SUPPLEMENTARY BENEFIT

Resources—valuation of shares in a family company.
The claimant owned one third of the issued share capital of a family company and the holding had been valued at £4,650. The supplementary benefit officer decided that the claimant was not entitled to benefit because she had capital in excess of £2,000. On appeal, the tribunal upheld the supplementary benefit officer's decision. The claimant appealed to a Social Security Commissioner on the grounds that the shares were charged in her son's favour for a sum in excess of their value and that £4,650 was an excessive valuation.

Held that:

1. it was inconsistent with the objectivity expected of supplementary benefit officers presenting cases to tribunals, and contrary to natural justice, for one rather than all of the letters written to the Department by the claimant's son's accountants containing submissions about the value of the shares not to have been submitted to the tribunal. The tribunal's decision not to admit those letters was erroneous in law (paragraph 11);

2. although a pledge of or a charge on the personal property such as shares can be created by informal words, it can exist only if there was an intention to create legal relations (paragraph 13);

3. the valuation of a minority share holding in a family company cannot be properly obtained by valuing the entire share capital of the company and dividing that in the ratio represented by the claimant's shares to the total share capital of the company. It is not the intention of the Supplementary Benefit (Resources) Regulations 1980 to require assets to be valued at a figure higher than anything that a claimant could realise on them (paragraphs 14 and 15).

The appeal was allowed.

1. My decision is that the decision of the supplementary benefit appeal tribunal (the appeal tribunal) dated 21 May 1981 is erroneous in point of law and it is set aside accordingly. The matter must be referred back to another tribunal to deal with in accordance with this decision.

2. The claimant is a woman aged over 90 who now lives in a nursing home the cost of which is, to a substantial extent, borne by her son. Her son has been appointed by the Secretary of State for Social Services to act for her on the footing that she is unable to act under (I assume) regulation 26 of the Supplementary Benefit (Claims and Payments) Regulations 1981 [S.I. 1981 No 1525] or some similar previous provision.

3. The claimant was until 18 March 1981 the owner of 100 shares (one-third of the issued share capital) of a family company (the company). According to a statement made by the benefit officer now concerned she was, immediately prior to the change in the law in November 1980, in receipt of a supplementary pension calculated by reference to a so called tariff income of £17.25 per week under paragraph 20 of Schedule 1 to the Supplementary Benefits Act 1976, on the footing that the value of these shares was £4,650. It is not clear to me whether precise evidence of these figures was before the appeal tribunal, but there is a statement in the chairman's note of evidence on the present appeal (which relates to a period after the change) that the claimant's previous assessment had been based on her holdings in the company. It is clear also that down to the time that the law changed no complaint was made about the computation of the supplementary benefit.

4. There were however substantial changes in the law that took effect on 24 November 1980. Under the changed law there ceased to be a tariff income. Among the important new provisions were regulation 7 of the Supplementary Benefit (Resources) Regulations 1980 [S.I. 1980 No 1300] (now re-enacted in the similarly named regulations of 1981), which precluded the payment of supplementary benefit to anyone whose capital resources exceeded £2,000, and regulation 5 of the same regulations which dealt with the valuation of capital resources. In particular regulation 5(a) provided for the valuation of most capital resources at their current market or surrender value less any outstanding debt or mortgage secured on them, no provision being made for any other kind of deduction for debts (see Decision R(SB) 2/83).

5. The immediate effect of this was that the benefit officer, relying on the valuation of the shares previously used, concluded that the claimant was no longer entitled to benefit. The claimant appealed and it was at once conceded that as she was a debtor to the company in a sum of £1,000 charged on the shares (possibly by virtue of the provision in the company's articles of association conferring a lien on its shares), the valuation had to be reduced by this amount. But this still left £3,650; and by itself it was of no assistance and the claimant through her son appealed against the decision refusing benefit. The appeal was dismissed and the claimant now appeals to the Commissioner. Her son represented her at the hearing before me, and the benefit officer was represented by Mr M. N. Qureshi of the Solicitor's Office of the Department of Health and Social Security.

6. No very clear grounds of appeal emerged from the letter of appeal, but it was indicated in that letter that on 18 March 1981 the claimant had transferred her shares and indicating that it was hoped that at least from that date benefit would be awarded. In fact, after inquiries about the transfer had no doubt been made, this was accepted and benefit was paid from the next following pay-day. This appeal therefore concerns only the intermediate period.

7. It is now apparent that the claimant's son was making two points; first that the shares were charged in his favour for a sum in excess of their value, and secondly that in any case £4,650 was an excessive valuation. It can hardly be said to appear from the record of the proceedings that these points were being made.

8. It would certainly be helpful if the clerk to appeal tribunals could compile a list of the documents that were placed before the tribunal. In the present case, so far as appeared from the papers available at the time that I granted leave to appeal, the only documents, other than the LT205 and the claimant's statement recorded in it, produced to the tribunal was a valuation of the shares in three different ways by accountants from the Department of Health and Social Security. It now emerges that there were also produced (by the benefit officer as I understand it) a copy of the transfer of shares from the claimant to her son and a covering letter with which the copy transfer was sent to the Department by the son's accountants. This stated among other things that as at 31 January 1981 the claimant owed her son more than £5,600. This was owed on account of nursing home fees met by the son. The consideration expressed in the transfer was £4,650 and was to be satisfied by the discharge of this amount of the indebtedness. There was of course no prospect of the claimant's being able to meet the indebtedness in any other way.

9. The claimant's son told me that he told the appeal tribunal that his mother had said to him that if he would pay the nursing home accounts so far as now met out of her supplementary benefit she would pledge her shares, but that the tribunal would not listen to this, treating it as irrelevant. He said also that he offered in evidence some letters written by the accountants but that they were rejected. He said that he derived the impression that the tribunal thought that the question of the valuation of the shares was concluded by what had been accepted prior to the change in the law. This last statement at least is borne out by the terms of the stated reasons for the tribunal's decision which were as follows:—

> "The Tribunal find no reason for revising the method by which [the claimant's] capital assets were evaluated when she was earlier in receipt of benefit. The Tribunal prefer the valuation of the Department's accountants which means that at 24/11/1980 [the claimant's] capital exceeded £2,000."

10. There is no reference in the record of proceedings to what the claimant's son said about the pledge or his attempt to introduce the accountants' letters into the evidence. It was however held in Decision R(SB) 10/82 (see paragraph 7) that the Commissioner was not restricted to looking at the record of the proceedings of the tribunal in determining whether a decision was erroneous in point of law. But the Commissioner there indicated in paragraph 15 the caution with which evidence about the course of the proceedings should be approached. The claimant's son in the present case gave clear indication in his notice of appeal of what he would contend and no evidence to the contrary was adduced at the hearing, but in view of the fact that there are other grounds on which I think it right to set aside the decision I need not go into the question of the incompleteness of the record. I would only say that if the tribunal did refuse to look at evidence that there had been a pledge they were wrong in so refusing. Under the old law there were no provisions for the valuation of capital assets. The new regulations above referred to, contained an express provision about valuation including an express provision for the deduction of any debt secured on the assets. If the point was expressly made that a debt was secured by pledge of the shares the tribunal ought to have decided whether they found that the shares were so pledged. A decision which takes no

account of the submission and contains no findings of fact relevant to it does not satisfy regulation 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980 [S.I. 1980 No 1605] since, although it is not necessary for a tribunal to record literally everything in its decisions, it must deal with (among other things) all points specifically raised by a claimant (see Decision R(I) 18/61 at paragraph 13).

11. There is however a more cogent ground on which the decision in this case falls to be set aside. When the claimant's son stated that he had tried to introduce certain letters from his accountants into the evidence I asked him what the letters were. He told me that they were letters written by his accountants (who had supplied him with copies) to the office of the Department through which the claim was being dealt with, concerning, among other things, the value of the shares. The lamentable fact then emerged that these letters had all been received in the Department but that one of them only had been tendered in evidence viz the letter of 3 April 1981 above referred to with the enclosed copy share transfer. It was in my judgment entirely wrong to tender part only of this correspondence, and bearing in mind that the letters contained submissions about the valuation of the shares I think that it was inconsistent with the objectivity expected of benefit officers presenting cases to tribunals to have excluded the correspondence in any case. In *Regina v Leyland Justice Ex parte Hawthorne* [1979] QB 283 it was held that a decision of justices was contrary to natural justice (without the tribunal being at fault in any way) when the prosecuting authority had withheld from the accused the names of two potential witnesses. In the present case the presenting officer failed to produce evidence of which he was aware but of whose relevance I will assume in his favour he did not appreciate. The omission would have been repaired if the letters tendered by the claimant had been admitted by the tribunal, but as it has turned out I hold the tribunal decision to have been erroneous in law on this ground. The matter will have to be referred back to a fresh tribunal, for whose guidance, the following paragraphs are intended.

12. Two points have been made on behalf of the claimant, the first relating to the inherent value of the shares, and the second relating to a deduction for any amount charged on the shares over and above the admitted charge of £1,000 in favour of the company. An answer favourable to the claimant on either point may or may not make it unnecessary for the tribunal to reach a conclusion on the other point, and it will be open to the tribunal to take the points in whatever order seems best to them. It is of course possible that new points may be raised. But I can only give guidance on those that have been raised.

13. I will take the question of the pledge or charge first. It is undoubtedly the law of England that a contract for valuable consideration that personal property such as shares shall stand charged with money lent or to be lent to or paid for the benefit of the property owner is capable of constituting a charge on the property for the amount of money so advanced or paid even if it is not evidenced by any written memorandum or accompanied by the handing over of any documents of title such as a share certificate. But such a contract though it can be created by informal words, can exist only if there was an intention to create legal relations. It will be for the tribunal to make and record a decision on this question (including if a charge be found the amount charged at any relevant time) unless having regard to their conclusion on the valuation of the shares they find it unnecessary to do so. I add that it has been suggested on behalf of the benefit officer that if the claimant's son had to be appointed to act for her she ought not to be regarded as capable of entering into such a contract, and if this suggestion is maintained the tribunal will have to have regard to that point; it may be

however that as it has been accepted that the claimant was capable of disposing of her shares the suggestion will not be maintained.

14. The question of the valuation of the shares themselves is a difficult one to require such a tribunal to investigate. I have to point out that the shares to be valued are the claimant's shares (one-third of the share capital of the company) and that this cannot properly be done by valuing the whole of the shares in the company and dividing by three. It usually emerges that the value of a minority holding of shares in a company is well below the appropriate fraction of the value of the whole of the capital, because the latter confers control of the company and the opportunity if it seems beneficial to do so to wind up the company and take its assets. The valuation by the accountants of the Department on which the tribunal relied was a valuation of the entire share capital which was then divided by three to arrive at the value of the claimant's holding. This was pointed out by the claimant's son's accountants in one of the letters not produced to the tribunal. It is not in my judgment the correct method of valuation of the claimant's holding, and had I not set the decision aside on other grounds, I should probably have set it aside on this ground.

15. It is obvious that the rule that a claimant with assets exceeding £2,000 is precluded from drawing supplementary benefit was laid down because it was thought proper that a person possessed of such assets ought first to realise some of them and live off the proceeds before making claims on public money. A person with, say, £2,500 in a building society could draw on that to meet his weekly requirements until in due course the amount in the account would drop below £2,000 and he could claim supplementary benefit. The same would apply where the asset instead of being cash is property that can be realised a little at a time (like stock exchange investments). Assets like insurance policies, which cannot be readily realised piecemeal, can be charged in favour of a bank or of the insurance company to secure a loan which can be used to meet requirements, and again the net value of the assets including money borrowed will fall between £2,000 in due course. A claimant who holds a minority interest in a family company is probably in no position to realise his holding piecemeal and may have difficulty in doing so at all. Only a person willing to lend him money without security would be willing to do so, and would regard a charge on the shares as almost superfluous. In these circumstances it is not in my judgment to be supposed that it was the intention of the regulations to require assets to be valued at a figure higher than anything that a claimant could realise on them.

16. In the present case the articles of association of the company according to the accountants' letter accompanying their valuation provided that a member wishing to transfer his shares had to offer them to the existing members (selected I know not how) at the "fair value" fixed by the auditors. In the sphere of valuation for estate duty purposes a somewhat sophisticated method of taking such a provision into account has been evolved (see *Lynall v IRC* [1972] AC 680). But I do not think that this should have any place in the law of supplementary benefit. It seems to me that for practical purposes a claimant would not be able to realise more on his shares than the fair value so fixed and that evidence of the value the auditors would so fix would be most material.

17. There are two other matters that may be relied on as evidence of the value of the shares, but as they are capable of various interpretations they need not be regarded as decisive. First the valuation at £4,650 had it seems been used in computing the claimant's supplementary benefit before the 1980 changes without objection. Secondly £4,650 had been stated as the

consideration for the transfer of the shares from the claimant to her son in March 1981. The tribunal will have to consider whether either of these constitutes an admission that this represented the value of the shares. Mr Qureshi submitted that the latter (which was not relied on by the appeal tribunal) was absolutely decisive. It is not for me to rule on this. It would seem to me to be open to the fresh tribunal to consider that as the claimant was at the time indebted to her son in excess of £4,650 and had no prospect of otherwise discharging the debt the price inserted was not so inserted because it was thought by the parties to represent the value of the shares but in order to avoid any suggestion that she had deprived herself of them at an undervalue. I must leave this to the tribunal.

18. The claimant's appeal is allowed.

(Signed) J. G. Monroe
Commissioner