CSB 201/1982
Resources
Capital - interest in shop, joint owner

JGM/MP

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

/ORAL HEARING/

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 3 August 1981 is erroneous in point of law and is set aside. The matter must be referred back to another tribunal.

2. The claimant made a claim for a supplementary allowance which was disallowed from 11 May 1981. I was informed at the hearing that an allowance had been paid to him for about twelve months before that date. The benefit officer based his disallowance on two grounds viz: (A) that the claimant's capital resources exceeded £2,000 and (B) that there ought to be included in the resources of the assessment unit a sum of £60 per week, the reasonable remuneration for his wife's working full-time without remuneration in the shop below mentioned, and that if that £60 per week were included in the resources of the assessment unit its resources would exceed its requirements.

3. The claimant appealed against this refusal to the appeal tribunal. Before the tribunal the benefit officer abandoned ground (B) on the basis of evidence that the business in which the claimant's wife worked could not support any remuneration at all. The appeal tribunal in dismissing the appeal relied on ground (A) alone. The claimant now appeals to the Commissioner. He was represented at the oral hearing before me by Mr C James, a solicitor from the Bradford Law Centre. The benefit officer was represented by Miss L Shuker of the Solicitor's Office of the Department of Health and Social Security. At the hearing Miss Shuker gave me an assurance that if the matter were referred back to another tribunal the ground (B) would not be re-opened. For the reasons stated in the following paragraph I consider that she was entirely right to give that assurance.

4. Regulation 4(4) of the Supplementary Benefit (Resources) Regulations 1980 (the 1980 Regulations) as originally enacted provided as follows:-

> "Where a person performs an unpaid service for another person who has the means to pay for that service and for which in the ordinary course he would pay, an amount calculated by reference to comparable employment and the means of that other person may be treated as if it were actually paid to and possessed by the first-mentioned person." (my underlining)

This regulation was amended from its inception by the substitution for the words underlined of the following

> "for another person a service for which that person makes either no payment or a payment less than that paid for comparable employment, an amount of earnings calculated by reference to such employment".

I have set out the regulation in its original form because it is clearer in the original form than in the amended form that the person by reference to whose resources the calculation has to be made is the person for whom the service is performed. As soon as that is realised, it will be seen that it is not intended that the discretionary power under the regulation (now re-enacted with small modifications in a fresh regulation) should be exercised so as to impute to a person performing gratuitous or underpaid services a reasonable remuneration for those services unless the person for whom the services are performed is able to pay for them.

5. I now come to the ground on which the tribunal confirmed the benefit officer's decision, viz. that the claimant's resources exceeded £2,000. The evidence on this issue was that there was a lock-up shop, not the home of the assessment unit, which according to the land certificate of the property was registered with absolute title in the names of the claimant and his father, free of any registered charge. So far as the legal title went the claimant had a half interest in the property. But in my judgment a person is only to be regarded as possessing resources if he has more than the bare legal title to them. He must have the beneficial title (with or without the bare legal title). Prima facie no doubt the beneficial title co-incides with the legal title. But it very commonly does not; for instance a trustee has the bare legal title but, except so far as he is a beneficiary under the trust, he has no beneficial title.

6. Where property is vested in joint names there is a well-known rebuttable presumption that their beneficial ownership is proportional to the shares in which they paid for it. Where one of the two is a father and the other is one of his children the first presumption may be displaced by the presumption that a father in allowing the property to be placed in joint names intended to benefit his child. It follows that if the father put up more than half the purchase price the resulting presumption is that the beneficial interests are equal. These presumptions are considered in Halsbury's Laws of England (3rd Edition) Vol. 38 at pages 867-871. In the present case, on the

evidence of the land certificate unsupported by any other evidence, it would be right to conclude that the claimant had a half share. Further, as his co-owner was his father, this conclusion would not have been affected by evidence that the father contributed all or more than half of the purchase price unless there was also evidence that the father had no intention of making a gift to his son. These matters were all peculiarly within the knowledge of the claimant rather than the benefit officer and if the claimant did not volunteer evidence about them the tribunal were in my judgment perfectly entitled to rely on the foregoing presumptions to determine the fraction of the claimant's interest in the property. On the evidence before them the claimant had a half interest, and Mr James at the hearing told me that this was in fact correct. The tribunal's finding was that he was part owner. In valuing a part share there are many factors that are incapable of precise determination but the claimant's fraction of the property was precisely ascertainable and it would have been better if the tribunal had made a finding of the precise fraction.

7. Having ascertained the fraction the tribunal had then to go on to value that fraction, since, if it was over £2,000, then subject to the exercise of the discretion to disregard it mentioned below, the claimant was not entitled to an allowance. The first factor in the valuation would be the value of the property as a whole. The claimant originally put this at £10,000 to £13,000 which he later reduced to £8,000. No other valuation or estimate appears to have been made. The tribunal do not say how they arrived at their conclusion that the claimant had capital assets in excess of £2,000. They refer in their findings to the claimant's valuation and I would infer that they concluded that even taking this value the claimant's half share would be £4,000, which exceeds £2,000.

8. If this was not the reasoning no other explanation was forthcoming. The reasoning that I have imputed to the tribunal is based on the fallacious view that an undivided half share in property that is not readily divisible is equal in value to one half of the whole. In fact, unless the claimant was in a position to force the sale of the property, there was no way in which he could realise his interest in it other than the sale of that interest to a third party. It is highly speculative what a third party would give for the right to become half owner along with the claimant's father, but it would certainly be less than half the value of the property as he could well find that he was buying himself a law-suit. The problems of the valuation of such a share in a much more complicated case were considered by the Commissioner in his decision on file C.S.B. 354/82 where some of the relevant facts to be ascertained were indicated. But the factors relevant in the present case at least are all so imprecise that it would be impracticable to do more than make a reasonable estimate of the value and I doubt if it is necessary to do more than recognise that (unless the claimant is in a position to procure an immediate sale and take his half share of the proceeds) the value must be noticeably less than half the total value of the property. As to the possibility of securing an immediate sale it has to be remembered that though theoretically a joint owner can secure such a sale, an order for such a sale is liable to be refused by the

Court against the will of the other joint owners where sale would frustrate the purpose for which the property was acquired (see Halsbury's Laws of England (4th Edition) Vol. 39 paragraph 550). It will be relevant therefore to enquire into the purposes for which the property was acquired. Very little evidence about this was adduced to the tribunal and, though I was at the hearing told a good deal more, that is not evidence on which I can give a decision as it was not before the tribunal. The tribunal to whom the matter is referred back will have to consider this point, which was not canvassed at all at the hearing. In my judgment, though it is quite possible that the tribunal could properly have arrived at the same conclusion as they reached if it had been canvassed, the decision was erroneous in point of law.

9. There is a further point on valuation, though not a point on which the tribunal were in error. Mr James mentioned debts owed by the claimant. It was decided in Commissioner's Decision R(SB) 2/83 that a person's resources fall to be computed without any deduction for debts, subject only to the fact that express provision is made in the regulations for the deduction from the value of any property of the amount of any debt or mortgage secured on it. No evidence of such debts was before the tribunal and for myself I do not think that they were under any obligation to enquire about them. Some evidence of debts was put before me, but as that evidence was not before the tribunal I cannot base any conclusion on them. I can only say that the evidence before me (which may not have been complete) contained nothing to indicate any charge on the property. In particular I reject Mr James' submission that, if the claimant owed his father any money, then his father as his co-owner had a charge on the claimant's interest in the property co-owned. His father may have had to hand some leverage to enable him to enforce payment of the debt, but co-ownership did not of itself mean that the debt was secured on the claimant's interest in the property. If the father had a charge it must have arisen in some other way and if it is relied on it will have to be proved to the tribunal to whom this matter is referred back.

10. There is one further matter. The property was used for the running of a shop business. The tribunal had before them a trading account and balance sheet of the business in which the business was described as being that of the claimant's wife. The account for the year to 31 May 1981 showed a loss. The balance sheet shows the assets in general at cost. If the shop property was a business asset its value is not shown, which it would not be if it had cost the business nothing to acquire. On the other hand alterations and improvements (which are not in reality assets at all) are shown at cost and this is perhaps some evidence that the property was regarded as a business asset. The case for constituting it a business asset would be stronger if the claimant himself were found to have been a non-working co-owner of the business. The importance of this question lies in the fact that under regulation 6(1)(a)(v) of the 1980 Regulations business assets are to be disregarded for such period as in the opinion of the benefit officer it would be reasonable to disregard them. This in the case of an appeal to an appeal tribunal means for such period as in the opinion of that tribunal it would be reasonable to disregard them (cf. Decision R(SB) 5/81 at paragraph 8). It was therefore necessary

for the tribunal to consider whether the property was a business asset to which regulation 6(1)(a)(v) applied, and if so whether it should be disregarded for a period. Alternatively it might possibly conclude that assuming it to be a business asset it was not appropriate to disregard it or to disregard it further. The fact that the claimant was previously being paid an allowance notwithstanding his interest in the property suggests the possibility that it had already been disregarded as a business asset for some time. Nevertheless it was the duty of the tribunal to consider whether it should be further disregarded and I find no indication that this was ever considered. In my judgment the purpose of regulation 6(1)(a)(v) is to achieve some sort of compromise between (A) the desirability of allowing a person to draw supplementary benefit without his being forced to realise business assets in the hope that by running a successful business he may cease to be a recipient of an allowance, and (B) the undesirability of allowing a person to run an unprofitable business indefinitely while living on supplementary benefit instead of on the proceeds of sale of assets that he is unable to put to profitable use in the business. The tribunal to whom the matter is referred back should exercise their discretion with this in mind.

11. The claimant's appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 8 March 1983

Commissioner's File: C.S.B. 201/1982
CSBO File: 20/82