

DGR/JCB

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF
SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S.B 4/81 *reported*

1. I grant the claimant leave to appeal on a question of law from the decision of the Supplementary Benefit Appeals Tribunal dated 27 January 1981, and the necessary consents having been given to my treating the application as the actual appeal, I further decide that the said decision of 27 January 1981 was erroneous in point of law, and accordingly I set it aside.
2. By an order made in the Leicester County Court on 2 April 1980 the ex-husband of the claimant's wife was required to pay to the claimant's wife the sum of £4,000 by instalments at the rate of £20 per week. By 24 November 1980 the balance of capital unpaid amounted to £3,040. The claimant claimed supplementary benefit, but the benefit officer disallowed the claim on the grounds that the balance of capital still outstanding was a lump sum falling within regulation 3(2)(b)(i) of the Supplementary Benefit (Resources) Regulations 1980 (S.I. 1980 No 1300), that it exceeded the amount specified in regulation 7, i.e. £2,000, and that as a result it was a capital resource and regulation 11(3) did not apply. The practical effect of this was that the claimant was not entitled to supplementary benefit.
3. The claimant appealed against the above decision to the local tribunal. They took a different view. They seem to have found that the relevant order was a property transfer order, and that, as it was payable, not as a lump sum, but by means of weekly payments, it was not a capital resource but instead income, and that as a result regulation 11(3) was applicable.
4. The claimant appealed against that decision to the Commissioner and asked for an oral hearing, a request to which I acceded. Prior to the hearing, the claimant's solicitors put forward certain submissions in writing and later explained that, as the hearing was to be held in

London, they would not be able to attend. In the event at the hearing neither the claimant nor any representative of his appeared before me. The benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. I am grateful to her for her submissions.

5. The submissions of the claimant's solicitors would seem to be to the following effect. The order of the County Court was a property adjustment order and not an order for payment of a lump sum by way of maintenance, and the relevant provisions in the Supplementary Benefit (Resources) Regulations 1980, in so far as they refer to lump sums, mean payments in satisfaction of a maintenance obligation and not property adjustment orders. Accordingly, money payable under a property adjustment order does not fall to be taken into account as part of the resources of the claimant for the purposes of the regulations.

6. Before considering the submissions of the claimant's solicitors there is a factual complication. Although the benefit officer appears in his statement of facts to have assumed that the order made by the County Court was in respect of the share of the claimant's wife in the property and business standing in the name of her ex-husband, and although this assumption appears, from a record of what happened at the hearing before the tribunal, read to me by Miss Shuker, to have been accepted by the claimant's solicitors - in any event they unequivocally rely on this assumption in their submissions to the Commissioner - the terms of the order itself certainly do not show that the £4,000 awarded was solely in respect of the claimant's wife's proprietary interest in the relevant property. For the order reads as follows:

"That the Petitioner do pay to the Respondent the sum of £4000 payable by instalments at the rate of £20 per week first payment to be made 7 days from the date of service of this order upon him. (Credit to be given to the Petitioner for the payments made to the date hereof) in full and final settlement of all or any claim which the Respondent may have against the Petitioner for ancillary relief whether this be by way of Lump Sum payment, Periodical Payments or otherwise."

7. Now, on the face of it the order would appear to be saying that the £4,000 is in satisfaction of both the proprietary interest of the claimant's wife and her claims for maintenance. The words "ancillary relief whether this be by way of Lump Sum payment, Periodical Payments or otherwise" would appear to relate solely to the claim for maintenance. It may, of course, be the case that the £4,000 was intended by the parties to be attributable exclusively to the wife's proprietary rights in the relevant property and the reference to ancillary relief was inserted by the legal advisers of the ex-husband merely to ensure that there were no further claims made upon him in the future. However, this is not clear from the actual terms of the order.

8. The tribunal's findings of fact read as follows:

"A property transfer order of £4000 was awarded to the appellant's wife, this was not payable as a lump sum but at a weekly amount."

The tribunal have not given their reasons for their finding that the whole of the £4,000 was attributable to the wife's proprietary rights in the relevant property, but the point would not appear to have been a contentious issue, and presumably they were prepared to accept the facts as set out by the benefit officer and confirmed by the claimant's wife herself, as establishing that the order in question was a property transfer order and not to any extent an order for payment of a lump sum in satisfaction of periodic maintenance. In the circumstances of the present case, I consider that it was open to the tribunal to make that finding. However, had the point been contended, the tribunal would not have been entitled to make a positive finding without directing their minds to the matter in issue and satisfying themselves that, notwithstanding the implication of the terms of the relevant order, the whole of the sum ordered to be paid was to be identified with the wife's proprietary interests alone. Moreover, they would have had to have given reasons for their conclusion.

9. I now turn to the submissions of the claimant's solicitors. Their argument depends upon there being no provision in the Resources Regulations covering a property transfer order. The two crucial regulations are 3(2)(b) and (c). They provide as follows:

"(b) where -

- (i) a lump sum payment is made, whether in pursuance of a court order or otherwise, by or derived from a liable relative, and
- (ii) if that lump sum were treated as a capital resource the claimant's capital resources would exceed the amount mentioned in regulation 7, [ie £2000]

that lump sum shall be treated as a capital resource and regulation 11(3) shall not apply;

(c) where -

- (i) a lump sum, other than one mentioned in subparagraph (b) (i), falls to be paid by instalments, and
- (ii) if the outstanding instalments were treated as a capital resource the claimant's capital resources would exceed the amount mentioned in regulation 7 [ie £2000],

any such instalments shall be treated as an income resource;"

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These sub-paragraphs are badly drafted, and I am not the least bit surprised that the benefit officer and the tribunal should have come to opposing views as to whether or not the £4,000 payment fell within (b) or (c). Fortunately, I do not have to consider these sub-paragraphs in depth or to grapple with the problems to which they give rise.

10. That they do give rise to difficulties of construction is only too evident. For example, what is the effect of the exclusion in sub-paragraph (c)(i)? There is no lump sum as such in sub-paragraph (b)(i) upon which the exclusion in sub-paragraph (c)(i) can bite. The reference in sub-paragraph (b)(i) is not to a particular lump sum as such, but to the fact of a lump sum payment having been made, which, not so much identifies a particular type of lump sum, but seems to define it by reference to its having actually been paid. Is the contrast being drawn between a lump sum which has been finally paid, and one which is to be satisfied by instalments, or is the distinction as between a lump sum made by or derived from a liable relative and one whose origin arises from some other source? On any footing sub-paragraphs (b) and (c) do not seem to cover a lump sum, derived otherwise than from a liable relative, which is not payable by instalments.

11. There are also other difficulties in the two sub-paragraphs, to which I need not advert. Fortunately for the purposes of this appeal I do not have to decide the issue just raised. However, I would observe in passing that it would be helpful for future appeals if during the intervening period the relevant regulations were amended so that what is intended is readily comprehensible. But as regards the present case I can dispose of the appeal on a narrow point. For, there is a further problem, not noticed by either the benefit officer or the tribunal, but in effect adverted to by the claimant's solicitors. These sub-paragraphs only apply to "a lump sum". Manifestly, a lump sum is different from a sum simpliciter. Unfortunately, there is no definition in the regulations of what constitutes a lump sum, so that I am constrained to construe it on basic principles.

12. In my judgment, a lump sum is a commutation of a periodic payment. For example, it may constitute satisfaction for an annuity or for weekly payments under the Workman's Compensation Acts.

However, the term lump sum is particularly used in matrimonial proceedings, and in this context it indicates a sum which the recipient is willing to accept in satisfaction of entitlement to maintenance for life or until remarriage. A lump sum in this sense manifestly falls within the contemplation of sub-paragraph (b). For that sub-paragraph refers to the case where a lump sum payment is made by, or derived from, a liable relative, which includes an ex-spouse. I am not exactly sure what the lump sum referred to in sub-paragraph (c) is supposed to mean, having regard to the qualification "other than one mentioned in sub-paragraph (b)(i)", but fortunately for the present decision it does

not matter, in that the property adjustment order is, in my judgment, not a lump sum on any footing. It is merely an amount of money which measures the proprietary entitlement of the claimant's wife to the relevant matrimonial assets. It may well be a compromise figure, but it is not a commutation of a series of periodical payments. It is not a "lump sum", but simply a "sum". Accordingly, in my judgment, it is not caught by either sub-paragraph (b) or sub-paragraph (c). Likewise, it does not fall within paragraph 11(3) of the regulations which again refers to lump sum payments and reads, as far as is material, as follows:

"Any periodical payment, including any arrears paid periodically, and any lump sum payment made, whether in pursuance of a court order or otherwise, to a member of the assessment unit, by or derived from a liable relative shall be taken into account in full as income; and in the case of any lump sum payment shall be attributable as follows -

..... "

13. Of course, the fact that a property transfer order is not caught by regulation 3(2)(b) or (c) or regulation 11(3) does not mean that a claimant's entitlement under such an order can for the purposes of Supplementary Benefit necessarily be disregarded altogether. I have not heard submissions on this point and accordingly I express no view whatsoever. In the present case all I am required to do is to consider the correctness or otherwise of the decision of the tribunal, and, for the reasons given above, I am satisfied that it was erroneous in point of law.

14. Accordingly, I have no hesitation in granting leave to appeal, and as the parties have both consented to my treating the application as the appeal itself, I can go on to decide the appeal. I am satisfied that the decision was erroneous and in accordance with regulation 10(8) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 (S.I. No 1605) I direct that this appeal be reheard by a differently constituted tribunal and determined afresh.

(Signed) D G Rice
Commissioner

Date: 27 July 1981

Commissioner's File: C.S.B. 81/1981
CSBO File: SBO 95/81