

MJG/OG

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF SOCIAL SECURITY COMMISSIONER

CSB 546/1981
230/1982
Report

1. My decision on these two appeals by the claimant is that the decisions of the supplementary benefit appeal tribunal dated 28 July 1981 and 20 October 1981 respectively are not erroneous in law. Consequently the claimant's appeals against those decisions are dismissed: Supplementary Benefits Act 1976 (as amended by the Social Security Act 1980), section 15A and the Supplementary Benefit and Family Incomes Supplement (Appeals) Rules 1980 S.I. 1980 No 1605 (as amended by S.I. 1982 No 40) rule 10(8).

2. The claimant is a single woman aged about 60 who shares a home with a Miss McF. There has been some contention before the supplementary benefit appeal tribunal as to whether the claimant should be treated as joint householder but as I read the appeal papers before me it does not appear that those particular parts of the tribunal's decisions are under appeal to the Commissioner. The appeals however lie on a different matter which arises out of the fact that the claimant and Miss McF also own another property, a cafe. This property has for some time been up for sale with an asking price of £25,000 and in the meantime is rented to a tenant at a rent of £3,000 a year, the half share of which payable to the claimant amounts in weekly terms to £28.84 a week. That sum is in excess of the claimant's requirements as assessed for supplementary benefit purposes, with the result that the claimant has not been entitled to supplementary benefit, under the two decisions of the tribunal, relating respectively to the period from 9 October 1980 to 23 November 1980 and from 24 November 1980 (the date on which there were extensive changes in the law of supplementary benefit) onwards.

3. The claimant's appeals are based on the assertion that in assessing her resources there should not have been taken into account the 'gross' rent of £28.84 a week received by her from the cafe, but should have deducted from that gross rent the claimant's share of the "outgoings" on a mortgage to a bank secured on the cafe and which was entered into originally in order to enable the claimant and Miss McF to purchase the cafe. As to that mortgage the claimant has stated (in her application for leave to appeal dated 6 January 1982),

"My share of the repayment of the bank loan for which the

mortgage is security⁷ is £11.54 per week. The bank refused to accept less. My share of the interest on the loan was £5.47 per week, making a total of £17.01 per week. The gross rent received by me was £28.84 per week. The effect is that I had £28.84 less £17.01, i.e. £11.83 per week net disposable income, and this is well below the scale rate".

Presumably the £11.54 per week to which the claimant refers is repayment of capital and I do not know (it is no direct concern of mine of course) whether the bank would be prepared to defer these repayments until such time as the cafe is sold. In my judgment, however, for the reasons set out below, neither the repayment of capital of £11.54 per week nor the repayment of interest of £5.47 per week can be deducted from the £28.84 per week rent in ascertaining the claimant's income from the cafe for supplementary benefit purposes.

4: So far as concerns the period prior to 24 November 1980 the legal position is that the matter was largely within the discretion of the tribunal. Under paragraph 4(1)(a) of Schedule 1 to the Supplementary Benefits Act 1976 (before it was amended by the Supplementary Benefits Act 1980 as from 24 November 1980) the supplementary benefit appeal tribunal decided not to exercise its discretion to allow a deduction from the "tariff" income from the claimant's capital to take account of the mortgage repayments. I accept that the tribunal's discretion was properly exercised in that regard. Indeed when one looks at the position from 24 November 1980 onwards, when the matter is governed by detailed regulations (see below), one finds that the effect of the regulations is the same, though I accept of course that that is by no means conclusive of the matter. However, I consider on general principle that the tribunal did exercise its discretion correctly, and therefore I hold that its decision dated 28 July 1981 was not erroneous in law.

5. So far as concerns the period from 24 November 1980 onwards, i.e. from the time that the 1976 Act was amended and comprehensive sets of regulations dealing with resources and requirements were introduced, the position is as follows. The value of the cafe, less sale expenses and the amount of the mortgage debts secured upon it, would, if it exceeded (as presumably it does) £2,000, normally have the effect of being taken into account as a capital resource and extinguishing any entitlement to supplementary benefit (see the Supplementary Benefit (Resources) Regulations 1980 /S.I. 1980 No 1300/ regulations 5 and 7). However under regulation 6(1)(a)(iii) of the Resources Regulations, the value of the cafe is in fact totally disregarded as a capital resource because the cafe is for sale and the benefit officer has regarded it as reasonable to disregard its value until such time as he estimates the sale will be completed. The result is that the greater disregard i.e. of the whole of the value of the cafe so to speak "swallows up" the lesser disregard, in the sense that otherwise the claimant would have been entitled to have the capital secured on the mortgage deducted from the value of the cafe (see regulation 5(a)(ii) of the Resources Regulations) and compare Commissioner's Decision R(SB) 14/81 (to which the benefit officer now concerned refers in his submission as C.S.B. 10/81).

6. The further question then is whether the claimant is entitled to any further "relief" for the capital and interest repayments to the bank on the mortgage loan. This depends on the calculation of her income resources under regulations 9 and 11 of the Resources Regulations 1980. Regulation 9, so far as is material, provides as follows:-

"Calculation of income resources

9(1) Except in so far as regulations 10, 11 and 12 provide that certain payments shall be deducted and that certain payments shall be disregarded, the amount of a claimant's income resources to be taken into account shall be -

(a) relates to earnings

(b) the whole of any other income of the assessment unit, calculated in accordance with regulation 11,

calculated on a weekly basis."

That reference clearly shows that the whole or gross income is to be taken into account unless there is a specific provision for a disregard or a deduction in regulations 10, 11 and 12. Regulation 10 relates to earnings and regulation 12 relates to dependants' income, neither of which are in issue in this case. One must therefore look at the provisions of regulation 11 which concerns "Calculation of other income". That regulation, so far as is material, provides as follows:-

"11(1) For the purposes of the calculation of the income resources of the claimant, all income shall be taken into account in accordance with the following paragraphs.

(2) There shall be treated as income and taken into account in full -

....

(n) any income from capital which falls to be disregarded by virtue of regulation 6(1)(a)(iii) i.e. property for sale - see above"

7. The only relevant provision for deduction from income in regulation 11 is regulation 11(6) (set out in full in the submission of the benefit officer now concerned dated 9 July 1982). It relates to income tax and provides that if tax is deducted at source the income is to be regarded as the net payment but if it is not so deducted the income is to be regarded as the gross payment though there can be a review subsequently at such time as tax is paid on the income. That again reinforces the view that regulations 9 and 11 contemplate that there shall be no deductions from income except payments actually made out of and attributable to that income, and specifically referred to in regulation 11. There is no provision in regulation 11

for the deduction of payments of mortgage interest or capital from rent received from property that is up for sale and I conclude therefore that neither the repayments of capital nor the interest payments to the bank can be deducted from the £28.84 a week rent of the cafe received by the claimant.

8. In her grounds of appeal the claimant states:-

"I believe the words 'and taken into account in full' /i.e. in regulations 9 and 11 of the Resources Regulations/ indicate that there shall be no disregard and not that reasonable expenses incurred in obtaining the income shall not be taken into account."

The supplementary benefit officer now concerned in his submission (paragraph 6) concedes that point, i.e. that "taken into account in full" means not benefiting from a fixed disregard under regulations, e.g. of the first £4.00 of the income or the whole of it (see provisions to that effect in regulations 11(4) and (5)). I am prepared to accept that submission but I nevertheless consider that the scheme of regulations 9 and 11 is such as to prohibit the deduction from income of sums other than those specifically provided for in those regulations. I would however be prepared to agree that the use of the word "income" might involve the deduction from 'gross' income of reasonable expenses occurred in its collection.

9. The claimant in her grounds of appeal states,

"It is suggested that where income from rent is involved it is reasonable that gross rent should be reduced by e.g. estate agent's commission in collecting the rent or the cost of repairs necessarily incurred in accordance with the terms of a lease".

However, those expenses are not in my view analogous to the repayment of mortgage capital and interest on a loan to purchase the property, as they are not of their nature payable out of the rent as e.g. estate agent's commission may be though the cost of repairs may not.

10. My conclusion that the repayments of capital and payments of interest under a mortgage cannot be deducted from the rent is reinforced by the fact that there is provision for mortgage repayments to be taken into account in another sense, i.e. in assessing a claimant's housing requirements. Regulation 16 of the Supplementary Benefit (Requirements) Regulations, 1980 /S.I. 1980 No 1299/ deals with this matter but is confined throughout in its scope to a mortgage on the claimant's home. The cafe in this case is not the claimant's home. There is provision in regulation 16(4) of the Requirements Regulations for taking into account, as a requirement, interest on a mortgage taken out for business purposes, but only when the mortgage is on the claimant's interest in his home, and the claimant intends to sell his interest in the home to discharge his business liabilities. That is not of course the situation in the present case.

11. I have referred to the Resources and the Requirement

Regulations in their 1980 versions, because those were the Regulations in force at the material time. The Requirements Regulations 1980 are still in force (though subsequently amended) but the Resources Regulations have been replaced by consolidating regulations, the Supplementary Benefit (Resources) Regulations 1981 /S.I. 1981 No 1527/ but the law as set out in this decision is not altered by the subsequent amendments or consolidating regulations.

(Signed) M J Goodman
Commissioner

Date: 6 October 1982

Commissioner's Files: C.S.B./546 1981 and C.S.B. /230/1982
C SBO Files: 712/81 and 74/82

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