SUPPLEMENTARY BENEFIT

Resources—the treatment of monies saved from earnings.

The claimant, who was self-employed, registered as unemployed through shortage of work and claimed supplementary benefit. His declared assets included £1,145.27 in a Midland Bank current account and £3,000 in a Midland Bank deposit account. He stated that the monies were to meet outstanding tax and National Insurance debts. The supplementary benefit officer refused the claim on the ground that the claimant had available capital resources above £2,000. On appeal, the tribunal upheld the supplementary benefit officer's decision and the claimant appealed to a Social Security Commissioner.

Held that:

1. before monies saved from past earnings can be treated as capital all relevant liabilities, in particular tax liabilities, must first have been deducted (paragraphs 4 and 5);

2. the deduction in respect of income tax under regulation 10(4)(a)(i) of the Supplementary Benefit (Resources) Regulations 1981, applies not only to tax already paid but to tax which the person is liable to pay (paragraph 8).

The appeal was allowed.

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1. For the reasons given below, the decision of the supplementary benefit appeal tribunal of 1 April 1982 is erroneous in point of law, and accordingly I set it aside. I direct that the matter be re-heard by a differently constituted tribunal.

2. This is an appeal brought with my leave against the unanimous decision of the supplementary benefit appeal tribunal of 1 April 1982. The claimant, a self-employed fence erector and landscape gardener, who through shortage of work had registered as unemployed on 8 December 1981 and had claimed a supplementary allowance, was refused benefit on the ground that he had available capital resources in excess of £2,000. At the time of his claim he declared the following assets:

"Midland Bank current account £1,145.27

Midland Bank deposit account £3,000

Land and garage valued at £4,300".

He stated that he was not prepared to sell the land and garage, which he needed for his business, and as for the monies held in the Bank accounts, these were to meet outstanding debts, i.e., tax and National Insurance liabilities.

3. In granting leave to appeal, I asked for submissions directed to whether the tribunal should have considered whether the monies in question were an income resource, against which tax is allowable, rather than a capital resource, against which tax is not allowable. In his submissions the benefit officer has contended that whether a particular sum of money is income or capital is essentially a question of fact. He argues that in the present case the tribunal had no direct evidence indicating the source of the money in the Bank accounts, and that there is nothing in the record of the hearing to show that it was ever contended that the monies were anything other than capital resources. Moreover, he refers to the claimant's statement in his letter of appeal that the resources in question were "money I had saved up to pay my commitments".

4. I think that this is too narrow an approach. As was said in paragraph 6 of R(SB) 2/83, a decision of a Tribunal of Commissioners, "In most cases capital resources arise out of income resources. They represent savings out of past earnings. However, before they undergo the metamorphosis from income to capital all relevant debts, including, in particular, tax liabilities, are first deducted. Indeed, regulation 10(3)(a)(i) [now regulation 10(4)(a)(i)] [of the Resources Regulations] specifically provides that income tax shall be deducted from a person's earnings". The fact that in the present case the claimant had specifically stated that the monies in question had been saved up indicates in itself that they represented accumulated earnings and as such they might still be income from which tax and other relevant items were deductible before being treated as capital, or they might have already undergone complete transformation into capital. Certainly the tribunal were put on enquiry as to the true nature of the deposits in the Bank accounts. However, they appear to have made no relevant findings of fact.

5. Now, if the monies in question did arise out of earnings, I do not see how they could properly be regarded as capital until income tax and other proper deductions had been taken into account. In my judgment, capital represented by savings of past earnings can only arise out of income from which all relevant liabilities have been deducted. Any other view would give a wholly false character to the monies in question.

6. The benefit officer has attempted to deal with the above criticism of his initial submission by arguing that in any event, even on the basis that the monies in question were income, and not capital, the claimant could not rely on regulation 10(4)(a)(i) of the Supplementary Benefit (Resources) Regulations 1981, because such monies had not *actually suffered* at the date of claim any deduction in respect of tax. In the words of the benefit officer:

> "... the regulation enables a benefit officer to take into account a person's earnings net of tax rather than the gross amount of his earnings. It does not, I submit, enable a benefit officer to deduct from a person's earnings an amount that may be intended for income tax but which has not been, or is not, used to pay tax. In short, I submit that Resources Regulation 10(4)(a)(i) only applies to earnings on which tax is paid. It cannot be applied to earnings on which tax may or may not be payable at some future date."

7. Regulation 10(4)(a)(i) provides as follows:

> "(4) In calculating the amount of a person's earnings, there shall be deducted from the earnings which he derives from any employment—
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> (a) any amounts which he pays or which are deducted by the employer from a payment of his earnings from that employment in respect of—
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> (i) income tax."

8. If the benefit officer is right in his submission, then a monstrous injustice is done to the self-employed. For whereas those who are engaged in employed earner's employment suffer a deduction of tax by reason of PAYE, and therefore fall within the provisions of the above regulation, those who are self-employed are not required to pay tax until there has been an assessment at the end of the tax year, and even then any tax due is paid in two separate instalments, the second of which is payable six months after the first. It would be surprising in the extreme if the draftsman had intended that those who were in employed earner's employment were entitled to have tax deducted for the purposes of calculating their earnings, but that those who were self-employed did not receive a similar concession. Although the drafting of the relevant provision leaves a great deal to be desired, nevertheless, I am satisfied that the words "he pays" means in the context "he is liable to pay". It is to be noted that the words actually used are not "he has paid", and these would be the words that one would expect to see if the benefit officer's contention were correct.

9. Accordingly, I am satisfied that the tribunal erred in point of law in failing to consider the essential nature of the monies in the Bank accounts, and that, as their nature had been put in issue by the claimant, they should have made specific findings as to whether all or any part of the monies in the Bank accounts were to be regarded as capital resources. If satisfied that such monies arose out of earnings, they should have made the deductions called for by regulation 10(4)—I have specifically dealt with paragraph (a)(i), but consideration should also have been given to paragraphs (a)(ii), (b), (c) and (d), in so far as these may have been relevant—and should have restricted accordingly the sums which could be treated as capital resources.

Their failure so to do constitutes an error of law, and I must set aside their decision.

10. I direct that the matter be re-heard by a differently constituted tribunal, who will consider the matter in the light of the principles stated above.

(Signed) D. G. Rice
Commissioner