficulties referred to would then have disappeared, and the claimant would have been in the happy position of having a substantial sum of money, which would have produced for her an income. On the face of it, the claimant's explanation is wholly unconvincing. Moreover, the claimant did not herself appear at the hearing before the tribunal to substantiate her contentions. It is sometimes the case that a claimant, who has made wholly unconvincing allegations in a written statement, is able to satisfy the adjudicating authority that, however unlikely such allegations appeared on their face, they did in fact represent the realities of the position. However, in the present instance no attempt was made to back up the claimant's version of events by evidence from her own lips. Not surprisingly, the tribunal did not believe the explanation given in her letter, and they categorically stated so.

10. The tribunal have, however, complicated the matter by stating under heading (iii) of their reasons that they found the appellant's true purpose in disposing of her property by gift to her son was to assist her eligibility for placement in local authority sheltered accommodation. It is difficult to see how the disposal of the property did advance her eligibility for being taken into such accommodation - both Miss Bigwood and Mrs Stockton were adamant that the only criteria under the relevant legislation was the medical condition of the claimant, not homelessness or, for that matter, penury - but the presenting officer appears to have made a submission to that effect, and seemingly the tribunal accepted it. Certainly, I cannot find anything in the evidence before the tribunal to support the presenting officer's submission that the claimant's chances of obtaining local authority sheltered accommodation would improve if she disposed of her property. However, nothing, in my judgment, turns on the point. Once the tribunal had reached the conclusion that the claimant had disposed of property for the purposes of securing or increasing her entitlement to supplementary benefit, then the fact that the claimant might have a further purpose for giving away her property is wholly immaterial. As was said in paragraph 22 of the unreported Decision on Commissioner's file CSB/858/1984:

> "If the tribunal are satisfied that the claimant has deprived himself of a resource, they must then go on to consider whether he deprived himself of that resource for the purpose of securing supplementary benefit or increasing the amount of such benefit. If that was the claimant's purpose, I direct the tribunal that it matters not that he also had another purpose. The tribunal should not accept the suggestion, put forward in numbered decision CSB/28/81 (on Commissioner's file number CSB/31/1981) at paragraph 17 (unreported) that the question to be asked is was the securing of supplementary benefit, or obtaining an increase of such benefit, the claimant's predominant purpose? Suppose a claimant on supplementary benefit inherits a large sum of money and proceeds to gamble with it and incur losses. Someone warns him that if he continues in this way he will be back on supplementary benefit and he replies, 'If I lose, that is my idea'. His predominant purpose in gambling with the money would obviously be to win at gambling. But it

would be open to the adjudicating authority to decide on these facts that another purpose was to obtain supplementary benefit. Again, suppose that a claimant has assets of, say, £1000 above the prescribed limit, and applies this money on a buffet wedding party and two days later, having spent sufficient to bring himself just below the prescribed limit, applies for supplementary benefit. The predominant purpose might be held to be to have a wedding party. But a subsidiary purpose could well be held, on these facts, to be to obtain supplementary benefit. After argument Ms Webster, who argued on behalf of the claimant with considerable ability, properly agreed that the application of regulation 4(1) did not turn on whether the claimant's motive of obtaining supplementary benefit, or an increase thereof, was her predominant motive".

Accordingly, in the present case the reasons set out under head (iii) are wholly immaterial to the tribunal's decision.

11. The second matter which it was incumbent on the tribunal to determine was the value of the claimant's interest in the property in accordance with regulation 5 of the Resources Regulations. The parties apparently agreed the worth of the bungalow at the relevant time as being £26,000. In her submissions Mrs Stockton has pointed out correctly that, in order to comply with regulation 5, the tribunal should have deducted 10% from that value. She contends that the failure so to do constitutes an error of law justifying the tribunal's decision being set aside. I regard this approach as wholly pedantic. The claimant will not be entitled to supplementary benefit as from the relevant date if she had assets in excess of £2,000, and if 10% is deducted from £26,000 the capital resources vastly exceed that statutory maximum. Manifestly, absolutely nothing turns on the point of whether or not 10% has or has not been deducted. I do not think it is even necessary for me to set aside the tribunal's decision on this point and to substitute my own.

12. The third matter which fell to the tribunal to determine was whether or not the claimant had an absolute right to the property. Manifestly, if her son had some proprietary interest, or alternatively if there had been a mortgage on the property, then her equity would be diminished accordingly. The tribunal made a clear finding on this matter. They stated:-

"It is accepted by the parties... that prior to the deed of gift the appellant owned the property outright and that there was no mortgage debt attaching to the property."

Mrs Stockton found this statement inadequate. In her view, the tribunal had concentrated insufficiently on the possibility of the claimant's son having some interest in the property, presumably in the form of a charge, for any work that he might have done on it. There is nothing in the record of proceedings to indicate that any such point was ever canvassed before the tribunal, and Miss Bigwood who was there to represent the claimant confirmed to me that no such point was ventilated by her. That is not entirely surprising, in that having regard to the fact that the property was valued at £26,000, or £23,400 after the 10% deduction is taken into account, and that the statutory limit at the relevant time for the payment of supplementary benefit was a mere £2,000, it is hardly conceivable that the extent of the interest in the property to which the son might have established title could in any sense have had any material consequence.

13. The final matter that remained for decision by the tribunal was how the discretion which is implicit in the wording of regulation 4(1) should in the present instance be exercised. It will be remembered that regulation 4 says that a resource of which the claimant has deprived himself for the purpose of securing supplementary benefit or an increase thereof may be treated as if it were still possessed by him. The tribunal in the present instance stated that they declined to exercise the discretion in favour of the claimant, seemingly basing their decision on "the public interest". Mrs Stockton argued that all discretions exercisable under the social security legislation had to be exercised in the public interest and that a statement to this effect took the matter no further. The tribunal had exercised their discretion, but what they had failed to do in the present instance was to say why they had exercised it adversely to the claimant.

14. In the present case it is perfectly obvious why the tribunal acted as they did. Prima facie where a person has disposed of property for the purposes of securing supplementary benefit or an increase thereof, he will be treated as still in possession of that property. The mischief against which the legislation provides is allowing the wholly unacceptable position to exist under which a claimant might give away valuable property to a third party and then, when in consequence he no longer has the resources to maintain himself, expect support from public funds by way of supplementary benefit. To allow such a situation to obtain is an affront to the feelings of the average tax-payer. Accordingly, one would not normally expect discretion to be exercised in favour of the claimant. There are, however, circumstances which readily spring to mind where a claimant might reasonably expect discretion to be exercised in his favour, eg where on the basis that the claimant had, in the absence of supplementary benefit, to live on the asset in question, the value of such asset had fallen below the statutory limit for entitlement to benefit, or where a double counting might otherwise arise, as when the relevant asset had been used to acquire other property and the latter property was included in the resources of the claimant. Now, if in a given instance it is seriously contended that one or other of the exceptional circumstances obtains, but nevertheless the tribunal refuse to exercise their discretion in favour of the claimant, then in that event it would be not unreasonable to expect the tribunal to explain why they adopted this course. But where, as in the present case, no such circumstances have even been canvassed, that it is arguable that there is no need for the tribunal to do more than simply say that they are not exercising their discretion in the claimant's favour. However, the Court of Appeal has recently laid particular stress on the need for stating the reasons why discretion has been exercised in a particular way (Lennard v International Institute for Medical Science (The Times, 29 April 1985) following Eagil Trust Co Ltd v Piggot Brown (unreported 6 March 1985)), and in the light of that emphasis I consider that the tribunal were under a duty to state specifically and not leave to implication, the reasons, however obvious, why there was no case for discretion being exercised in favour of the claimant. The tribunal should have explained that this was a flagrant instance of a very valuable property having been handed over to a third party and, as a result, the donor having to look for public support. They should also have explained that there were no special circumstances justifying the claimant's being relieved from the consequences of her action. However, the matter need not be sent back to the tribunal. All the necessary facts have been found and I can substitute my own decision for that of the tribunal.

15. Accordingly, my decision is as set out in paragraph 1.

(Signed) D G Rice
Commissioner

Date: 4 October 1985