

CSB 19/1981

VGHH/BR

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

agains the decision

Decision C.S.B. 4/82

1. My decision is that the decision of the Supplementary Benefit Appeal Tribunal dated 13 January 1981 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination (Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] rule 10(8)(a))

2. This is an appeal by the claimant on a point of law against the decision of a Supplementary Benefit Appeal Tribunal on 13 January 1981 dismissing the claimant's appeal of 4 December 1980 against the decision of a supplementary benefit officer issued on 26 November 1980 that the claimant was not entitled to supplementary pension [sic- it is obvious that supplementary allowance is meant, since the claimant was under pensionable age/ from 24 November 1980.

3. I granted leave to appeal against the decision of 13 January 1981 and held an oral hearing of the appeal. The claimant appeared. He was not represented. The Benefit Officer was represented by Mr & Roberts, of the Solicitors' Office, Department of Health and Social Security.

4. According to the written submission of the supplementary benefit officer to the tribunal, the appellant is a married man of 57 living with his wife in an owner occupied house, on 19 September 1978 he withdrew £8,900 from "cedar holdings" and deposited it in a Lloyds Bank account, on 25 September 1978 he withdrew this amount in cash and he has also a further £1,000 invested in "cedar holdings" currently. The submission states that the Supplementary Benefit (Resources) Regulations 1980, regulation 7, specify that a person with capital assets exceeding £2,000 shall not be entitled to a supplementary allowance or pension and also where a person deprives himself of a resource for the purpose of securing Supplementary Benefit, or increasing the amount of any such benefit, it may be treated as if it were still possessed by him: regulation 4(1) of the above regulations. The reasons for the benefit officer's decision

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were stated to be that he had decided that the claimant possessed capital assets in excess of £2,000 and was therefore not entitled to supplementary benefit. The claimant had not provided any information to satisfy him that the capital held had reduced to below £2,000 and therefore no entitlement to supplementary benefit existed: regulations 4 and 8 of the Supplementary Benefit (Claims and Payments) Regulations 1980.

5. The Chairman's signed note of evidence is a document at which I am entitled to look: see Decision No C.S.B. 3/82. It is in these terms:

"SBO

Prior to 24 11 80 app was receiving £18.34 S.B. weekly. Assessment based on capital totalling £4,950.34. £3,929.34 was the balance of cash declared to be notionally available to app by a previous Tribunal. SBO accepts depletion of capital at the rate of £18.75 per week but after a year the appellant would still have capital over £2,000. He still possesses £1,000 invested in CedarHoldings.

Appellant

States that of the £8,900 withdrawn on 19 9 78, £3,929 has been spent on gambling etc. £5,000 was spent on house improvements and he has none of the cash as assumed by the previous Tribunal. He has no evidence as to how the capital was spent. He has been unemployed from Nov 71. He has spent no money on his house during the last year, he has no lodgers and no mortgage or Bank loan on his house"

6. The facts found, decision and reasons for the decision of the Tribunal are set out on form LT235. The facts found were:

"At a previous Tribunal hearing in January 1980 it was decided that £3,929.34 in cash should be assumed notionally available. The appellant has produced no evidence to justify the revision of that decision by this Tribunal. The appellant's capital assets at January 1980 were deemed to total £4,950.34. He had been in receipt of £18.34 weekly Supplementary Benefit but this was withdrawn on 24 11 80. The Tariff Income assessed by the Department prior to 24 11 80 was £18.75 per week which, the Tribunal considers it reasonable to assume, is the weekly amount by which his capital has reduced since the previous decision became operative."

The tribunal decision was:

"The Tribunal confirms that the appellant is not entitled to Supplementary Benefit from 24 11 80"

The Tribunal's reasons were:

"The Tribunal has no evidence on which to review the previous Tribunal decision and the notional capital of £4,950.34 deemed the word "deemed" is an insertion above the line of the

manuscript/ at January 1980 must stand. It is accepted however that this will have depleted by approximately £1,000 during the last year but this still leaves the appellant with capital in excess of £2,000. The Resources regulations preclude persons with capital in excess of £2,000 from receiving Supplementary Benefit."

7. In his grounds of appeal against this decision, the claimant complains "the first tribunal hearing on the face of their decision did not decide the issue by deeming me to have resources under Paragraph 28 of Schedule 1 of the Act. Subsequently, the Department Representative told me that that paragraph was not being applied to me Yet the Supplementary Benefit Officers observations prior to the most recent tribunal hearing refer to Regulation (4)(1) of the Supplementary Benefit (Resources) Regulations 1980 which are practically identical to paragraph 28 of Schedule 1. It is therefore obvious that the Department are 'deeming' me to have resources under that Regulation and under no other authority."

8. Regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] (which I shall refer to as "the Resources Regulations") and which came into force on 24 November 1980 provides:

"Notional resources

4. - (1) Any resource of which a person 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"

Regulation 7 provides:

"Maximum capital resources for entitlement to supplementary benefit

7. Subject to regulation 8, where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with these regulations exceeds £2,000, the claimant shall not be entitled to supplementary pension or allowance"

Regulation 8, which it is not necessary to set out, is headed "Effect of capital resources of dependants". Nothing in this case turns on that regulation.

The provisions for the calculation of capital resources are contained in regulations 5, 6 7 and 8, Notional resources are considered in regulation 4.

9. Paragraph 28 of Schedule 1 of the Supplementary Benefits Act 1976, which was repealed by the Social Security Act 1980 and was not in force on 24 November 1980 (the earliest day in issue before the tribunal whose decision is now under consideration) provided:

"Resources deliberately abandoned

28. If a person has deprived himself of any resources for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, those resources may be taken into account as if they were still his".

10. Rules 7, 8 and 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] which I shall call "the Appeals Rules" and which came into operation on 24 November 1980) are in these terms:

"Determinations of the Tribunal

7. - (1) The determination on any matter of a majority of the tribunal shall be the determination of the tribunal
- (2) The tribunal shall -
- (a) record every determination in writing; and
 - (b) include in every such record a statement of the reasons for their determination and of their findings on material questions of fact; and
 - (c) if a determination is not unanimous, record a statement that one of the members dissented and the reasons given by him for dissenting
- (3) As soon as may be practicable after the tribunal make their determination a copy of the record of the determination, made in accordance with this rule, shall be given to each interested person and to any other person who appears to the tribunal to be interested and the person who brought the appeal shall be informed of the conditions governing appeals to a Commissioner

Right of appeal to Commissioner from decision of tribunal on point of law

- 8 (1) Subject to paragraph (3) any person who is a party to proceedings before a tribunal may appeal to a Commissioner, with the leave of a Commissioner, against any decision of the tribunal given in those proceedings on the ground that the decision is erroneous in point of law
- (2) For the purpose of paragraph (1) the parties to the proceedings before the tribunal are the person who brought the appeal to the tribunal and the benefit or supplement officer against whose determination the appeal was brought
- (3) Paragraph (1) shall not apply to any decision of a tribunal which is recorded in writing before
24 November 1980

10.

- (8) On an appeal from a decision of a tribunal the Commissioner may -
 - (a) refer the case to another tribunal with directions for its determination; or
 - (b) hold that the decision is not erroneous in point of law"

11. The claimant, before me, repeated his complaint that paragraph 28 of Schedule 1 of the Supplementary Benefits Act 1976 (now replaced by regulation 4 of the Resources Regulations) was being held against him. Mr Roberts, on behalf of the benefit officer, submitted that the decision both of the benefit officer and of the Tribunal was not reached pursuant to regulation 4(1) of the Resources Regulations, there being no reference to it in form LT235 or the Chairman's Notes and there being no indication that the tribunal directed their minds to any of the criteria required by that provision. He submitted that the Tribunal considered that the claimant still possessed capital in excess of £2,000 and did not accept that he had disposed of it. Before regulation 4(1) of the Resources Regulations could apply it would be necessary for the Tribunal to find that the capital had been disposed of but that he should be treated as still possessing it. It would also be necessary to find that the claimant had deprived himself of the capital for the purpose of securing supplementary benefit, or increasing the amount of such benefit: see the express wording of regulation 4(1).

12. There is no doubt in my mind that the Tribunal were not considering the actual capital possessed by the claimant. They were considering the notional capital of which he was deemed to be possessed. The only power, after 24 November 1980, to treat a person as possessing capital which he does not in fact possess is contained in regulation 4(1). The Tribunal may well have been considering that regulation, since they used the words "notional capital", and the heading to regulation 4(1) is "notional resources", and specifically referred to deeming, while that regulation contains the similar word "treated", and regulation 4 is relied on in the written submission to them. If they were considering that regulation, their decision was clearly erroneous in point of law since there is no finding that the claimant had deprived himself for the purpose of securing supplementary benefit, or increasing such benefit, of any resources, and no suggestion that they ever considered this requirement, which is a pre-requisite before a claimant can be deemed or treated as having notional resources. If they were not considering this regulation, and their references (in two places) to notional sums and to deeming purport to be a confirmation of findings by the previous Tribunal of capital notionally possessed by the claimant, that was a conclusion to which no reasonable tribunal could have come since the tribunal decision of 15 January 1980 (the record of which is before me) referred in terms to the possibility of the Supplementary Benefits Commission considering paragraph 28 of Schedule 1 of the Supplementary Benefit Act 1976 and made it quite clear that their own decision was not founded on that paragraph. I am left guessing as to the legal principles on which the tribunal proceeded in reaching their decision.

13. My attention was drawn, in the written submission of the supplementary benefit officer in connection with this appeal, to the case of Crake v Supplementary Benefits Commission [1980] SB 38, where Mr Justice Woolf held, at page 323 paragraphs A - F that the findings of fact in the case before him were "not any such thing" and that the reasons given were inadequate. He held that the decision of the appeal tribunal, notwithstanding failure to "provide a statement of the reasons therefor in writing", required by rule 12(1) of the Supplementary Benefit (Appeal Tribunal) Rules, was not erroneous in point of law. In so doing, he stated that he was following a decision of the Divisional Court in Mountview Court Properties Ltd v Devlin [1970] 21 P & C R 686.

The present Appeals Rules were not, however, before the Judge in Crake's case, which was decided under rules framed under the old supplementary benefit system under which the authorities had a wide discretion as to whether or not to award benefit and were not governed by a closely circumscribed legal framework designed to secure uniformity of application of the rules. Mountview's case was concerned with provisions enabling reasons to be called for on request and the proper course on certiorari and is remote from the regulations governing the present case.

14. In my judgment, failure to comply with the requirement to give adequate reasons and to find the necessary material facts, imposed by rule 7 of the Appeals Rules amounts to an error of law per se. Failure to give adequate reasons and find the necessary material facts in a similarly worded regulation (regulation 12 of the National Insurance (Industrial Injuries) (Determination of Claims and Questions) Regulations 1948 [S.I. 1948 No 1299] was held by an unanimous Court of Appeal in R v Deputy Industrial Injuries Commissioner ex parte Howarth (R(I) 14/68, Appendix) to be a ground for quashing the decision of a Medical Appeal Tribunal, and of the Commissioner who affirmed that decision. The Commissioner, in decision R(A) 1/72, on the similarly worded regulation 14(2) of the National Insurance (Attendance Allowance) Regulations [S.I. 1971 No 621] held that a failure adequately to set out the reasons for a decision was itself an error of law and that the obligation to give reasons for the decision imported more than a requirement to state the conclusion or that the statutory provisions were not met and that the claimant, looking at the decision, should at least be able to discern on the face of it the reasons why the evidence had failed to satisfy the authority. The decision has never been questioned and has been acted on for more than a decade. In explaining the well-known principle adumbrated in Norton Tool Co Ltd v Tewson [1972] I C R 301 (and applied on many occasions) that it is unsatisfactory and amounts to an error of law for a tribunal simply to state the amount of compensation which is to be awarded by the industrial tribunal without showing how that figure has been arrived at, Mr Justice Donaldson, as he then was, in Alexander Machinery (Dudley) Ltd v Crabtree [1974] I C R 120 at page 122 stated the basis of that proposition as follows:

"in the absence of reasons it is impossible to determine whether or not there has been an error of law. Failure to give reasons therefore amounts to a denial of justice and is itself an error of law."

I agree.

15. In the present case, accordingly, I set the decision aside for failure to comply with rule 7 of the Appeals Rules by not giving adequate reasons and finding the material facts, so that one is left guessing as to what they were and I remit the case to another tribunal for decision, pursuant to rule 10(8) of those rules.

16. In determining the claimant's appeal, the tribunal to whom it is now remitted, should find as a fact whether the claimant's actual capital on 24 November 1980, and subsequently, has or has not exceeded £2,000 calculated in accordance with the Resources Regulations and should show how they arrived at this conclusion. If they decide to treat the claimant as having notional resources, or capital, under regulation 4 of those regulations, for the purpose of this calculation, specific findings that the claimant has deprived himself of resources for the purpose of securing supplementary benefit or increasing the amount of such benefit, within the meaning of regulation 4(1) of those regulations will be required and it will be necessary for them to hear evidence and to find and set out the primary facts on which such a conclusion is based.

17. Since this decision was originally written, the Supplementary Benefit and Family Income Supplements (Appeals) Amendment Rules 1982 [S.I. 1982 No 40] which came into operation on 15 February 1982, have substituted the following paragraph (a) in rule 10(8):

- "(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"

The material facts have not been found in the present case and the amended Rules do not confer power on the Commissioner to conduct a complete re-hearing, admitting fresh evidence and making additional findings as to the facts. This would be necessary in order to give a decision: see paragraph 16 above. Accordingly, it is in my judgment not expedient in the circumstances of the present case to exercise the power conferred by paragraph (a)(i) of the amended rule 10(8) and for me to give the decision that the tribunal should have given. I have accordingly decided to refer the case to another tribunal under paragraph (a)(ii).

Signed V G H Hallett
Commissioner

Date: 22 February 1982

Commissioner's File: C.S.B. 19/1981
C SBO File: 19/81