

DR/JS

Norman Perowne
Commissioner's File: CSSB/152/85
C.A.O. File: AO 2475/85
L.O: Laurieston
L.O. Ref. No: 311/152831

SUPPLEMENTARY BENEFITS ACT 1976

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

see para 7(c)

Name: ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~

Social Security Appeal Tribunal: Glasgow

Case No: 5/2

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal dated 2 April 1985 is erroneous in point of law and is therefore set aside.

2. The claimant formerly lived with her husband in Australia. A breakdown of the marriage occurred, and the claimant and her husband entered into an agreement in that connection in October 1984. It was understood by the local adjudication officer that under that agreement the claimant accepted a lump sum payment of £4,000 on condition that she did not make a further claim for maintenance. In connection with the present appeal to a Commissioner a copy of the agreement has now been produced. Under that agreement the claimant and her husband agreed that in full settlement of all property and maintenance matters between them the husband should pay to the claimant the sum of 8,000 Australian dollars. 8,000 Australian dollars at the time under consideration amounted to approximately £4,000. The claimant spent £1,000 on air fares in order to return to Scotland, £700 in connection with acquiring a flat in Scotland and £1,000 on living expenses. By 23 January 1985 the claimant had about £1,300 of the said lump sum of £4,000 still in hand.

3. The claimant claimed supplementary benefit on 29 November 1984. The local adjudication officer decided that the claimant was not entitled to supplementary benefit, and, after an appeal by the claimant, a social security appeal tribunal reached a similar decision. The claimant applied for leave to appeal to a Commissioner on a question of law from the tribunal's said decision, and the Chairman of the tribunal allowed that application. I am now concerned with the appeal, and in that connection an oral hearing took place before me.

4. The following statutory provisions are relevant in the present case:-

(a)/

- (a) Under regulation 2(1) of the Supplementary Benefit (Resources) Regulations 1981 (as amended) a "liable relative" is, so far as relevant to the present case, defined as follows:-

" 'Liable relative' means a spouse or former spouse ... and 'payment made by or derived from a liable relative' shall be construed accordingly, except that a reference to such a payment shall not include a reference to a payment resulting from a disposition of property, whether voluntary or by order of the court as the case may be, made in or in connection with an agreement to separate"

- (b) Regulation 13(1), 13(2) and 13(3)(a) of the said Resources Regulations provide as follows:-

"13.-(1) Any periodical payment, including any arrears paid periodically, and subject to paragraph 4(a), any lump sum payment, including any arrears paid by way of a lump sum, 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.

(2) The amount of any lump sum payment to be taken into account under this regulation shall, in any week in which the assessment is made, be whichever is the less of -

- (a) the amount received, less, where an assessment is made on review or on a repeat claim, the aggregate amount of income assumed from it by virtue of a previous determination;
- (b) such part of the amount as may at that time reasonably be considered to form part of the resources of the assessment unit.

(3) Except in a case to which paragraph 3(a) or(4)applies, a lump sum payment to which this regulation applies shall be attributable as income as follows:-

- (a) where it is payable for the claimant or the claimant and any dependant, the number of weeks to which it shall be attributable shall be the whole number obtained by dividing its amount by -

(i)/

- (i) the aggregate of £2.00 and the amount of pension or allowance which would, if the sum were disregarded, be payable to the claimant in the week in which the assessment is made, or
- (ii) where the sum is paid in pursuance of a court order for periodical payments, the amount of those payments expressed as a weekly rate, if that amount is higher than the aggregate in head (i),

and the divisor applied shall be the weekly rate at which the sum shall be attributable;"

5. The local adjudication officer took the view that the said payment of £4,000 made to the claimant by her husband represented a lump sum payment in lieu of a maintenance settlement and that, having regard to the relevant statutory provisions, the remaining balance of the said payment received by the claimant from her husband meant that she should not be found entitled to supplementary benefit until 7 October 1985.

6. At the hearing before the tribunal it was apparently argued on the claimant's behalf that the said sum of £4,000 received by the claimant from her husband should be regarded as a capital payment, and that the balance then possessed by the claimant should be disregarded because of the provisions of regulation 6(2) of the said Resources Regulations. The tribunal's decision indicates that they were not prepared to accept that contention and that they regarded the monies possessed by the claimant at the time of her claim for benefit as an income resource. I agree with the adjudication officer now concerned with the case and with the claimant's representative that the tribunal have not recorded sufficient reasons for rejecting the contentions put forward on behalf of the claimant. I also agree with the said adjudication officer and the claimant's representative that the tribunal have not made any relevant findings on the issue regarding whether they considered whether any portion of the said £4,000 resulted from a disposition of property. In that connection, however, I would mention that a copy of the agreement entered into between the claimant and her husband mentioned above was not before the tribunal. In my view there has been a breach of regulation 19(2) of the Social Security (Adjudication) Regulations 1984 which necessitated the Chairman of the tribunal including in the record of the decision findings on questions of fact material to the decision.

7. Having regard to the views expressed above I have reached the conclusion that the tribunal's said decision must be set aside as being erroneous in point of law. The case must now be reconsidered by a differently constituted tribunal. In that connection I make the following directions:-

(a)/

- (a) The tribunal must consider whether any portion of the said payment of £4,000 received by the claimant resulted from a disposition of property - see the statutory provision mentioned in paragraph 4(a) above.
- (b) The tribunal must consider whether the claimant's expenditure in regard to the items mentioned in paragraph 2 above fell to be treated as proper deductions when deciding what proportion, if any, of the said £4,000 fell to be treated as an income resource under the relevant statutory provisions. It is not in dispute between the parties that these items of expenditure carried out by the claimant should be regarded as proper deductions, but of course that will be a matter to which the tribunal must give consideration.
- (c) At the hearing before me the adjudication officer's representative indicated that it appeared to him very doubtful whether a discretion given to the adjudicating authorities under said regulation 13(2)(b) would warrant a proper disregard of any item of expenditure not yet made by the claimant. I am not prepared to accept that submission. Under regulation 13(2)(b) the amount of any lump sum payment to be taken into account as an income resource shall be such a part of the amount as may at that time reasonably be considered to form part of the resources of the assessment unit. That statutory provision is in wide terms, and it seems to me that a tribunal has a discretion to allow as a disregard items of expenditure not yet paid for. The discretion must of course be properly exercised, and it will be the duty of the tribunal dealing with the case to decide what part of the said lump sum payment falls to be reasonably considered to form part of the resources of the claimant at the time of her claim. I can give no additional guidance to the tribunal in this connection since neither the claimant nor her representative at the hearing before me indicated what further items, if any, would be suggested as being proper deductions from the lump sum payment received by the claimant.

8. The claimant's appeal is allowed.

(signed) Douglas Reith
Commissioner
Date: 7 October 1985