

RAS/11/LM

Commissioner's File: CSSB/34/87

Region: Scotland

SUPPLEMENTARY BENEFITS ACT 1976

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

**IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT**

1. My decision is that the decision of the social security appeal tribunal dated 4 June 1986 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. When he made his claim for a supplementary allowance the claimant who suffered from multiple sclerosis was living in a home for the disabled. He owned a flat which he had purchased in the hope that he would one day be well enough to live in it. But he had not been able to do so and his grown up children lived there. The flat was worth more than the £3,000.00 capital limit and the claim for a supplementary allowance was turned down by an adjudication officer who took the view that the claimant was not entitled to the benefit of regulation 6(1)(a)(i) or (ii) of the Supplementary Benefit (Resources) Regulations 1981 which provides that -

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

(a) the value of

(i) the home,

(ii) any premises which have been acquired and not yet occupied by the assessment unit but which it is intended will be the home within 6 months of the date of acquisition or such longer period as is reasonable in the circumstances,"

because, having regard to the definition of "home" in regulation 2(1), it was fatal to the claimant's case that he had not actually lived in the flat. The adjudication officer did not as far as I can see consider regulation 6(1)(a)(ii). The tribunal took the same view as the adjudication officer with regard to regulation 6(1)(a)(i). And with regard to paragraph (1)(a)(ii) they said in effect, as I understand it, that it could not be reasonable to extend the six months referred to in that provision to a period which might never come to an end.

3. "Home" is defined in regulation 2(1) of the Resources Regulations to mean "the accommodation ... normally occupied by the assessment unit and any other members of the same household as their home ..." and the adjudication officer who is now concerned with the case relies on R(SB) 27/84 and R(SB) 7/86 for the proposition that if a claimant has never occupied the premises in question those premises cannot be said to be normally occupied by that claimant. That it seems to me is undoubtedly right but it is not the whole

of the matter. It is still necessary to consider whether on the facts the claimant did occupy the accommodation and that seems to me to be a different question from whether he ever resided in it. As the claimant's solicitors have pointed out it has, at least in other contexts, long been accepted (see for example R v. St. Pancras Assessment Committee (1877) 2QBD 581 and Eve v. Garland (1934) Ch 620, and see also Crawley Borough Council v. Sawyer (1987) The Times October 16) that a person may be in occupation of premises without residing in them - it may be enough if he has his furniture and other possessions there and has the intention to move in as soon as he can. It seems to me that the view taken by the tribunal and the adjudication officer treats the definition of "home" as if for the words "normally occupied by the assessment unit" there were the words "in which the assessment unit normally resided". In my view the tribunal were wrong in law to assume that a person who was not in residence could not be in occupation. There is evidence in this case that the claimant bought the flat and kept it furnished and otherwise ready to move into as soon as he might be well enough to do so; the new tribunal must consider whether on the facts as they find them the flat was "normally occupied" by the claimant in the sense to which I have referred.

4. With regard to regulation 6(1)(a)(ii) the tribunal, as I have said, took the view that "such longer period as is reasonable in the circumstances" required in effect that the period should have a built in termination. I simply do not see why that should be so. It was of course open to the tribunal to decide on the facts of the case that it was not reasonable to extend the period to the whole of the time the claimant hoped against hope that he would be able to leave the home for the disabled and go and live in the flat; but they should not have tied their hands by assuming as they did that they could not extend the period in that way.

5. The tribunal's decision was erroneous in law in the respects to which I have referred. The claimant's appeal succeeds.

(Signed) R A Sanders
Commissioner

Date: 8 August 1988