SUPPLEMENTARY BENEFIT

Resources—valuation of land and buildings.

The claimant owned a property comprising a farmhouse, in which he lived, a garden, some land and outbuildings. The farm was run as a hobby and the accounts showed an overall loss in the previous 12 months. The supplementary benefit officer considered that the enterprise was a business and it was reasonable to expect the assets to be realised and the land to be sold. He decided to allow at least 13 weeks to arrange for the sale or leasing of the land under regulation 6(1)(a)(v) of the Supplementary Benefit (Resources) Regulations 1981 and then to take the value into account as a resource. On appeal, the claimant contended that all his land and buildings should be regarded as a home in the same way that croft land is regarded in a Scottish croft. He disputed that his land was worth £5,000, said by the presenting officer to be the district valuer's valuation. The tribunal upheld the supplementary benefit officer's decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. when valuation is an issue, the presenting officer must produce some evidence of a proper valuation and not rely solely on an oral statement (paragraph 4);

2. the exception contained in the latter part of regulation 6(1)(a) applies to all the subparagraphs above it. Once it has been determined that it would be practicable and reasonable for any part of premises to be realised separately, regulation 6(1)(a) permits a discretion under regulation 6(1)(a)(v) that the business assets may be disregarded for such period as the supplementary benefit officer considers reasonable, but not that disposal of them may be postponed (paragraph 8);

3. whether outbuildings can reasonably be regarded as part of the home is a matter of fact and, where land is said to be severable, a ground plan of the property should be produced (paragraph 9);

4. the meaning of "home" in regulation 2(1) of the Resources Regulations does not confine the definition of "croft land" exclusively to Scotland and a small-holding may be compared with croft land (paragraph 11).

The appeal was allowed.

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1. My decision is that the decision of the Burnley Supplementary Benefit Appeal Tribunal, dated 12 May 1983, is erroneous in law and is set aside. I direct that the claimant's appeal be reheard by a differently constituted appeal tribunal.

2. This appeal by the claimant is brought with leave granted by me. The claimant, a married man aged 52, had been in receipt of supplementary benefit since 3 September 1981. He is the owner of a property which comprises a farmhouse, in which he and his wife reside, with a garden and two fields of some 12 acres together with a barn and other outbuildings. Also in his household is his daughter who received supplementary benefit in her own right. The claimant's wife runs the farm and the stock kept on the farm at the relevant time consisted of 10 sheep, 3 cows, a heifer, 2 pigs and also a few fowl. According to the visiting officer, farming was done by the claimant's wife as a hobby for the previous two years and was not making a profit but it was hoped to make a profit eventually. On 30 November 1982, accounts for the farm were received at the local office of the Department of Health and Social Security which showed an overall loss of £1,401.62 in the 12 months period ending on 31 October 1982. In their findings, the appeal tribunal recorded that the first year of accounts showed a loss which the claimant's solicitor put at about £200. The benefit officer dealing with the appeal to the Commissioner presumes that the reduction of the loss to £200 is for the financial year ending April 1983.

3. On 14 February 1983, the supplementary benefit officer decided that, following a reasonable period of time, i.e. at least 13 weeks, the claimant's land would be taken into account as a resource and that he would then not be entitled to supplementary allowance. The benefit officer decided that, in view of the accounts, the claimant's wife could not be deemed to be receiving an income from the farm but, in considering capital resources, he considered whether the land belonging to the claimant was part of his home or whether his wife's farming interests constituted a business of which the land was an asset. The benefit officer considered that the land could be realised separately without affecting the claimant's house and home. He also decided that, in view of the amount of money invested in the farm and the claimant's wife stated intention to make a profit, her enterprise was a business. In his opinion, it was unlikely that a clear profit would be made within the near future and he decided that it was reasonable to expect the assets of the business to be realised and the land to be sold. Since its value was estimated to exceed £2,500, the claimant's entitlement to supplementary benefit would be extinguished by regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527], as amended from 22 November 1982 by the Up-rating Regulations 1982 [S.I. 1982 No. 1127] ("the regulations"). The benefit officer also decided to allow 13 weeks in the first instance to arrange for the sale or leasing of the land under regulation 6(1)(a)(v) of the regulations.

4. The claimant appealed because he did not wish to sell his land where they had lived for 25 years, he did not believe it to be worth £5,000, said to be a valuation by the district valuer, and that it would be impracticable and unreasonable to sell his land which is attached to his home. The appeal

tribunal had before them a valuation, dated 28 April 1983, by a firm of chartered surveyors who assessed the area of the land, excluding the house and garden, at 12.6 acres and the value freehold with vacant possession at £2,800. That was the only evidence of the value. The presenting officer is recorded as having said that the district valuer had estimated the value at £5,000 for 12 acres of hill land. No evidence was submitted as to that valuation or whether it referred to the land in issue or was a general valuation of hill land in the area. It is wholly unsatisfactory and inadequate on an issue as to value that a presenting officer should merely make a statement without a scrap of evidence to support it. The claimant said that part of the outbuildings contained domestic toilet and coal store.

5. The tribunal found that domestic toilet and coal store were in one of the outbuildings. It was recorded in the findings that the claimant had argued that, under the definition of "home" in regulation 2(1) of the regulations, all his land and buildings should be regarded as a home in the same way that croft land is regarded in a Scottish croft. The tribunal confirmed the decision of the benefit officer and recorded their reasons as follows:—

> "The Tribunal considered that it is reasonable to expect the capital value of the land and outbuildings to be realised. Since this value is put on the one hand at £5,000 and by the appellant's own valuer at £2,800 these valuations would extinguish the appellant's right to Supplementary Benefit, and it is reasonable under resources regulation 6(1)(a)(v) to allow 13 weeks to arrange the disposal."

6. The statutory provisions of the regulations relevant to the issues in this appeal are as follows:—

(a) Regulation 2(1)

> "2.—(1) '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 and it includes also any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately, in particular the croft land where, in Scotland, the home is a croft;"

(b) Regulation 5

> "5. Except in so far as regulation 6 provides that certain resources shall be disregarded, the amount of a claimant's capital resources to be taken into account shall be the whole of his capital resources assessed where applicable—
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> (a) at their current market or surrender value less—
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> (i) in the case of land, 10 per cent., and in any other case, any sum which would be attributable to expenses of sale, and
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> (ii) any outstanding debt or mortgage secured on them."

(c) Regulation 6(1)(a)

> "6.—(1) In calculating a claimant's capital resources the following shall be disregarded:—
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> (a) the value of—
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> (i) the home,
>
> (ii) .....
>
> (iii) .....
>
> (iv) .....

(v) the assets of any business which is owned, in whole or in part, by a member of the assessment unit, for such a period as in the opinion of the benefit officer it would be reasonable to disregard them,

(vi) .....

except in relation to any part of premises which, having regard to all the circumstances, it would be practicable and reasonable to regard as a property which could be realised separately."

7. The tribunal have not found whether all the claimant's land and buildings constituted his home, unless the entry in the findings as to the claimant's argument is intended to be a finding. If they so found, then the whole should be disregarded as the claimant's capital resources by reason of regulation 6(1)(a)(i). They made no finding as to whether the property or any part of it are the assets of any business or whether a business was being carried on or whether it was likely to be a profitable business.

8. The benefit officer dealing with the appeal has submitted that the reasons both of the benefit officer's decision and the tribunal's confirmation of it reveal an error of law in allowing a period of 13 weeks disregard of a capital asset because, once it was determined that it would be practicable and reasonable that part of the premises constituting the 12 acres and outbuildings could be realised separately, regulation 6(1)(a) permits no discretion under regulation 6(1)(a)(v). That is correct because the exception contained in the latter part of the sub-regulation applies to all the sub-paragraphs of regulation 6(1)(a). The provision in regulation 6(1)(a)(v) relates to— "such period as in the opinion of the benefit officer it would be reasonable to disregard them"; that does not allow for postponing disposal but means that such assets shall be disregarded for such period as the benefit officer considers reasonable. In other words, taking into account the assets of any business as a capital resource may be postponed in the discretion of the benefit officer but not that disposal may be postponed. The decisions might have been intended to mean that the assets should be disregarded for 13 weeks and after that period it would be practicable and reasonable to regard them as realisable separately. Whether or not that is permissible, attributing a discretion to postpone disposal to regulation 6(1)(a)(v), is certainly incorrect and erroneous in law.

9. The decision of the tribunal is deficient of findings and reasons in a number of respects. They made no finding on whether the property or part thereof constituted the claimant's "home" under regulation 2(1) or on whether part of the outbuildings used as a toilet and coal store constituted part of the home. I do not agree with the benefit officer that "outbuildings" in the definition of "home" refer only to those within the curtilage of the living accommodation occupied and that only such outbuildings will fall to be treated as part of the home. It is a question of fact whether they can reasonably be regarded as part of the home. In particular, a toilet and coal store would appear at first sight to be part of a home. A ground plan of the property would seem to be necessary in a case in which land is said to be severable but the tribunal had before them only a copy based on the Ordnance Survey map of the area of the district with the boundaries of the property defined in outline. The land is described in the chartered surveyor's valuation. I also disagree with the benefit officer that the fact that a market valuation of some part of a small holding has been produced (but not by the district valuer) may indicate that part may be separately saleable.

10. The tribunal have not given any reasons as to (a) the practicability and (b) the reasonableness of realising a part of the premises separately, having regard to all the circumstances, which must be considered subjectively in regard to the claimant's home or the business carried on by his wife, if indeed on the rehearing the tribunal find that it was a business. In that regard they must consider the situation as regards the farm stock since, if the land is to be sold, it may be inevitable that the stock would also have to be sold. As to the future prospects of the profitability of the farming business, the benefit officer must produce some evidence to support his opinion (if it becomes relevant) that it is unlikely that a clear profit will be made in the near future. Farming is sometimes run at a loss and the local benefit officer had evidence in the accounts of EEC subsidies received. In the case of livestock, animals in a particular year might be affected by disease or adverse weather conditions involving also veterinary surgeon's fees. These are all matters of fact and I am merely indicating factual considerations which might arise and are relevant to a question of profitability.

11. Another issue which was not dealt with by the tribunal is the claimant's submission that his small-holding should be regarded in the same way as croft land where, in Scotland, the home is a croft. The presenting officer merely submitted that the land cannot be classed as a croft. In the Shorter Oxford English Dictionary, one meaning of "croft" is given as

> "a piece of enclosed ground used for tillage or pasture:
> in most parts a small piece of arable land attached to a house."

The introduction of "croft land" in the definition of "home" in regulation 2(1) by the words "in particular" does not confine the definition as applying exclusively to Scotland. The preceding language used in the meaning of "home" and the example of croft land in Scotland permits of a similar consideration being given to land elsewhere than in Scotland. It is, of course, a question of fact as to whether or not subjectively it should be so regarded but there is no reason in law on the construction of the regulation why it should not be so regarded in considering "any premises not so occupied which it would be impracticable or unreasonable to expect to be sold separately." The regulation thus permits of a comparison being made in the case of a small-holding with croft land in Scotland.

12. In the respects mentioned, the decision of the appeal tribunal is erroneous in law, if only for non-compliance with rule 7(2)(b) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No. 1605], as amended. On the rehearing it will be necessary for the tribunal to consider:—

(a) whether the whole of the property is the claimant's home, taking account of the small-holding as a whole and whether it is comparable with "croft land" in Scotland;

(b) if the whole of the property is not the home, to decide whether it is being used as a farm for livestock or whether any part is capable of being used as arable land;

(c) whether the farm is being used as a viable or potentially viable business having regard to the vagaries of farming; expert evidence will be required should a question arise as to the prospects of making a profit in the future;

(d) if it arises, to decide whether it would be (a) practicable and (b) reasonable to expect part of the property to be sold separately, having regard to its use for livestock and whether the effect would be to put an end to the assets of a business;

(e) if the stage is reached, to determine the current market value of the part that may be severable based on a proper valuation; in considering this, account must be taken of the 10% discount allowed in the case of land by regulation 5(a)(i). It is not sufficient simply to record, as the tribunal did on incomplete evidence, that either valuation would extinguish the appellant's right to supplementary benefit.

13. The claimant's appeal is allowed.

(Signed) J. S. Watson
Commissioner