

IDENTIFIED DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

CS B 117/1983



VGHH/JW

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSION

Name: Rosina Mary Kemp (Mrs)

Supplementary Benefit Appeal Tribunal: Barking

Case No: 07/396

1. This appeal succeeds. My decision is that the decision of the supplementary benefit appeal tribunal dated 9 September 1982 is erroneous in point of law. I set it aside and refer the case to another tribunal for determination in accordance with my directions.

2. The course of the proceedings and the relevant law are summarised in the written submission dated 4 July 1983 of the supplementary benefit officer now concerned and I agree with and adopt that summary in these respects.

3. By a decision issued on 1 July 1982 a supplementary benefit officer decided that the claimant was not entitled to a supplementary pension from 5 July 1982. The claimant appealed against that decision and the officer then gave as his reason for his decision that the claimant had unreasonably deprived herself of a capital asset which she should be deemed to still possess, that that asset exceeded £2,000 in value and accordingly a supplementary pension was not payable. The officer was relying on regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 the terms of which are set out in the above mentioned submission of 4 July 1983.

4. The supplementary benefit appeal tribunal, before whom the claimant appeared and gave evidence, found that on 18 January 1982 the claimant had moved to local authority accommodation, that the property which she owned was worth an estimated £26,000 and was legally made over to her son by way of gift. They confirmed the benefit officer's decision giving as their reasons that after examining all the evidence the tribunal were satisfied that the claimant was not entitled to a supplementary pension as she had deprived herself of a resource and it might, therefore, be treated as if it were still possessed by her.

5. The decision of the supplementary benefit appeal tribunal was clearly erroneous in point of law for failure to comply with Rule 7 of the Appeals Rules. The benefit officer now concerned, in his written submission, has pointed out that the tribunal should have

made and recorded findings of fact and given reasons on four separate matters, which he lists. I agree. The important matter on which there is no finding at all is as to whether the claimant had deprived herself of the asset (bungalow) "for the purpose of securing supplementary benefit, or increasing the amount of any such benefit". The claimant had stated in her written appeal that she had made the bungalow over to her son as she just could not do the garden or decorations, she had a bad ulcerated leg and also the rates and bills were getting too much for her. There is absolutely nothing in the record of the tribunal decision, or anywhere else, to show whether the tribunal accepted her statement or not. If they did, the claimant's appeal should have succeeded. The claimant is left completely in the dark as to whether her evidence was accepted or not. If they did not, they should have said that they rejected it and why and they should have expressly found what the claimant's true purpose was, and why. They should then have gone on to consider the value of the claimant's interest in the property in accordance with regulation 5 of the Resources Regulations (which regulation does not appear to have been considered by them at all) and have applied their minds to the exercise of their discretion. As pointed out by the benefit officer now concerned, the application of regulation 4 is not mandatory. It is discretionary. If the tribunal did appreciate the discretionary nature of regulation 4, it is not clear from their decision whether they did or not; they have given no indication of the basis on which they exercised their discretion.

6. The claimant's representative has suggested that there is sufficient evidence for me to give the decision which the tribunal should have given. I cannot do this because I have no power to conduct a complete re-hearing, finding further facts, and deciding in particular whether or not I accepted the claimant's evidence as to her reasons for disposing of the property. The case must accordingly be referred to another tribunal which should be entirely differently constituted. They should consider and make findings on each of the points referred to by the benefit officer now concerned in his above mentioned written submission, a copy of which, together with a copy of my decision, should be before the fresh tribunal. That tribunal should also be referred by the benefit officer to those Commissioners' decisions, of which there are already more than one, which explain the discretionary nature of regulation 4(1).

Signed: V G H Hallett
Commissioner

Date: 27 September 1983

Commissioner's File: C.S.B. 117/1983
C SBO File: 78/83
Region: London North