SUPPLEMENTARY BENEFIT

Resources—deduction of mortgage debt from value of capital resource.

The claimant owned a bungalow with adjoining land which he had purchased with a single mortgage of £16,000 and to which he hoped to move. Planning permission to develop the land had been obtained. The supplementary benefit officer initially awarded supplementary benefit but later withdrew it (the District Valuer having valued the "development land" at £9,000) on the grounds that the claimant's capital resources exceeded the then capital limit of £2,000. On appeal, the tribunal by a majority upheld the disallowance decision, the bungalow and the development land by then being offered for sale together at £32,000. They took the view that the value of the bungalow fell to be disregarded under regulation 6(1)(a)(i) of the Supplementary Benefit (Resources) Regulations 1981 and that the value of the "development land" did not fall to be reduced under regulation 5(a)(ii) of those regulations since, in the event of a separate sale, the mortgagees would have sufficient security for the mortgage debt on the bungalow and other land remaining. The claimant appealed to a Social Security Commissioner.

Held that:

1. accommodation could not be treated as "the home" in terms of regulation 6(1)(a)(ii) where there was no evidence that it had ever been occupied by the claimant (paragraph 11(1));

2. if a single mortgage was secured on land which fell to be disregarded under regulation 6 (e.g. as "the home") and on land which fell to be valued (e.g. as capable of separate realisation), in assessing resources under regulation 5(a)(ii) the entire mortgage debt had to be deducted (paragraph 11(2));

3. the onus of proving that his property fell to be disregarded as "the home" or the "intended home" under regulation 6(1)(a)(i) or (ii) rested on the claimant, but the onus of proving that a part of the property could be realised separately, and was thereby excepted from disregard, rested on the benefit officer (paragraph 14(5)).

The appeal was allowed.

Decision

1. This appeal succeeds. My decision is that the decision of the supplementary benefit appeal tribunal ("SBAT") dated 11 February 1983 is erroneous in point of law. I set it aside and refer the case to another SBAT for determination in accordance with my directions.

Representation

2. I held an oral hearing of this claimant's appeal. The claimant, who appeared, was unrepresented. The supplementary benefit officer was represented by Mr. E. O. F. Stocker.

Nature of the appeal

3. The issues in the appeal to the SBAT were whether a plot of land adjoining the claimant's house was (a) an excluded capital asset for supplementary benefit purposes because it formed part of the claimant's home and (b) if not excluded, how that asset should be valued when the home and adjoining plot were together subject to a mortgage debt secured on them both.

The supplementary benefit officer's decision

4. On 5 July 1982 a supplementary benefit officer decided that the claimant was not entitled to supplementary allowance from 5 July 1982. The claimant appealed against this decision to a SBAT saying "you say that I have £2,000 in assets so would you please tell me where it is so as I can pay off my debts as I am approximately £6,000 in debt".

5. In his written submission on the appeal, the supplementary benefit officer stated that the facts before him were that the claimant had made a claim for supplementary benefit on 8 October 1981. He was sick and was not entitled to sickness benefit. He was a married man separated from his wife, aged 52 years, who lived as a member of his daughter's household. On 18 November 1981 the claimant telephoned the office requesting help with the mortgage repayments on his house in Wakefield which he hoped to move into as soon as the doctors said he could live alone. The claimant's mortgage was an endowment policy and the yearly interest was £2,531.52 and this was allowed in the claimant's assessment for 6 months. On 5 April 1982 the claimant was visited at his daughter's home and it was found that his house in Wakefield had land adjoining it owned by the claimant that had planning permission for two houses. On 5 July 1982 the District Valuer returned the form issued by the Department on 6 April 1982 valuing the land only at £9,000. On that date supplementary benefit was withdrawn and the claimant was issued with a notice stating that he was not entitled to supplementary benefit as his capital exceeded £2,000.

6. The supplementary benefit officer's reasons for his decision are not stated but he refers to regulation 5 of the Resources Regulations as specifying that a claimant's capital resources to be taken into account should be the whole of his capital resources at their current market or surrender value less in the case of land 10% and to regulation 7 as specifying that where the value of a claimant's capital resources exceed £2,000 the claimant should not be entitled to an allowance.

The SBAT decision

7. On 11 February 1983, the SBAT (by a majority) upheld the supplementary benefit officer's decision of 5 July 1982.

8. The SBAT found the facts as follows:

"The plot of land and bungalow in question were purchased in 1979 for £23,000. In March 1981 the Appellant was seriously injured in a road accident. He had a hip replacement in November 1982. He did not have enough contributions to qualify for sickness benefit. Hence the claim for supplementary benefit. The plot had the benefit of Planning Permission for two dwellings. Form A64 produced to show that the "development land" i.e. that part of the plot with planning permission, was valued at £9,000 by the District Valuer. Plan of the Charge Certificate produced at the hearing showed that the access past the bungalow to the "development land" was narrow but plainly sufficient for planning purposes. Three builders had expressed interest in the purchase of the "development land" but, for reasons associated with the site itself, each of them had decided that development of the site was not an attractive proposal. In October 1982 the Appellant had placed the matter in the hands of Estate Agents. They had not advised a separate sale of the "development land". The whole of the plot, including the development land, and the bungalow was offered and is still being offered for sale at £32,000. The Charge Certificate, which was produced, expressly provided that the whole of the plot, including the "development land", and the bungalow was charged so as to secure the loan. The original loan had been for £16,000. That had been increased in May 1982 to £18,620. The sum required to redeem the Mortgage as at the date of the hearing was £19,125. The accident of March 1981 has so incapacitated the Appellant that he could not be expected to live alone. But for that he would have occupied the bungalow on the plot in question as his home".

9. The reasons of the majority were:—

"The relevant provisions are Regulation 5—especially Regulation 5(a)(i) and (ii) of S.I. 1981 No. 1527. They provide that the market value of land (less 10% thereof) and less any outstanding mortgage secured on such land shall be regarded as a capital resource. Regulation 6(1)(a)(i) of the same Regulations is also relevant. Particularly the proviso thereto which reads "except in relation to any part of the premises which, having regard to all the circumstances, it would be practicable or reasonable to regard as a property which could be realised separately." The effect of Regulation 7 of the same Regulations is that, if the capital resource exceeds £2,500 (or £2,000 at the time of the SBO's decision) then the Appellant is not entitled to supplementary benefit. The majority view was that, in the event of separate sale of the development land, the Mortgagees would have sufficient security for their debt on the bungalow and other land remaining and that, therefore, Regulation 5(a)(ii) aforesaid did not apply to the £9,000 worth of "development land". The majority also held the view that the separate realisation of the "development land" was both practicable and reasonable because the grant of planning permission in respect of such land had the effect of making such land a separate capital asset."

The relevant law

10. The statutory provisions of the regulations relevant to the issues in this appeal (the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] are as follows:—

(*a*) Regulation 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

"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—

(a) at their current market or surrender value less—

(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

(ii) any outstanding debt or mortgage secured on them."

(*c*) Regulation 6.—(1)(a)

"(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.

(iii) any premises which are for sale and the value of which it would be reasonable in all the circumstances to disregard

for such period as the benefit officer may estimate as that during which the sale will be completed,

(iv) .....

(v) .....

(vi) .....

except in relation to any part of premises which, having regard to all the circumstances, it would be practicable or ["and" from 9 August 1982] reasonable to regard as a property which could be realised separately."

Was the decision of the SBAT erroneous in law?

11. The decision of the SBAT is erroneous in law on several grounds:—

(1) The chairman's note of evidence records:

"Bought prop. 1979. Intended living in it when he was well enough to live alone".

There is no other evidence anywhere in the case paper on this point. No SBAT properly instructed as to the law could on this evidence have reached the conclusion that the property bought by the claimant was "the home" in terms of regulation 6(1)(a)(i) (which is the only paragraph in regulation 6 referred to in their decision), in view of the definition of that expression in regulation 2(1) as "the accommodation.....normally occupied by the assessment unit.....". There was *no* evidence that the claimant (or any member of the assessment unit and any members of the same household), had ever occupied the property.

(2) The SBAT's decision is erroneous on its face. Assuming, as the SBAT did assume, that the bungalow was a capital resource the value of which fell to be disregarded under regulation 6(1)(a)(i) because it was "the home", but that the development land did not fall to be so disregarded, then the development land fell to be valued under regulation 5. Paragraph (a)(ii) of that regulation requires the value of that land to be its current market value less 10% and less any outstanding debt or mortgage secured "on them" (a clear reference back to the earlier mention in that regulation of the claimant's capital resources). The District Valuer had valued the development land at £9,000. The mortgage debt was £18,620 at the date of claim and £19,125 at the date of the SBAT hearing. It was secured on the bungalow and the development land by a single mortgage. There is no provision in the Supplementary Benefits Act 1976, as amended, nor anywhere in the regulations, for any apportionment of the mortgage debt between any property which is "the home" and that which is not, when arriving at the value of the property that does not form part of "the home". The wording of regulation 5(a)(ii) is clear. The entire mortgage debt is to be deducted when valuing the claimant's capital resources. If it is charged on some capital resources which do fall to be valued and others the value of which are to be disregarded by virtue of the provisions of regulation 6, the amount of the mortgage debt must be deducted from the value of the capital resources that are to be valued, i.e. from the value (less 10%) of the development land alone, on the assumptions made by the SBAT. On the figures found by the SBAT the value of the development land, ascertained in accordance with regulation 5, is nothing. It is worthless.

(3) The SBAT, on the evidence recorded by them, considered the wrong paragraph of regulation 6(1)(a). What they should have considered was paragraph (ii) which relates to premises which have been acquired and are not yet occupied by the assessment unit, instead of paragraph (i) which is only relevant where some member of the assessment unit (and any other member of the same household) has occupied the property. They should also have considered whether paragraph (iii) applied at any time.

Is it possible to give the decision that the SBAT should have given?

12. It is not possible, let alone expedient, to give the decision that the SBAT should have given since the necessary facts have not been found. It is essential to enquire whether the claimant or any other member of the assessment unit and any member of the same household had at any time prior to his accident in March 1981 occupied the bungalow, or any of the rest of the accommodation at Wakefield, acquired by the claimant in 1979. If the answer is "Yes", regulation 6(1)(a)(i) will fall to be considered. If the answer is "No", then regulation 6(1)(a)(ii) will require consideration and it will be necessary to find out the reason why the property was not occupied between the date of acquisition and the date of the accident in March 1981. (The reason why it was not occupied thereafter is in evidence, i.e. that the claimant cannot safely live alone). It may be that the intention that the premises should be the home ceased when they were put on the market and from that time regulation 6(1)(a)(iii) will fall to be considered. It will be necessary to estimate the period during which the sale will be completed (unless the sale has taken place by the time of the fresh SBAT hearing) and whether it is reasonable in all the circumstances to disregard the value of the premises.

13. The case must accordingly be referred to a fresh SBAT which, in accordance with the usual practice, should be entirely differently constituted.

Directions to the SBAT

14. The SBAT to whom the case is now referred for determination should:

(1) determine whether any, and if so what part, of the property has ever been occupied by the claimant or any other member of the assessment unit and, if so, whether it was "normally occupied" in terms of regulation 2(1).

(2) if no part of the property was so occupied, determine the claimant's intention in terms of paragraph (ii) of regulation 6(1)(a) as to when the premises would be the home and whether such period is reasonable in the circumstances. The claimant can only succeed under this paragraph, in respect of any week for which supplementary benefit is claimed, if he has at the beginning of that week a current intention that such premises should be his home and it was reasonable in the circumstances to consider a longer period than the 6 months from the date of acquisition of the premises.

(3) make findings as to whether or not the premises are for sale and whether it is the whole or part and which parts of the premises are for sale. Determine whether the claimant's intention that the premises should be his home ceased when he put the premises on the market so that (iii) and no longer (ii) of 6(1)(a) applies; whether it is reasonable in all the circumstances to disregard the

value of the premises; and estimate (unless it is known), the duration of the period before the sale will be completed, as to which the claimant may wish to produce evidence if the premises have not been sold by the time of the SBAT hearing.

(4) in arriving at the determination under (1) or (2), specifically consider whether the development land forms part of the garden of any property occupied or intended to be occupied by the claimant or any other members of the assessment unit and his household or whether it was not so occupied and it was impracticable or unreasonable to expect the development land to be sold separately (see the definition of "home" in regulation 2(1)) as for example croft land or property comparable with it (see decision on Commissioner's file C.S.B. 851/83 to be reported as R(SB) 13/84.)

(5) save for the exception at the end of paragraph (1)(a) of regulation 6 (when the onus is on the benefit officer) the onus of proving the above matters rests on the claimant, for it is for him to show that he can avail himself of a relevant exemption in terms of regulation 6.

(6) as regards the question as to whether it was impracticable to expect the development land to be sold separately, the SBAT should have in mind that the claimant has only an equity of redemption to sell i.e. a freehold (or leasehold) interest (there is no evidence on this point) subject to a mortgage securing a debt charged on it and the bungalow of many times the value of the development land (on present evidence).

(7) any valuation should be carried out on the principles set out in paragraph 11(2) above, having regard also to the observations of the Commissioner relating to valuation set out in decision C.S.B. 851/83 (to be reported as R(SB) 13/84.).

(8) if none of the property is "the home" and none of it falls within paragraph (ii) or (iii) of regulation 6(1)(a) of the 1981 Resources Regulations, the entire property should be valued as at the date of claim on the basis of the actual interest therein of the claimant free from the mortgage debt, 10% should be deducted from the market value so ascertained and then the amount of the mortgage should be deducted as at the same time.

(9) as regards any period subsequent to the date of claim, if the regulations to be considered or the value of the property which falls to be valued, or of the mortgage debt, have altered in a way likely to lead to a different conclusion in relation to the claimant's entitlement to supplementary benefit, separate findings should be made by the SBAT.

(Signed) V. G. H. Hallett
Commissioner
