

JEM/AG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

1053

CSS 739/1982

money lent by sister to buy house : principle of 'lien by subrogation'

1. My decision is that the decision of the Manchester Supplementary Benefit Appeal Tribunal dated 19 July 1982 is erroneous in law. Accordingly I set it aside. It is expedient that I give the decision the appeal tribunal should have given, that is that section 20(1) of the Supplementary Benefits Act 1976 has no application and that the amount of £577.33 is not repayable.
2. This appeal by the claimant to the Commissioner with the leave of the Commissioner is against the unanimous decision of the Manchester Supplementary Benefit Appeal Tribunal dated 19 July 1982 confirming the decision of the benefit officer issued on 25 May 1982 that "Supplementary allowance amounting to £577.33 has been overpaid in the period 15 11 81 to 25 5 82 inclusive and that this amount is properly recoverable".
3. I turn now to the facts before the appeal tribunal. In December 1979 the claimant when in work bought a derelict house. For this purpose he borrowed the sum of £2,100 to cover the cost of the property of £1,900 and fees and charges of the conveyance. The IOU dated 1 December 1979 signed by the claimant states "I.O.U. £2100 (two thousand one hundred pounds) for the purchase of No 10 Princes Street ...". A letter dated 21 June 1982 from the claimant's sister states "This is to confirm that in 1979 I, S.N.B. ... lent to my brother [the claimant] the sum of £2,100 for the purchase of a house at 10, Princes Street ..". The claimant was in receipt of supplementary benefit allowance from 15 November 1981 to 25 May 1982 because he was unemployed. The claimant stated that his only capital assets were £17.56 in an account with the Midland Bank. However at an interview on 20 April 1982 the claimant stated that he owned a property 10 Princes Street. The district valuer valued the property at the price of £3,500. The claimant's supplementary benefit allowance was terminated and the benefit officer issued the decision referred to in paragraph 2 above. When interviewed on 16 June 1982 the claimant gave the actual date of completion as some time in January 1980.

4. Regulation 5 of the Supplementary Benefit (Resources) Regulations 1981 provides so far as relevant -

"5. Except in so far as regulation 6 provides that certain resources shall be disregarded, the amount of a claimant's capital resources to be taken into account shall be the whole of his capital resources assessed where applicable -

(a) at their current market or surrender value less -

(i) in the case of land, 10 per cent, and in any other case, any sum which would be attributable to expenses of sale, and

(ii) any outstanding debt or mortgage secured on them;

(b) ..."

5. Regulation 6(2) of the Resources Regulations provides so far as relevant as follows:-

"6 - (2) Where the value of a claimant's capital resources .. 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 note in passing that on the basis that the sum of £2,100 is deducted from the value of the property (with the addition of the amount in the Midland Bank of £17.56) the claimant's capital resources amounted to £1,417.56, that is below the relevant limited.

7. The appeal tribunal erred in law in failing to apply the principle of lien by subrogation. The principle of lien by subrogation applies where money is advanced to a prospective purchaser to pay the contract price. The lender is entitled by subrogation as soon as the vendor has been paid, to the lien which the vendor would have had if the price had remained unpaid, see re Roberts, Public Trustee v Roberts /1946/ Ch 1.

8. From the documentary evidence of the terms of the IOU dated 1 December 1979 and of the letter dated 21 June 1982 quoted above which were before the appeal tribunal, as a question of fact it is clear that the sum of £2,100 was advanced to the claimant to pay the contract price. Consequently the claimant's sister S.N.B. ... is entitled by subrogation to the vendor's lien. The lien is a debt secured on the property 10 Princes Street. Although to be enforceable against a purchaser for value of the property without notice a vendor's lien would normally have to be registered (and different provisions apply when the land is in an area of compulsory registration for title under the Land Registration Act 1925 as amended), I do not see that such conveyancing niceties are relevant

in the context of the supplementary benefit legislation. Accordingly within the terms of the Resources Regulations 5(a)(ii) as a question of law the sum of £2,100 is deductible as "any outstanding debt or mortgage secured on them". I would pause to remark in regard to the calculation at paragraph 6 of this decision above of the claimant's capital resources that there would of course be the 10% deduction on the district valuer's value of the property. This of course is academic as the claimant's capital resources are in any event below the then relevant figure of £2,000. Accordingly although the claimant failed to inform the Department of the existence of the property at the time when he first claimed supplementary benefit, as the sum of £2,100 is (for the reasons given above) secured on the property, there can be no question of claim for overpayment of the supplementary allowance totalling £577.33.

9. In the light of the appeal tribunal's error of law as to the principle of lien by subrogation it is unnecessary to go into the interesting submissions on the Resources Regulations put forward by the benefit officer now concerned in his submission dated 16 February 1983. I would only add that in the light of the claimant's grounds of appeal to me dated 8 October 1982 that "I hold that the debt is charged on the property because this was the clear intention of both parties, and that it is reasonable to find in law that this is the case" the further possibility of the application of the equitable doctrine of rectification may apply. To obtain rectification the party claiming the relief must normally show first that there was an actually concluded agreement antecedent to the instrument which it is sought to be rectified and secondly that the agreement has by mutual mistake in drafting been inaccurately represented in the instrument, see *McKenzie v Coulson* (1869) L.R. 8 Equity 368. However, in the light of the appeal tribunal's error of law as to the principle of lien arising by subrogation I do not need to consider the application of the doctrine of rectification in the present case.

10. Rule 10(8) of the Supplementary Benefit and Family Income Supplements (Appeal) Rules 1980 as amended by rule 6(2) of S.I. 1982 No 40 provides as follows:-

"10 - (8) On an appeal from a decision of a tribunal the Commissioner may -

- (a) hold that decision is erroneous in point of law and -
 - (i) if he is satisfied that it is expedient in the circumstances, give the decision the tribunal should have given; or
 - (ii) refer the case to another tribunal with directions for its determination; or
- (b) hold that the decision is not erroneous in point of law."

As the facts were before the appeal tribunal on which they should have based a finding on the principle of lien by subrogation I am satisfied that it is expedient in the circumstances that I should give the decision the appeal tribunal should have given. Accordingly my decision is as set out in paragraph 1 above.

11. Accordingly the claimant's appeal is allowed.

12. I need only add two matters. First the claimant requested an oral hearing which request I refused as I consider the matter is satisfactorily dealt with without one. Secondly I have given careful consideration to the matters contained in and annexed to the claimant's further observations dated 25 March 1983 in respect of which I need say nothing further in the light of my decision above.

(Signed) J B Morcom
Commissioner

Date: 23 May 1983

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