SUPPLEMENTARY BENEFIT

Resources—disregard of the value of "the home" which comprises two separate properties.

The claimant, his wife and five dependent children had been living in one large house when in June 1986 he sold it and with the proceeds bought two smaller houses approximately 3/8th of a mile apart The claimant and two elder sons slept in one house and returned for meals to the other where his wife, two daughters and youngest son lived. The adjudication officer decided that the claimant was not entitled to supplementary benefit because his capital, namely the market value (less 10%) of the house in which the claimant slept, exceeded £3,000. On appeal the tribunal confirmed that decision. The claimant appealed to the Commissioner seeking to have that value disregarded under the provisions of regulation 6(1)(a)(i) of the Resources Regulations.

Held that:

1. although the locality of the units of accommodation is an important factor, all other relevant factors must be taken into account in determining whether or not the definition of "the home" is satisfied (paragraph 14);

2. the claimant's assessment unit "normally occupied" the two houses in question (paragraph 14);

3. a distinction exists between a claimant who owns two houses, each of which can accommodate all members of his assessment unit and which are used at different times for different purposes and cases where each house is inappropriate for the size of the assessment unit (paragraph 14).

The appeal was allowed

1. My decision is that the decision of the social security appeal tribunal dated 31 July 1987 is erroneous in point of law, and accordingly I set it aside. However, as I consider it expedient to give the decision the tribunal should have given, I further decide that the claimant is entitled to supplementary benefit as the value of his resources does not exceed the prescribed level.

2. This is the claimant's appeal against the decision of the social security appeal tribunal dated 31 July 1987, confirming the adjudication officer's decision issued on 6 February 1987, leave having been granted by the tribunal chairman. The claimant did not attend the oral hearing of the appeal held before me, but was represented by Mr. J. Martin, of Counsel, instructed by the Bradford Law Centre. The adjudication officer was represented by Mr. D. Tempest of the Chief Adjudication Officer's Office.

3. At the material time the claimant, who was in receipt of supplementary benefit and then aged 57, lived with his wife and five dependent children in a house in Bi Street. The children were then aged 16, 14, 13, 11 and 9. In June 1986 he sold the house for £21,000. On 20 June 1986 he purchased a smaller house nearby in F Road for £12,000. This house consisted of two reception rooms, three first floor bedrooms, kitchen and bathroom. On 22 July 1986 he purchased another house approximately 3/8ths of a mile away in B Street for £8,500. It comprised a kitchen and lounge on the ground floor, one large bedroom and bathroom on the first floor and one attic bedroom. The claimant and his two elder sons slept in the house in F Road and returned for meals to the house in B Street, where the claimant's wife, two daughters and youngest son lived. The properties were sold and purchased by the claimant in his sole name.

4. On 6 February 1987 the adjudication officer decided that the claimant was not entitled to supplementary benefit as the value of his resources exceeded the prescribed limit. Thereupon the claimant appealed to the tribunal. In his grounds of appeal he stated:—

> "In few years time all my children will be over 16 and they will get married and being parents it is our responsibility to look after them properly. The time will come when me and my wife only will stay in the present house [in B Street] which has one bedroom and one attic which will be suitable for two of us..."

On 16 April 1987 he stated that the house at Bi Street had six bedrooms but as the bathroom and kitchen were too small he had decided to sell and purchase two houses. He also stated that his oldest son was due to marry in June or July 1987 and that the couple would live in the house at F Road.

5. In his written submission on the claimant's appeal, the adjudication officer took the view that as the house at F Road was only being used to sleep in, it did not fall within the definition of "home" in terms of regulation 2(1) of the Supplementary Benefit (Resources) Regulations 1981. Further, as none of the circumstances listed in regulation 6(1) applied, the value of the house did not fall to be disregarded in calculating the claimant's capital resources. The adjudication officer had regard to regulation 5(a)(i) and calculated that the claimant's capital resources exceeded £3,000, the limit prescribed by regulation 7.

6. The claimant and his representative attended the hearing of his appeal before the tribunal on 31 July 1987. In the event they dismissed the appeal. The findings of fact read:—

"(1) Appellant sold a house which accommodated the whole family of 7 for £21,000 and bought two smaller houses as he was apparently unable to buy a single replacement house in the area to house the whole family from the sale proceeds and, being on SB [supplementary benefit] could not afford to buy a more expensive one in better condition than the old one which had defects.

(2) Appellant and his two eldest sons only sleep at—F Road and return to live during the day at—B Street with his wife, two daughters and youngest son who sleep there.

(3) The two houses are 3/8ths mile apart and the Tribunal do not accept that two houses can constitute a "home" as defined in the regulations and in this respect the submission of the appellant is rejected.

(4) Since the family mainly live at B Street, this is the property which constitutes the 'home'. In this respect it is noted that F Road has neither cooking nor bathroom facilities at the moment as renovation of that property is required.

(5) F value is £12,000 as the appellant bought it for that figure on 20.6.86.

(6) Appellant has capital assets of £10,800 in—F Road to be taken into account.

(7) As £10,800 is more than £3,000 capital limit, no SB payable."

The reasons for decision read:—

"R(SB) 30/83 applied.

Para 19(3) "home does not extend to comprise a plurality of units of accommodation in different locations despite para 19(4) e.g. two adjacent but physically separate cottages may fairly be regarded as together constituting "home" of assessment unit of appropriate size.

Reg 5 Resources Regs—current value of capital resource less 10% to be taken into account.

Reg 7 where capital resources exceed £3,000, no capital SB payable."

7. Regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 provides that every tribunal chairman shall record a statement of the reasons for the tribunal's decision and of their findings on material questions of fact. In the present case for the reasons set out below although the tribunal chairman completed Form AT2 with detail and with care, he nevertheless failed to comply with statutory requirements. As a result the decision is erroneous in law. I have no alternative but to set it aside.

8. The main question for decision by the tribunal was whether both the houses at B Street and F Road constituted the claimant's "home" in terms of regulation 2(1) of the Resources Regulations. If they did, then their total value fell to be disregarded under regulation 6(1)(a)(i) in calculating the claimant's capital resources. If they did not, then the further question arose whether the value of the one of the properties could be taken into account in assessing the claimant's capital resources.

9. Regulation 2(1) provides, so far as relevant to the present appeal;

"'Home' means the accommodation, with any garage, garden and outbuildings, normally occupied by the assessment unit and any other members of the same household as their home..."

10. It is not in dispute that the claimant, his wife and five dependent children formed the assessment unit for the purposes of regulation 2(1). Their resources and requirements were correctly aggregated and treated as the

claimant's under paragraph 3 of Schedule 1 to the Supplementary Benefits Act 1976. It is also accepted that they were members of the same household. Accordingly I have to consider whether the assessment unit "normally occupied" the two houses. In Decision R(SB) 30/83 the Commissioner considered the definition of "home", albeit for the purposes of the Requirements Regulations, which is identical. At paragraphs 19(3) and (4) he said:—

> "(3) ..., it may also be observed that were a plurality of accommodations in different locations to be admitted as constituting 'the home', the way would be open for the Supplementary Benefits scheme to be saddled with the aggregate housing expenditure of any couple upon say a town flat and a country cottage as one or other of which they were at all times living together as husband and wife. For, whilst such claimants might founder upon the separate test of 'need', such possibility reinforces my view that under the Requirements Regulations 'the home' does not extend to comprise a plurality of units of accommodation in different locations.
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> (4) However, I should by way of precaution make clear that nothing in my present decision is intended, by its reference to different locations or otherwise, to prejudice cases in which some plurality of units—as, for example, two adjacent but physically separate cottages—may fairly be regarded as together constituting 'the home' of an assessment unit of appropriate size."

11. In the Tribunal of Commissioners Decision R(SB) 7/86 the definition was considered further. At paragraph 5 it was held, so far as relevant to the present appeal:—

> "5. It is well established under the general law that a person may properly be said to *occupy* a dwelling house etc without actually physically residing therein. But the word "occupied" is only part of the definition of "the home" in regulation 2(1). That definition also requires that the accommodation must be "*normally* occupied... as [the claimant's] *home*". Those additional elements of the definition were considered by the learned Commissioner in the decision on Commissioner's Files: CSB/292/1983 and CSB/399/1983 (unreported) where at paragraph 7 the learned Commissioner stated:—
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> > "I was not referred.. to any authorities on the meaning of "occupied.. as their home", but I have since the hearing read one or two cases under the Rent Acts, in which the question whether a person is occupying premises as his home (not by way of interpretation of the provisions of any enactment) has been considered. In *Herbert v Byrne* [1964] 1 W.L.R. 519 a person who had acquired the end of a long lease went and slept in the premises at night for about a month while continuing in other respects to live with his family in other premises. It was his intention to move the whole family into the new premises when ready. The question as viewed by the Court was whether at the end of the 4 week period the person concerned was occupying the new premises as his home. It was held that he was. I think that the view was taken that he satisfied the 'as the home' part of the matter by reason of the fact that he intended shortly to make it his home, but that it was only on account of his sleeping there that he satisfied the 'occupying' part of the matter."

12. Since the hearing I have read the case of *Langford Property Co. Limited v Goldrich* [1949] 1 L.R. 511 in which the Court of Appeal considered whether two self-contained flats together constituted a "separate

dwelling house" under the Rent Acts. The flats were self-contained but not adjoining in a block of flats and were separately let and appeared in the valuation list as having different rateable values. In due course the two flats were let together for the first time under one tenancy and were occupied together by the tenant as a home for himself and his family. No structural alterations were made to the flats. The Court of Appeal held that the two flats together were within the definition of a "dwelling house" and constituted one dwelling house for the purpose of the Acts.

13. Mr. Martin stressed that the houses in question were not two separate homes as contemplated in Decision R(SB) 30/83 at paragraph 19(3). The reality of the position was that the house at F Road was in the nature of "an annex" to the house in B Street. He likened the position to school buildings on a "split site" which nevertheless constituted one school. Similarly in the present case, although the accommodation was on "a split site", it nevertheless constituted one home which satisfied the definition contained in regulation 2(1) of the Resources Regulations. He submitted that the tribunal's decision was erroneous in law because it was based purely on the distance between the two houses and failed to consider the reality of the position. They had applied the wrong test. Mr. Tempest adopted the alternative written submission of the adjudication officer now concerned and supported the appeal on the same grounds. In addition, Mr. Tempest submitted that the tribunal's decision failed to comply with the statutory requirements in that they had failed to explain why paragraph 19(4) of Decision R(SB) 30/83 was not applicable on the facts of the present case. The tribunal had failed to give due consideration to that paragraph. "Two adjacent but physically separate cottages" was given in example and did not exclude two units of accommodation separated by a greater distance. The houses in question constituted "the home" of the assessment unit, forming together accommodation of appropriate size.

14. In my view the tribunal erred in law in concluding that the question of distance between the two houses was the crucial issue. Although the locality of the units of accommodation is an important factor, all other relevant factors must be taken into account in determining whether or not the definition of "the home" is satisfied. In the present case I have reached the conclusion that it was. I accept the submissions made to me. As a result both houses in question fall to be disregarded in calculating the claimant's capital resources under regulation 6(1)(a)(i) of the Resources Regulations. I have also been influenced by the following factors:— Neither property was capable of accommodating all members of the assessment unit; the mode of life of the assessment unit supports the conclusion that the house at F Road was in effect "an extension" to or "an annex" to the house in B Street, it was not suggested at the date of the adjudication officer's decision or at any other time that the claimant had purchased the house at F Road as a potential investment; the two houses in question were within walking distance of each other and were not incompatible with the conclusion that they constituted a single unit of accommodation. I have considered the interpretation given to "normally occupied" and I am satisfied that the claimant's assessment unit "normally occupied" the two houses in question. A sharp distinction exists between a claimant who owns two houses, each of which can accommodate all members of his assessment unit and which are used at different times for different purposes e.g. one during weekdays and one during weekends and cases such as the present one where each house is inappropriate for the size of the assessment unit so that by necessity both houses in question are used to accommodate the assessment unit. It cannot be overstressed that each case must be determined by reference to its individual facts.

15. For the reasons stated, the tribunal's decision was erroneous in law. Mr. Martin and Mr. Tempest urged me to give the decision which I considered the tribunal should have given as I am empowered by section 101(5)(a)(1) of the Social Security Act 1975, as amended. I consider it expedient to do so and I give the decision set out in paragraph 1.

16. The claimant's appeal is allowed.

Commissioner's File No: CSB 388/88

(Signed) R. F. M. Heggs
Commissioner