SUPPLEMENTARY BENEFIT

Resources—capital—trusts—personal injury.

The claimant's grandson, born on 21 March 1985, had in February 1986 been admitted to hospital suffering from meningitis and septicaemia and subsequently underwent amputations to both legs and the digits of his right hand. On 16.5 86 he joined the claimant's household. In July 1986 a collection was made on his behalf and the funds allocated were transferred on 30.1.87 to Trustees under a Trust Deed. Following a repeat claim on 17.11.86 the claimant said that a trust fund had been set up for his grandson but that the money was not accessible until after he reached the age of 18. The adjudication officer decided that the money raised by the collection was a capital resource belonging to a dependant of the claimant and that it did not fall to be disregarded under the provisions of regulation 6 of the Resources Regulations. Having received a copy of the Trust Deed the adjudication officer reviewed her decision but decided not to revise it. On appeal the tribunal reached the same conclusion as the adjudication officer but in so doing decided that the funds did not qualify for disregard for the different reason that his grandson had not suffered a personal injury by virtue of an attack of meningitis. The claimant appealed to the Commissioner.

Held that:

1. the expression "personal injury" used in regulation 4(7) and 6(1)(k) of the Supplementary Benefits (Resources) Regulations 1981 must be given its ordinary meaning and is in no way limited because a distinction is drawn between personal and criminal injuries (paragraphs 10 and 16);

2. the ordinary meaning of "injury" in the expression "personal injury" includes a disease and any injuries suffered as a result of a disease (paragraph 15).

The appeal was allowed and the Commissioner substituted the decision that claimant's grandson was not to be treated as possessing a resource.

1. My decision is that the decision of the social security appeal tribunal ("the tribunal") dated 14 May 1987 is erroneous in law and is set aside. In place of the said decision I give my own decision that by virtue of regulation 4(7) of the Supplementary Benefit (Resources) Regulations 1981 the claimant's grandson A is not to be treated as possessing a resource pursuant to regulation 4(6) of the said regulations.

2. This is an appeal brought by the claimant with the leave of the tribunal chairman against the above-mentioned decision of the tribunal which confirmed the decision of the adjudication officer issued on 4 December 1986 to the effect that an income equal to the scale rate and heating allowance payable in respect of the claimant's grandson A was available from a trust fund.

3. I heard the appeal at an oral hearing granted at the request of the claimant's solicitors. The claimant attended and was represented by Mr. R. Drabble of Counsel, instructed by Messrs Holt, Jones and Collins, Solicitors, of Swansea and the adjudication officer was represented by Mr. M. N. Qureshi of the Solicitor's Office, Department of Health and Social Security.

4. The facts of the case are not in dispute. The claimant and his wife are the grandparents of a child A, born on 21 March 1985. On 21 February 1986 A, who was then living with his mother, became ill, and on the following day the claimant took him to Neath General Hospital where he was found to be suffering from meningitis and septicaemia which was complicated by disseminated intravascular coagulation. He was then transferred to a hospital at Chepstow where, on 19 March 1986 both his legs were amputated below the knee. The fingers of his right hand distal to the first joint and his right thumb were also amputated. At the end of September 1986 A was taken

to the Hospital for Sick Children in Great Ormond Street and in October 1987 futher amputations of his legs above the knee were carried out so as to make limb fitting possible. Arrangements for the fitting of prosthesis were made at the Roehampton Limb Fitting Centre.

5. In July 1986 a collection on behalf of A was started and met with a good response. On 30 January 1987 the funds collected were transferred to Trustees under a Trust Deed executed on that day. At the date of the oral hearing the amount collected together with the interest thereon amounted to about £25,000.00.

6. In the meantime, on 16 May 1986 A had joined the claimant's household and the supplementary allowance payable to the claimant was revised to include the appropriate scale rate and a heating allowance for A. When the claimant, after a brief suspension of his benefit, made a further claim on 17 November 1986 he stated that a trust fund had been set up for A but that there was no access to the money until A reached the age of 18. After making enquiries, and before she was informed of the terms of the Trust Deed, the local adjudication officer decided on 28 November 1986 that the money raised by the collection was given to A as an outright gift and belonged solely to him and that as a capital resource belonging to a dependant of the claimant, the whole of the fund had to be taken into account unless it could be disregarded under regulation 6 of the Resources Regulation. Regulation 6(1)(k), which was the only provision of the regulation which was of possible relevance, provides as follows:—

> "*Capital resources to be disregarded*
>
> 6.—(1) In calculating a claimant's capital resources the following shall be disregarded—
>
> (a) ...
>
> (k) a sum representing the market value of the equitable interest of a member of the assessment unit in trust funds—
>
> (i) which are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to him, and
>
> (ii) to which as sole beneficiary under the trust he is entitled absolutely,
>
> so however [what follows is not relevant]
>
> ....."

The adjudication officer could not identify any personal injury or criminal injury in consequence of which the payments had been made and decided that as A's handicaps resulted from operations following a period of serious illness the capital held could not be disregarded under paragraph 6(1)(k) and was to be taken into account in full. She then went on to apply regulations 7 and 8 which provide as follows:—

> "*Maximum capital resources for entitlement to pension or allowance*
>
> 7. Subject to regulation 8, where the value of a claimant's capital resources (including those of a partner or dependant) as calculated in accordance with those regulations exceed £3,000, the claimant shall not be entitled to a pension or allowance.
>
> *Effect of capital resources of dependants*
>
> 8.—(1) Where a claimant's capital resources as calculated in accordance with those regulations—

(a) exceeds the sum specified in regulation 7; but

(b) would be reduced to or below that sum if the capital resources of a dependant were disregarded,

the capital resources of that dependant shall be disregarded as a capital resource, but shall be treated as producing a weekly income resource equal to the weekly requirements which would be applicable under Parts II and III of the Requirements Regulations (normal and additional requirements).

(2) [not relevant]"

As she had decided that the total capital resources of the assessment unit at that time were £13,427.18 plus accrued interest she applied regulation 11(2)(o)(i) of the Resources Regulations which provides:—

"*Calculation of other income*

11.—(1) For the purposes of the calculation of the income resources of the claimant, all income other than that to which regulation 10 applies shall be taken into account and calculated on a weekly basis in accordance with the following paragraphs and regulations 9(2) to (4).

(2) There shall be treated as income and taken into account in full—

(a) .....

.....

(o) any income calling to be taken into account by virtue of—

(i) regulation 8;

(ii) ....."

The adjudication officer decided that the income resource to be taken into account in full was to be equal to A's normal requirement of £10.20 a week and his additional requirement for heating of £5.55 a week.

7. After receiving a copy of the Trust Deed the adjudication officer reviewed her decision under regulation 87 of the Adjudication Regulations. She considered regulations 4(6) and (7) of the Resources Regulations which provide:—

"*Notional Resources*

4.—(1) ...

(6) A member of the assessment unit shall be treated as possessing the whole or any appropriate share calculated in accordance with paragraph (8) of any resources held under a trust, whether created by virtue of a statutory provision or otherwise, under which the trustees have any express or implied discretion to pay him, or apply for his benefit, any income or capital.

(7) A member of the assessment unit shall not be treated as possessing a resource pursuant to paragraph (6) if the trust funds are derived from a payment, whether in pursuance of a court order or otherwise, in consequence of a personal or criminal injury to him except [what follows is irrelevant]."

The adjudication officer decided that as the Trust Deed included an express discretion as mentioned in regulation 4(6), A had to be treated as possessing an appropriate share of the trust fund and, for the same reason as that for which she had previously decided that there could be no disregard under regulation 6(1)(k), decided that he was not exempt by regulation 4(7). Then, following the same reasoning as before, she decided that her original decision should not be revised.

8. The tribunal reached the same conclusion as the adjudication officer but by a different route. They found in effect that under the Trust Deed there was an express discretion as mentioned in regulation 4(6) but did not go on to consider whether regulation 4(7) applied. Instead they considered regulation 6(1)(k) and found in effect that there could be no disregard under that regulation because they did not accept that A, in suffering an attack of meningitis, suffered a personal or criminal injury. They considered that he had suffered from a disease and not a personal injury and that the amputations carried out were carried out as treatment for the disease and did not amount to personal injury to him. Having found that there could be no disregard under regulation 6 they evidently went on to consider regulation 7, 8 and 11 in the same way as the adjudication officer had done. In conclusion the tribunal said that they rejected Mr. Drabble's submission "that the exemption [under regulation 6(1)(k)] must include all payments which flow from injury done to the person as well as tortious liability". I take them to have meant that they considered that the exemption given by regulation 6(1)(k) (and hence also regulation 4(7)) related only to funds derived from payments made in consequence of criminal injury or of personal injury giving rise to legal liability.

9. The grounds of the present appeal are:—

> "that the Tribunal erred in law in holding that the monies paid into the trust fund were not funds derived from a personal injury to [A], and in particular erred in law in holding that the phrase 'personal injury' was not apt to include a disease or injuries suffered as a result of a disease."

10. The Resources Regulations do not include a definition of the expression "personal injury" and accordingly, unless it appears from the context that it is being used in an unusual sense, it must be given its ordinary meaning. It seems to me that in one respect it is being used in an unusual sense in regulations 4(7) and 6(1)(k) because a distinction is drawn between personal injuries and criminal injuries. I am unable to think of any injury to a person of such a nature that it could be a criminal injury without also being a personal injury and I therefore conclude that the distinction drawn by the above regulations is not significant in relation to the nature of the injury under consideration and, if it is significant at all must be significant only in relation to the circumstances in which the injury occurs. Therefore, when considering the nature of the injuries within the scope of the expression "personal injuries" I think that it is appropriate to proceed as if there were no mention of criminal injuries. However, it will be necessary to consider later whether the reference to criminal injuries has the effect of limiting the personal injuries to which the regulations apply to injuries which occur in particular circumstances.

11. I turn now to consider the ordinary meaning of "injury" as part of the expression "personal injury". As most commonly used, the word "injury" refers to such things as cuts, bruises and broken legs whether caused deliberately, by negligence or by pure accident and such examples of injuries come immediately to mind upon being told that somebody has been injured. However, the meaning of a word is not limited to its meaning as most commonly used and in my view the meaning of "injury" is wide enough to include diseases, although I accept that a person describing the condition of someone suffering from a disease would be much more likely to name the specific disease than to say that the person concerned was suffering from an injury.

12. Some support for my view is to be found in the Shorter Oxford Dictionary where the meaning listed under "injury" includes:—

> "Hurt or loss caused to or sustained by a person or thing; harm, detriment, damage."

Further support for a wide meaning is to be found in the speech of Lord Simon of Glaisdale in *Jones v Secretary of State for Social Services* (1972 AC p.944). At page 1019 he said:

> "Without, as I say, attempting any definition, my understanding of the terminology [of the Industrial Injuries Act 1965] is as follows: Incident' is something which happens in a way remarkable to sensory perception in a mentally separable period of time. Accident' is an untoward incident, or a mishap. Injury' is hurt to body or mind....."

The *Jones* case was a case under the National Insurance (Industrial Injuries) Act 1946 and Mr. Drabble cited two other cases from that field. Although reported cases in that field have mostly been concerned with the question whether there was a "personal injury by accident" for the purposes of the industrial injuries legislation in force at the time and in particular with the question whether there was an "accident" they do in my view afford valuable assistance in deciding upon the meaning to be given to "personal injury" in the regulations now under consideration, notwithstanding the difference in context. The first case cited by Mr. Drabble was CI 83/50(KL) which concerned a doctor who was attending persons suffering from tuberculosis and was found to have contracted that disease himself. It was held that, in the then state of medical knowledge, it was impossible to hold that his incapacity resulted from injury by accident, the Tribunal of Commissioners taking the view that it resulted from a process. The second case was CI 159/50 and concerned a trainee nurse at a day nursery who caught poliomyelitis from an infected child. Her claim succeeded because the Commissioner was evidently satisfied on the evidence that contact with an infected person on a single occasion was enough to transmit the disease. In neither case was anything said to indicate that any of the Commissioners concerned had any difficulty in accepting that the disease concerned constituted an injury. Indeed, it appears to have been simply taken for granted that that was so.

13. The same is true of two cases decided by the House of Lords under the Workmen's Compensation Act, 1897. The first was *Brinton's Limited v Turvey* (1905 AC p. 230) and concerned a workman who was employed sorting wool in a factory. While he was so working a bacillus (according to the medical evidence or theory) passed from the wool to his eye and infected him with anthrax of which he died. The House decided by a majority, Lord Robertson dissenting, that the appellant's death was attributable to personal injury by accident. It does not appear to me that Lord Robertson's dissent was based on the view that the contraction of a disease could not constitute an injury. I think it was based on his view that there had been no "accident" and that if it were held that there had been an accident the result would be to open the door to claims which could not have been contemplated by Parliament. The second case was *Innes or Grant v G and G Kynoch* (1919 AC p. 765) and concerned a workman employed in handling artifical manure, consisting mainly of bone dust, who died from blood poisoning caused by his becoming infected through an abrasion on his leg by certain noxious bacilli, which were present in large numbers in bone dust, but were also found in the air and in other substances, though in a much lesser degree. I mention the case only because Lord Birkenhead LC in his speech referred to the infection or contraction of the disease as "the injury", that Lord Parmoor said:—

> "In all cases an accident is a necessary factor, but, if an accident causes injury in the shape of disease it does not alter its essential character, and the resultant injury is subject-matter for compensation."

And that Lord Wrenbury said:—

> "The man suffered personal injury, for he contracted a disease and it resulted in his death."

14. Before I leave the question of the ordinary meaning of "injury" I think I should add that section 76(5) of the Social Security Act 1975 itself acknowledges that injury includes disease. It reads as follows:—

> "Nothing in this Chapter affects the right of any person to benefit in respect of a disease which is a personal injury by accident, within the meaning of Chapter IV, except that a person shall not be entitled to benefit in respect of a disease as being an injury by accident arising out of and in the course of any employment if at the time of the accident the disease is in relation to him a prescribed disease by virtue of the occupation in which he is engaged in that employment. (My underlining)".

15. For the foregoing reasons my conclusions is that in the expression "personal injury" the ordinary meaning of "injury" includes a disease and that being so I have no doubt that it includes any injuries suffered as a result of a disease.

16. At the end of paragraph 10 above I referred to the possibility that the references to criminal injuries might have the effect of limiting the personal injuries to which the regulations apply to injuries which occur in particular circumstances. What I had in mind was the view apparently taken by the tribunal that exemption given by regulations 6(1)(k) and 4(7) applies only in the cases of personal injuries which occur in circumstances giving rise to legal liability, either criminal or civil. I reject that view of the matter. In my opinion the word "otherwise", in the expression "payment, whether in pursuance of a court order or otherwise" is wide enough to cover payments made voluntarily such as those made in the present case.

17. It follows from my conclusions reached in paragraphs 15 and 16 that in my opinion the tribunal erred in law in adopting the narrow approach to the words "personal injury" that led them to decide that the payments made to the trust fund were not exempt under regulations 4(7) and 6(1)(k). I must therefore set their decision aside.

18. It is not in dispute that the Trust Deed includes an express discretion as mentioned in regulation 4(6) and is not in dispute that the trust fund was derived from payments made in consequence of damage done to A by his meningitis and consequent amputations. In the circumstances I consider it expedient for me to make the finding of fact that A's meningitis and amputations were personal injuries. I make that finding and in the light of it the appropriate decision is as set forth in paragraph 1 above.

Commissioner's File No: CSB 802/1987

(Signed) J. N. B. Penny
Commissioner