JGM/BF

Commissioner's File: CSB/200/1985

C A O File: AO 2314/85

Region: Midlands

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No: 21

1. My decision is that the decision of the social security appeal tribunal dated 2 January 1985 was erroneous in point of law. The matter must be remitted to another tribunal.

2. I remit this matter for the second time to another tribunal with a feeling of regret that I have not under regulation 27(1)(a)(i), having set the decision aside, jurisdiction to rehear the whole matter, as I should certainly in this case find it expedient to do so. The case is one that calls for the consideration of refined rules of law and equity and the finding of all the facts necessary to enable those rules to be applied. Not being able to find those facts myself I am forced to give directions on the basis of various alternative possible findings, and even so may well fail to do so exhaustively. Moreover alternative directions are apt to confuse the reader. The time consumed in this latter exercise would be better spent in making the findings myself. Cases of this sort, though far from uncommon, are much rarer than the other class of common case in which a power such as I have suggested would save all concerned a great deal of trouble, viz those where the tribunal has not found quite all the facts (those not found being quite probably facts as to which there would be no controversy), and for want of the finding thereon the matter has had to go back to the tribunal with an expenditure of time out of all proportion to that which would have been required for the Commissioner to give the decision himself. As a result the tribunal's burden of pending cases has been increased and this has no doubt led to time pressure on the tribunals which can lead directly to deficiencies in their findings.

3. The claimant's application for a supplementary allowance was rejected on the ground that he had "notional assets" in excess of the amount specified in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [SI 1981 No. 1527 (the Resources Regulations)]. The evidence was that there had been a house (the original house) vested in the claimant's sole name which had been compulsorily acquired, in respect of which the claimant was in the year 1982 paid £21,112.74. The claimant said that of this money he had paid £4,630 to his wife (who is still resident in Pakistan) for repairs to the house in which she lives and which is the property of the claimant, and £14,000 to his brother ostensibly on the ground that his brother was beneficially the owner of two-thirds of the original house. The benefit officer (now the adjudication officer) did not accept that the original house was as to two-thirds the property of the claimant's brother and concluded that the claimant had deprived himself of the money for the purpose of securing supplementary benefit in terms of regulation 4(1) of the Resources Regulations and had a notional resource of that amount. It does not appear for how long he would have been regarded as continuing to possess the whole or part of such notional resource. The claimant appealed to the appeal tribunal who dismissed his appeal by a decision dated 19 July 1983 and confirmed the decision of the benefit officer. This confirmatory decision was set aside by the Commissioner by a decision dated 2 February 1984 and the matter was remitted to another tribunal whose decision dated 2 January 1985 (again confirming the benefit officer's decision) is that now before me.

4. The tribunal found that there was no evidence to substantiate the claimant's allegation that he had paid part of the proceeds to his wife and his brother except for the affidavits and the evidence of the brother. The excepted matters of course were direct evidence of the matter which was conclusive if it was accepted. It would seem that the tribunal was uncertain whether to accept it or not, although it seems to have been accepted by the benefit officer and by the previous Commissioner. It does not absolutely follow that, if he had not paid the money as stated, he still possessed it; and if it was the tribunal's conclusion that the claimant still possessed it based on evidence to support such a finding and they were relying on it for their decision, it ought to have been expressly made. I do not, however, think that they intended to make any such finding, since in the reasons for the decision they concluded that the capital sum of £14,000, if transferred, was transferred with the intention of obtaining supplementary benefit. In particular they rejected the conclusion that the brother had a two-thirds interest in the original house, which, if true, would have meant that the brother was entitled to two-thirds of the net price obtained, or roughly £14,000.

5. I am remitting the matter to yet another tribunal because, in rejecting the contention that the brother had a two-thirds interest in the original house the tribunal seem to have assumed that, unless the contrary was proved by credible evidence of the intentions of the parties, the fact that the property was vested in the claimant's name alone established that the brother had no interest in it. The brother can, however, have acquired an interest in it by virtue of the equitable presumptions that arise when property is purchased with money and/or mortgages provided by persons in specified proportions. And that aspect of the matter has not been investigated. It is for this reason that I find the decision to have been erroneous in point of law. It will I think be best if it is made clear to the new tribunal specifically to what extent there is an issue whether the claimant was or was not at the date of claim, or at any relevant time thereafter, still in possession of some relevant part of the

proceeds of sale. It is not in fact very satisfactory where the adjudication officer is contending that the claimant deprived himself of resources for the purpose of securing supplementary benefit, to ventilate the suggestion that he has not deprived himself of them at all; nor is it satisfactory, without a clear finding that the claimant has deprived himself of assets, to reach a finding as to the purpose with which he did so.

6. The claimant says that the original house belonged as to two-thirds to his brother. That can of course have happened by some express arrangement properly carried through. But if there is not acceptable evidence of such an arrangement that does not mean that the only proper inference is that the property belonged exclusively to the person in whom the legal title was vested. That would no doubt be the correct conclusion if there were not, as here, evidence of any matters giving rise to equitable presumptions as to beneficial ownership.

7. According to the original tribunal's note of the evidence it was stated that the original house in question was bought in 1965 for £3,000 of which £300 was put down by the claimant and £700 by his brother and that a mortgage of £2,000 was taken out by the claimant and that the original house was in the claimant's sole name. There is no recorded finding on the correctness of this; and the want of any such finding must have been one of the matters that led the Commissioner to set aside the decision. Broadly the same evidence seems to have been given again to the second tribunal. But again there is no finding about it. Such a finding was essential if the evidence more specifically directed at showing the ownership of the property was acceptable, as it seems to have been. I will assume for the moment that the evidence is accepted that the cost of the original house was £3,000; and that of this, £300 was found by the claimant, £700 by his brother and £2,000 by a mortgage taken out by the claimant (which I take to mean that it was taken out by the claimant alone and not jointly with his brother, though that will have to be investigated by the new tribunal). There may be a question how the costs of acquisition, which should be treated as part of the price, were met. I give the present direction on the assumption that these costs make no difference. In giving leave to appeal I referred to the decision of Bagnall J in Cowcher v Cowcher 1972 1 WLR 425, which establishes two important propositions. First the proportions in which parties beneficially own property which has been purchased with the assistance of a mortgage is settled at the time of the purchase and those proportions are not affected by the manner in which the parties discharge the mortgage. If one party pays more than his fair share (having regard to his original proportion) he is entitled to have it recouped with or without interest and his right of recoupment is a charge on the property. But he is not on that account entitled to a larger fraction of the property itself. Shares originally agreed can of course be varied by agreement, but such agreement has to be proved and section 53 of the Law of Property Act 1925 makes it difficult to have an effective arrangement that is (especially a gratuitous transaction) without documents in writing.

8. The second proposition that emerges from the decision in Cowcher v Cowcher relates to the method of arriving at the proportions in which people are to be impliedly treated as owning property where a significant part of the cost is raised by a mortgage. It has always been clear that if one person provides £300 out of a total cost price of £1,000 while the other provides £700 the one has a three-tenths share while the other has a one-tenth share. The Cowcher decision ([1972] 1WLR at pages 431-432) explains what happens when part of the

purchase price is raised on a mortgage. If the mortgage is the sole liability of one of the two persons it counts as if it were money provided by that person. Thus if in the present case the purchase cost is found to be £3,000 of which the claimant provided £300 while his brother provided £700 and the remaining £2,000 was provided by a mortgage for which the claimant was solely responsible then the property would belong as to twenty-three thirtieths to the claimant and as to seven thirtieths to his brother. If it emerged that his brother had in fact paid off the mortgage then his brother would have a charge for £2,000 with or without interest on the original house which, subject to that charge, would belong to them in the same proportions. The question whether the mortgage was the sole responsibility of the claimant would not conclusively depend on the terms of the mortgage itself, as there could have been the intention that despite appearances the brother was to be partically responsible to the mortgage. If such an understanding is found to have existed account must be taken of it. But it would have to be proved by acceptable evidence.

9. There is thus a need for proper findings on the matter of the original cost and how it was met. I understand that solicitors were employed in connection with the purchase. I commend to the tribunal paragraph 6 of the adjudication officer's submission dated 14 May 1985 as an indication of the matters on which findings are required.

10. Supposing that the tribunal conclude as a result of their findings that the claimant's brother's interest in the original house was substantially less than two-thirds, then they will conclude that if he gave his brother £14,000 out of the proceeds he gave him something more than he was entitled to; in other words that he was depriving himself of resources. They then have to go on to consider whether he was doing so for the purpose of securing supplementary benefit or increasing the amount of any such benefit within the meaning of regulation 4(1) of the Resources Regulations. This they will probably be able to do only by drawing inference of the circumstances, as there is unlikely to be direct evidence of the state of the claimant's mind at the time. It will be best if they indicate the facts on which they base any such inference.

11. If they conclude that the claimant did deprive himself of any amount for either of the above purposes they will have a discretion to treat that amount as still possessed by him, the claimant. In exercising their discretion they should bear in mind that if the claimant actually possessed that resource and had nothing else on which to live he would over a period of time have exhausted that resource in order to live. It would be wrong to treat him as retaining the notional resource indefinitely. It might for instance be right to treat him as using it up at the rate at which he would have qualified for supplementary benefit if he had not had the resource. This is purely a suggestion. The tribunal might well think there were circumstances that made this suggestion appropriate or appropriate only with modifications. It will be in view that the claim is a continuing claim which was made in March 1983 and that if the claimant would apart from any notional resource, have been entitled to supplementary benefit ever since then, the new tribunal will be having to consider the question of an award down to the date of their hearing; and the question how long the notional resource should be regarded as being possessed to an extent sufficient to deprive the claimant of title to a supplementary allowance could be a live one.

12. If the tribunal find an actual resource these problems will not arise. The actual resource exists for so long as it is possessed.

13. I note that the benefit officer appears to have accepted two points in favour of the claimant without question. First he has accepted that the money paid to the claimant's wife in Pakistan, said to have been for repairs of the house in which she lives there (which is the claimant's property) is not a resource of which the claimant has deprived himself for purposes of securing supplementary benefit. Secondly he has not sought to attach any value to the house in which the claimant's wife lives. This house is not the home as defined in the Resources Regulations as the claimant's wife is not a member of his assessment unit, so that it does not fall to be disregarded under regulation 6(1)(a)(i) of those regulations. I apprehend that it was disregarded by the benefit officer on some such ground as that it had no marketable value in this country if the proceeds of sale cannot be remitted here. I do not wish to suggest that these matters ought to be reopened. And I mention only possible considerations that would have to be taken into account if they are.

14. The appeal succeeds.

(Signed) J G Monroe
Commissioner

Date: 9 August 1995

ATH/SH/12/MD

Commissioner's File: CSB/598/1987

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:

Social Security Appeal Tribunal:

Case No:

ON
NOT ... OUT OF
THE DE...TMENT

1. I allow this appeal by the claimant. The decision of the social security appeal tribunal dated 24 February 1987 was erroneous in law and I set it aside. I substitute my own decision which is that between 9 October 1986 and 15 October 1986 the capital resources of the claimant and his wife jointly did not exceed £3,000 and that the claimant was entitled to supplementary benefit for the period from 13 October 1986 to 19 October 1986.

2. In 1986 the claimant was in receipt of supplementary benefit as a married householder under pension age. However, by a decision issued on 14 October 1986 the adjudication officer decided to refuse payment to the claimant of supplementary benefit from 13 October 1986 to 19 October 1986 "as the savings of the claimant and his wife jointly, exceed the capital limit of £3,000". The claimant appealed and on 24 February 1987 the social security appeal tribunal disallowed the appeal. The claimant now appeals with my leave.

3. I have issued two directions, one dated 15 March 1988 directed to the claimant, and one dated 8 June 1988 directed to the adjudication officer, and as a result of the responses to those directions by the claimant and by the adjudication officer respectively, I have been able to reach my decision.

4. <u>The Facts</u>

In September 1986 the claimant and his wife had the following assets:

(i) A caravan used as a holiday home and valued at £600.

(ii) £13.39 to the credit of the claimant in his current account at Barclays Bank.

(iii) £347.18 to the credit of the claimant's wife in her current account at Barclays Bank.

They had the following debts:

(a) A Barclaycard debt of approximately £300.

(b) A Barclaycard debt of approximately £800.

(c) A bank loan to the claimant's wife of £30.12.

5. The wife had formerly been a teacher and on or about 8 October 1986 she received from her former employers a gratuity. The gratuity was paid to her by cheque in the sum of £2,696.67. On 9 October 1986 that cheque was paid into her account and the amount of the cheque, £2,696.67, was credited to her account on that date. On 15 October 1986 the cheque was cleared. On the same date, 15 October 1986, the Barclaycard debts were paid by two cheques, one for £200 (or £250) and the other for £500. I assume that the cheques were drawn by the claimant's wife since, as I understand it, it was her account that was debited on that date in the sum of £700 (or £750). (I should explain that there is a discrepancy in the figures. In Form AT2 it is stated that the Barclaycard debts were "approx £300" and "approx £800". In Form AT2 it was also stated that on 15 October 1986 there was a "payment of £200 of [the claimant's] Barclaycard debt and £500 of [the claimant's wife's] Barclaycard debt". In his letter dated 30 April 1987 the claimant has stated: "On 15 October we issued cheques to Barclaycard of £500 and £250". The adjudication officer, in response to my direction, has conceded that for the purposes of this appeal the claimant's wife's account was debited in the sum of £700 on 15 October in respect of payments by cheque of her Barclaycard debts and it is not necessary for the purpose of the present appeal to determine whether the wife's bank account was debited in the sum of £700 or £750).

6. When the cheque for £2,696.67 was credited to the wife's account on 9 October 1986, the sums credited to her and to the claimant in their bank accounts less the bank loan of £30.12 but together with the value of the caravan, namely £600, totalled more than £3,000. On 15 October 1986, when the claimant's wife's account was debited in the sum of £700 (or £750), the sums credited to her and to the claimant in their bank accounts less the bank loan but together with the caravan totalled less than £3,000. The question to be decided is whether or not for the period from 9 October to 15 October 1986 their capital resources, taken jointly, exceeded £3,000.

7. Regulation 7 of the Supplementary Benefit (Resources) Regulations 1981, as amended, and so far as is relevant, provides:

> "7. ... where the value of a claimant's capital resources including those of a partner or dependant) as calculated in accordance with these regulations exceeds £3,000, the claimant shall not be entitled to pension or allowance."

The adjudication officer, according to Form AT2, decided that from 9 October 1986 to 14 October 1986 "the capital resources exceeded the prescribed level and that as a result no supplementary benefit is payable to [the claimant] in the week commencing with pay day 13.10.86." In their reasons for their decision, in Form AT3, box 4 the appeal tribunal stated:

> "... The fact that money is owed elsewhere cannot be taken into account until it is properly paid. As a result for the short period the capital limit of £3,000 was exceeded and so supplementary benefit could not be paid."

8. The adjudication officer refers to and relies upon CSB/296/1985. In that case the claimant instructed a solicitor to act for him in a claim for damages for personal injuries. The solicitor received £12,000 damages on behalf of the claimant and placed this money on deposit pending negotiations for the purchase of a house. In paragraph 3 the Commissioner said that the question was "whether the £12,000 should be treated as the claimant's capital

resource during the time it was on deposit i.e. presumably in the solicitor's client's account. If it is to be so treated then the claimant was not entitled to the supplementary benefit ..." The Commissioner held, in paragraph 7, that the £12,000 "whilst in the solicitor's hands, was nevertheless an actual resource of the claimant". He said:

> "It was an actual resource because there was no difference in principle, in my view, between monies being held by a solicitor on behalf of a client and for example monies held by a bank or building society on behalf of a customer (when the bank or building society balance undoubtedly is to be regarded as an actual resource)."

In that case the money was on deposit "i.e. presumably in the solicitor's client's account" for some months before it was used for the purchase of a house and there can be no doubt, in my judgment, that as it was the claimant's money, it was an actual resource of the claimant.

9. In the present case, however, it is accepted by the adjudication officer that the cheque for £2,696.67, although "paid" into the claimant's wife's account on 9 October 1986 was not in fact cleared until 15 October 1986. As the Commissioner said in CSB/110/1987 at paragraph 12:

> "... As a matter of law it seems to me inescapable that whenever a person draws a cheque he embarks, whatever he may think or wish, upon a complex and technical transaction involving, at the very least his bankers, the payee and the payee's bankers, and it would seem to follow that the date upon which a cheque is regarded as paid may, as a matter of fact and law, vary in relation to the various parties involved."

The claimant has produced a specimen paying-in slip for an account in Barclays Bank which reads:

> "Customers are advised that the Bank reserves the right at its discretion to postpone payment of cheques drawn against uncleared effects which may have been credited to the account."

That is no doubt intended to indicate to the customer that he/she is not entitled, before a cheque has been cleared, to draw upon any money credited to that customer's account on the paying-in of a cheque: see Capital and Counties Bank Ltd v Gordon [1903] A.C. 240 at page 249 per Lord Lindley. The relationship of a bank with its customer is, of course, the relationship of debtor and creditor and it is clear from the terms of that paying-in slip, that Barclays Bank do not accept the relationship of debtor and creditor on the mere paying in of a cheque. The reason is quite simple. When the cheque is paid in to the local branch, that branch does not receive the money until the cheque has been cleared. That is to say, it must be sent to and accepted by the bank upon whom the cheque was drawn and then passed through the Clearing House, and it is only upon the conclusion of those administrative arrangements that the money will be notionally transferred to Barclays Bank and the claimant will then become the creditor of Barclays Bank in relation to the sum in question. The point can be made clearer by considering what would happen if a person opened a new account and paid in a cheque; if that cheque were dishonoured it would mean that he had no money in his account and any cheques drawn by him must either be dishonoured by his bank or, if paid, will necessitate his account going into overdraft.

The steps taken in regard to clearance of cheques is set out in In re Farrow's Bank Ltd [1923] 1 Ch. 41 at page 41-42, It follows, therefore, in my judgment that the sum of £2,696.67 did not become a capital resource of the claimant until 15 October 1986, the date when the cheque was cleared.

10. The sum of £700 (or £750) debited to the claimant's wife's account on 15 October 1986 represented, of course, payment out of the claimant's wife's account in Barclays Bank to Barclaycard. I imagine that the two cheques by which that payment was made did not go

through the Clearing House system. In other words, the debit will have been immediate or almost immediate. In any event, the adjudication officer has conceded that her account was debited in the sum of £200 on 15 October 1986 (see paragraph 5 above). Be that as it may, however, I am concerned only with the period with which the adjudication officer was concerned namely from 9 October 1986 to 14 October 1986: see Form AT2 at paragraph 14; and on 14 October 1986 the sum of £2696.67 had not, in my judgment, become a capital resource.

11. My decision does not affect the position of a claimant who deliberately refrains from paying into his account a cheque drawn in his favour. In such a case, regulation 4 of the Resources Regulations will be likely to apply and he will be likely to be found to have "deprived himself for the purpose of securing supplementary benefit" of a resource.

12. In the result, therefore, my decision is that the claimant's capital resources, including those of his wife, did not exceed £3,000 from 9 October 1976 to 14 October 1986. The decision of the appeal tribunal was erroneous in law in that it contained a false proposition of law: R(A) 1/72 at paragraph 4. Accordingly, I set aside that decision. It is expedient that I should give the decision which I consider to be appropriate: section 101(5)(a)(ii) of the Social Security Act 1975. My decision, therefore, is that the claimant is entitled to supplementary benefit from 13 October 1986 to 19 October 1986 (see paragraph 2 above).

(Signed) A.T. Hoolahan

Commissioner

Date: 20 September 1988