

Capital - disregard under Reg 6(1)(b) -  
som doesn't have to be continually tied up  
in the purchase of home. ★ ✓

DGR/SH/11/MD

Commissioner's File: CSB/0322/1986

C A O File: AO 2397/SB/86

Region: Wales & South Western

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A QUESTION OF LAW  
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Mary Haskins (Mrs)

Social Security Appeal Tribunal: Exeter

Case No: 2/05

[ORAL HEARING]

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 26 September 1985 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.
2. This is an appeal by the adjudication officer, brought with my leave, against the decision of the social security appeal tribunal of 26 September 1985. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant, who was present, was represented by Mr Mark Rowland of Counsel, instructed by Mr Peter Smith, solicitor to the Child Poverty Action Group, whilst the adjudication officer was represented by Mr P Darby of counsel, instructed by the Solicitor's Office of the Department of Health and Social Security. I am indebted to them both for their submissions.
3. The facts of this case are not in dispute. In August 1983 the claimant sold her home and moved to Holme Place, Oakford, Tiverton, a property owned by the Holme Place Co-operative Association, a body corporate with limited liability registered under the Industrial and Provident Societies Act 1965. The rules of the Association precluded the acceptance of money on deposit, but allowed it to issue loan stock. The right to occupy property owned by the Association was dependent upon the occupant's purchasing one share in the Co-operative. Moreover, in the present case it was a further condition of the claimant's going into occupation of the property that she take up loan stock to the value of £11,500. On 18 October 1983 she acquired £8,000 worth of stock, and on 11 November 1983 a further £3,500. It was a term of issue that this stock should not be repaid until 12 months after the holder had resigned from the Association. In the event, she gave notice on 14 September 1984 of her withdrawal from the Co-operative. On 22 September 1984 she moved to 1 Brew House, Oakford. On 5 October 1984 she applied for supplementary benefit, and stated that her holding of loan stock was not realisable for 12 months. Nevertheless, the adjudication officer decided that the loan stock was a resource in possession falling within regulation 5 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No 1527], being a chose in action, conferring a right to the money in question by a specific date. As this exceeded the statutory limit, the adjudication officer disallowed the claim to

benefit.

4. In due course, the claimant appealed to the tribunal who in the event overturned the decision of the adjudication officer. They based their decision on regulation 6(1)(f) of the Resources Regulations. That particular regulation reads as follows:-

"6. - (1) In calculating a claimant's capital resources the following shall be disregarded:-

....

(f) any sum which is deposited with a Housing Association as defined in section 189(1) of the Housing Act 1957 or section 208(1) of the Housing (Scotland) Act 1966 as a condition of occupying the home."

In the view of the tribunal the £11,500 in dispute had been deposited with a Housing Association - it was accepted that the Holme Place Co-operative Association was a Housing Association within the definition contained in section 189(1) of the Housing Act 1957 -and that sum remained deposited therewith at the date of claim as a condition of occupying the home. It was therefore to be disregarded.

5. In the course of giving their reasons for their decision the tribunal remarked that "the onus of proving that the claimant had more than £3,000 invested in the Housing Association rested upon the adjudication officer, that onus had not been discharged". This puts the onus the wrong way round. It is for the claimant to establish that he is entitled to supplementary benefit and this will involve his demonstrating that he does not have capital assets in excess of the statutory limit. Accordingly, on this ground alone the tribunal's decision would have to be set aside.

6. However, further matters have been raised on which it is proper that I should give some guidance. The first issue is whether or not the £11,500 could properly be regarded, as at the date of claim, as deposited with the Housing Association as a condition of occupying the home. This question in turn raises a further matter, namely whether subscribing for loan stock could be regarded as depositing. What is meant by the word "deposited"? Does it envisage leaving money "on deposit" in the banking sense? If it does, then in the present instance the £11,500 was not so deposited, because the rules of the Association expressly prohibit a transaction of that kind. Or does the word "deposited" mean "put under the control of without conferring any proprietary interest therein", analogously to a deposit of title deeds by way of security? Or is the word to be given a broad interpretation and treated as covering any payment which is "tied up with" the Association, a contention put forward by Mr Rowland?

7. Mr Rowland argued that in construing the relevant provision regard should be had to the purpose for which it was enacted. In his submission, the underlying object of regulation 6(1)(f) was to put on the basis of equality a person who had bought his home, and as a result had the benefit of regulation 6(1)(a)(i), and a person who although not actually having bought his home, had parted with to a Housing Association a sum of money approximately corresponding to the value of his home. Accordingly, the word "deposited" should be construed widely, and in support of this approach he relied on Swan v. Pure Ice Company Ltd (1935) 2KB 265 and Wills v Bowley (1983) A.C. 57. The point is not an easy one, but on balance I think that in the context of the relevant provision the word "deposited" was not to have a technical or narrow meaning. If a particular Housing Association requires the provision of an appropriate sum in the form of loan stock rather than (say) by way of a payment on deposit in the banking sense, then the claimant should not be prejudiced. At the end of the day, how the money is provided is essentially a matter of mechanics. Accordingly, I think that the claimant's subscription for £11,500 worth of loan stock can

properly be regarded as a deposit within the regulation.

8. However, that is not the end of the matter. The deposit has to be made "as a condition of occupying the home". The home is, of course, in the present case the particular home which belonged to the Housing Association, namely Holme Place. At the date of the claim the claimant had left Holme Place and had resigned from the Association. Accordingly, the sum deposited was no longer lodged as a condition of occupying Holme Place. By that time the claimant was occupying a new home, namely 1 Brew House. Mr Rowland endeavoured to get out of this difficulty by suggesting that it was enough if the sum in question, when first deposited, was lodged as a condition of occupying the relevant home. In other words, if at the date of claim the money which had been deposited as a condition of occupation was still so deposited, it mattered not that the original home to which the deposit related had ceased to be occupied by the depositor. I do not accept that construction of the regulation. In my judgment, the words cannot bear that interpretation. It is necessary to consider the position as at the date of claim, and if reliance is to be placed on regulation 6(1)(f) the claimant has to show that the money is then still deposited and that the home to which it relates is still occupied. The interpretation suggested by Mr Rowland does violence to the words employed. Accordingly, as in the present case the claimant had at the date of claim ceased to occupy Holme Place, she cannot derive any advantage from regulation 6(1)(f). In so far as the tribunal concluded otherwise, they erred in point of law and their decision must be set aside.

9. Mr Rowland went on to submit that, if I decided that the tribunal had erred in point of law and that their decision must be set aside, then the new tribunal should consider regulation 6(1)(b), which reads as follows:-

"6. - (1) In calculating a claimant's capital resources the following shall be disregarded:-

.....

(b) any sum attributable to the proceeds of sale of a home which is to be used for the purchase of another home within six months of the date of sale or such longer period as is reasonable in the circumstances."

Mr Rowland contended that in August 1983 the claimant had sold her then home in order to move to Holme Place and that out of the proceeds of sale she had applied £11,500 in taking up loan stock. It was this sum which she wished to apply in the purchase of a new home, presumably by means of reducing the mortgage which she had taken out to acquire it. Mr Rowland argued that regulation 6(1)(b) covered a situation of this sort, and it mattered not that the money in question had been used in the intervening period to enable the claimant to acquire possession of another property. It was for the new tribunal to decide whether, notwithstanding that the period of six months had been exceeded, it was reasonable in the circumstances to disregard this sum pursuant to regulation 6(1)(b). In my judgment, provided that the new tribunal are satisfied that the sum of £11,500 can properly be identified with the proceeds of sale of the claimant's home immediately prior to August 1983, then it is open to them pursuant to regulation 6(1)(b) to decide whether in the circumstances it is reasonable to disregard it. The fact that the money has been deposited with a Housing Association in the interval of time between the sale of the home occupied by the claimant prior to August 1983 and her acquisition of 1 Brew House should not be fatal to reliance on regulation 6(1)(b). However, whether or not she is able to get within that provision on the facts will depend upon appropriate findings on the part of the new tribunal and the exercise of their judgment as to whether or not it is reasonable to extend the six months' period.

10. It follows from what has been said above that I must set aside the tribunal's decision

and direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned above.

11. I allow this appeal.

(Signed) D.G. Rice  
Commissioner

Date: 27th October 1986