

SUPPLEMENTARY BENEFIT

Resources—deprivation of a capital resource.

The claimant had been receiving supplementary benefit since 1980. In November 1982 he received £18,700 following the compulsory purchase of his house but claimed to have spent it all on repaying various loans. The adjudication officer decided that the money should be treated as still possessed by him and, because it exceeded the prescribed limit (at that time £2,500) he was not entitled to supplementary benefit. On appeal the tribunal confirmed the decision. Following an appeal to a Social Security Commissioner the appeal was reheard by a different tribunal which also confirmed the decision. The claimant appealed again to a Social Security Commissioner.

Held that:

1. once it had been shown that a capital resource had been received by the claimant the onus of proving that it was no longer possessed by him rested on the claimant and failing a satisfactory explanation it was open to the tribunal to find that the claimant still had that resource (paragraph 18);
2. if it was found that the claimant still retained the resource and had not disposed of it so that his actual resources were above the prescribed limit, regulation 4(1) of the Supplementary Benefits (Resources) Regulations 1981 (notional resources) was not required to be considered. If on the other hand it had been disposed of, it was necessary to consider regulation 4(1) (paragraph 20);

3. the expression "Any resource of which a member of the assessment unit has deprived himself" in regulation 4(1) should be given its ordinary and natural meaning in the context in which it occurred (paragraph 21);
4. any deprivation must have been for the purpose of securing supplementary benefit or increasing the amount of such benefit, but that purpose need not be the predominant motive (paragraph 22);
5. if it was decided that the claimant had deprived himself of a capital resource for the purpose of securing supplementary benefit then the adjudication authority must exercise its discretion as to whether to treat the claimant as still possessed of the resource in question. This discretion is unlimited. It must, however, be exercised judicially, taking into account all the circumstances of the case;
6. if an adjudication authority found that regulation 4(1) fell to be applied against the claimant in circumstances where an actual resource was converted into another actual resource of lesser value, then they should only apply the regulation to treat the claimant as still possessed of the difference between the value of the new resource and the resource which it replaced (paragraph 23).

The appeal was allowed.

Decision

1. My decision is that the decision of the supplementary benefit appeal tribunal dated 30 March 1984 is erroneous in point of law. I set it aside and refer the case to a social security appeal tribunal for determination in accordance with my directions.

Representation

2. I held an oral hearing of this appeal. The claimant, who did not appear, was represented by Ms L. Webster of the Welfare Rights Unit (Greater London Citizens Advice Bureau Service). The adjudication officer was represented by Mrs A. M. Stockton of the Solicitor's Office, Department of Health and Social Security.

Nature of the appeal

3. It is not in dispute that the decision of the tribunal dated 30 March 1984 is erroneous in law. The issue in this appeal, and that on which directions have been specifically requested by the adjudication officer now concerned, is as to the "kind of findings and reasoning which the application of regulation 4(1) [of the Supplementary Benefit (Resources) Regulations 1981] calls for".

The relevant law

4. Regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 provides:

"4.—(1) Any resource of which a member of the assessment unit has deprived himself for the purpose of securing supplementary benefit, or increasing the amount of any such benefit, may be treated as if it were still possessed by him".

5. The expression "assessment unit" is defined in regulation 2(1) as meaning the claimant, and any partner and dependant of the claimant. The words "claimant", "dependant" and "partner" are all defined in the same regulation. All these definitions apply "unless the context otherwise requires": see the opening words of the regulation. (Nothing turns on these definitions in the present appeal).

The decision of the supplementary benefit officer

6. By a decision issued on 7 March 1983 a supplementary benefit officer decided that the claimant was not entitled to a supplementary allowance.

7. The claimant appealed against this decision. The supplementary benefit officer made a written submission on this appeal on form LT 205. He stated that the facts before him were that the claimant is a married man aged 56 years who lives with his wife (49) and three dependant children (aged 16, 11 and 11 respectively) in local authority accommodation. Also in the household is a non-dependant daughter (aged 23). In November 1982 the London Borough of . . . compulsorily purchased the claimant's house at 7 N. . Road E17 for £18,700. The claimant claimed to have repaid the following loans:

16.12.82	M I	50	G	Road E17	£7,000
15.12.82	M S	50	G	Road E17	£4,000
27. 1.83	M M	50	G	Road E17	£2,800
16.12.82	M A	11	B	Road E17	£2,700
16.12.82	K I	40	H	Road E17	£1,400
15.12.82	M Z	46	B Park	Road E10	£800
					<u>£18,700</u>

Supplementary benefit was in payment from 11 September 1980 until 10 November 1982. The supplementary benefit officer stated that the reasons for his decision were regulation 4(1) of the Resources Regulations (set out in paragraph 4 above) and regulation 7 of those Regulations, which provides that where the capital resources of a claimant including those of a partner or dependant exceed £2,500 (N.B. £3,000 from 21 November 1983) he is not entitled to supplementary pension or allowance. He had decided that the £18,700 received from the sale of 7 N. . . Road should be treated as still possessed by the claimant. A payment could not be made under regulation 3 of the Urgent Cases Regulations because the claimant had friends from whom he could borrow.

8. The claimant, in his grounds of appeal to the tribunal of 23 May 1983, gave the amounts which he says he repaid, as set out in paragraph 7 above. He added that he still owed £2,000 to Mr. Z and also £2,000 to different creditors because he could not maintain himself and had to keep borrowing to support his family consisting of a wife and three children. He did not know that the capital which he had would have an effect on the payment of his benefit. He had made the payment of the sums mentioned above in good faith.

The decision of the tribunal dated 23 May 1983

9. Before the tribunal which heard the appeal on 23 May 1983 the claimant gave evidence, according to the chairman's note, that he was involved in a 4 year court case in Pakistan between 1974 and 1978. He borrowed money at the time to pay for the legal costs of the case, which was finally found against him. He said that the £18,700 from the sale of his home had been used to repay his creditors, all these expenditures were incurred in the Court Case costs. He had also paid £4,000 for his daughter's wedding, some of this money was raised in Pakistan. The claimant had lived in this country since 1951. His children were educated here and speak English well. He purchased the home in 1961 for £11,000 [sic].

10. This tribunal gave their decision on 23 May 1983. I shall call this "the first tribunal decision". They confirmed the decision of the supplementary benefit officer. They found the following as material facts, namely that in November 1982 the London Borough of . . . had compulsorily purchased the claimant's home for £18,700, and that the claimant used this money to pay his creditors for the debts he had incurred at the time of the Court Case in Pakistan. They gave as reasons for their decision that the claimant had deprived himself and his family of his capital by using it to pay off debts not acquired in this country. They made it clear in their reasons that their

authority for this conclusion was regulation 4(1) of the Resources Regulations.

11. The claimant appealed against the first tribunal decision to the Commissioner. The benefit officer then concerned supported this appeal on the ground that for regulation 4(1) to apply it was necessary to make a finding that the claimant had deprived himself of a resource "for the purpose of securing supplementary benefit, or increasing the amount of any such benefit". The omission related to a "material question of fact" and was in breach of rule 7(2)(b) of the Appeals Rules and constituted an error of law. He invited the Commissioner to refer the case to another tribunal. The Commissioner accepted this submission, and its reasoning, and set the first tribunal decision aside and referred the case to another tribunal for determination.

The decision of the tribunal dated 30 March 1984

12. The appeal was re-heard by a supplementary benefit appeal tribunal on 30 March 1984. It was submitted on his behalf that he was under pressure to repay debts at the time that he received £18,700.

13. The tribunal gave their decision on 30 March 1984. I shall call this "the second tribunal decision". The second tribunal decision was "to confirm the benefit officer's decision." Their findings of fact on questions material to their decision were:

"Appellant is a married man currently living with his wife, 3 dependant children, and one non-dependant son in local authority accommodation. In June 1979 he returned from a four year stay in Pakistan and has been in receipt of Supplementary Benefit since September 1980. In November 1982 his house, which he had purchased in 1961, for £1,100.00 [sic], was compulsorily purchased by the local authority for £18,500 [sic] approximately. On 7.3.83 his supplementary benefit was refused on the grounds that he had deprived himself of capital resources in order to claim supplementary benefit. An appeal against this decision was confirmed by a SBAT on 23.5.83 but referred to a differently constituted tribunal following an appeal to a Social Security Commissioner [sic]. While it was represented on behalf of appellant that he was under pressure to repay creditors, no evidence was submitted of any threat of legal proceedings".

The tribunal's recorded reasons for their decision were:

"Appellant did not contest that he had used the money obtained from sale of his house to repay creditors. The tribunal therefore find as a fact that appellant deprived himself of capital assets in order to claim a continuation of supplementary benefit and that the Benefit Officer was correct to cease payment of benefit in accordance with the provisions of Regulation 4(1) of the Resources Regulations".

Was the second tribunal decision erroneous in law?

14. It clearly was. The conclusion that because the claimant used the money received from the sale of his house to repay creditors he did so in order to claim a continuation of supplementary benefit is wholly illogical and cannot be supported. One is left entirely in the dark as to how the second tribunal arrived at the conclusion that because the money was used in repayment of creditors the claimant's purpose must have been to secure the continuance of supplementary benefit. There are no findings of fact which support such a conclusion and the reasoning is wholly inadequate.

Is it expedient to give the decision that the second tribunal should have given?

15. No. This is unfortunately impossible, in the absence of proper findings of fact. The case must be referred to a social security appeal tribunal, which should be entirely differently constituted, for determination in accordance with my directions.

Directions to the social security appeal tribunal

16. Regulation 4(1) of the Resources Regulations enables the resources of a member of the assessment unit (in this case, the member is the claimant) to be treated as still possessed by him where three conditions are fulfilled:

- (1) the resource in question must be one of which that member has deprived himself,
- (2) such deprivation must have been for the purpose of securing supplementary benefit, or increasing the amount of such benefit, and
- (3) the determining authority, in the exercise of its discretion, must decide that such resource shall be treated as still possessed by the claimant.

17. The appeal tribunal to whom the case is now referred for determination should accordingly make specific findings as to (a) whether the claimant had deprived himself of any, and what, resources and, if so, when; (b) whether he deprived himself of those resources (or any of them, and, if so, when) for the purpose of securing supplementary benefit, or increasing the amount of such benefit; and (c) whether, in the exercise of their discretion, the tribunal determine that such resources shall be treated as if still possessed by the claimant. On each of these points the findings of primary fact on which the tribunal's conclusion is based must be found and the reasons for such conclusion given, all such findings being recorded by the chairman of the tribunal in accordance with regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 as amended.

18. Once it has been shown that a member of the assessment unit has recently received, or otherwise been the owner of, a capital resource (income resources are not in issue in the present appeal) the onus of proving, on a balance of probability, that he no longer has that resource rests on *the claimant*, since it is for him to establish title to supplementary benefit. In the present case, it is not in dispute that the claimant received £18,700 (the finding of £18,500 made by the second tribunal seems to have been a clerical error) from a London Borough on the compulsory purchase of a house of his in November 1982. Supplementary benefit was in payment to him up to November 1982. From the time he received the money, his capital resources were clearly above the prescribed limit of £2,500 (£3,000 from 21 November 1983) set out in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981. The claimant says that he expended this sum of £18,700 in repaying loans. It is for him to prove that this is so. Failing a satisfactory account of the way in which the money has been disposed of, it will be open to the tribunal, and a natural conclusion, to find that the claimant still has, in some form or other, that resource and consequently to conclude that his actual resources are above the prescribed limit.

19. The tribunal should ask to see contemporaneous receipts for the loans which it is claimed were repaid, and should ask for oral evidence from the alleged lenders, all of whom have addresses in London E17 or E10. Were their loans, all but one of which are of 4-figure sums, secured on the claimant's house? Or did they lend these large sums without any security? It seems unlikely that they were secured on the house, because the entire

£18,700 was apparently paid direct to the claimant (a fact which—if disputed—is readily verifiable by enquiry of the London Borough which paid the money). What *were* the alleged proceedings in Pakistan on which the claimant says he expended more than £18,700? Can the claimant produce receipted bills from his own lawyers for their bills and from anyone in the proceedings whose costs he has been ordered to pay? Are any of the court documents available? The story as to the repayment of these loans, of large sums of money apparently advanced by a number of different persons without any security, to enable costs to be paid in another country many thousands of miles away requires careful investigation before it is accepted.

20. After investigating and making findings on the points referred to in paragraph 19 above, the tribunal should make specific findings on whether there were in fact loans of the amounts claimed, what the amounts actually loaned were, how much was repaid, to whom, the respective dates of repayment and how much, if any, still remains owing. As already indicated in paragraph 18, if not satisfied that loans were repaid, the tribunal should consider whether the claimant has discharged the burden of proving that he has disposed of the £18,700 and that this sum is no longer a resource of his. If they find that the claimant, on a balance of probability, still retains this resource, so that his actual resources are above the prescribed limit, regulation 4(1) will not be required to be considered. If, however, the tribunal is satisfied that the claimant no longer has the £18,700 as a resource, either because he has used it in repaying loans in the manner alleged, or for some other reason, the tribunal should go on to consider whether the conditions for the application of regulation 4(1) of the Resources Regulations referred to in paragraph 16 above are satisfied.

21. In deciding whether the first condition of regulation 4(1) has been satisfied, namely whether the claimant has deprived himself of a resource in terms of that regulation, the expression “Any resource of which a member of the assessment unit has deprived himself” as used in that regulation should be given its ordinary and natural meaning in the context in which it occurs. A similar approach was adopted by Lord Brandon in giving the leading opinion, with which all the other Lords of Appeal were in agreement in *Presho v Department of Health and Social Security* [1984] A.C. 310 at page 317 letter H when construing the expression “directly interested in the trade dispute” as used in section 19(1) of the Social Security Act 1975. That context is a series of paragraphs containing anti-avoidance provisions designed to ensure that claimants, and others, are not able to obtain supplementary benefit on the basis of resources which have been artificially reduced below the prescribed limits or in some other way are greater than they appear to be: see paragraph (1), (2), (3), (5), (6) and (8). They are designed to remove the advantages that might otherwise be obtained from the more obvious forms of “supplementary benefit planning” which would defeat the intention of the supplementary benefit legislation which is to provide for those in need. “Resource” and “deprived” are both ordinary words in the English language and neither I, nor any tribunal, should attempt a definition. “The purpose of a definition is to limit or modify the ordinary meaning of a word and the court is not entitled to do that”: see *Cozens v Brutus* [1973] A.C. 854 at page 861, per Lord Reid. It would be especially undesirable so to limit words appearing in an anti-avoidance provision of this kind. I direct the tribunal that in deciding the question whether the £18,700 is a resource of which the claimant has deprived himself in terms of regulation 4(1) they “consider, not as law but as fact, whether in the whole circumstances the words . . . do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved”: see *Cozens v Brutus* at page 861.

22. If the tribunal are satisfied that the claimant has deprived himself of a resource, they must then go on to consider whether he deprived himself of that resource for the purpose of securing supplementary benefit or increasing the amount of such benefit. If that was the claimant's purpose, I direct the tribunal that it matters not that he also had another purpose. The tribunal should not accept the suggestion, put forward in numbered decision CSB 28/81 (on Commissioner's file number CSB 31/1981) at paragraph 17 (unreported) that the question to be asked is was the securing of supplementary benefit, or obtaining an increase of such benefit, the claimant's predominant purpose? Suppose a claimant on supplementary benefit inherits a large sum of money and proceeds to gamble with it and incur losses. Someone warns him that if he continues in this way he will be back on supplementary benefit and he replies "If I lose, that is my idea". His predominant purpose in gambling with the money would obviously be to win at gambling. But it would be open to the adjudicating authority to decide on these facts that another purpose was to obtain supplementary benefit. Again, suppose that a claimant has assets of, say, £1,000 above the prescribed limit, and applies this money on a buffet wedding party and two days later, having spent sufficient to bring herself just below the prescribed limit, applies for supplementary benefit. The predominant purpose might be held to be to have a wedding party. But a subsidiary purpose could well be held, on these facts, to be to obtain supplementary benefit. After argument Ms Webster, who argued on behalf of the claimant with considerable ability, properly agreed that the application of regulation 4(1) did not turn on whether the claimant's motive of obtaining supplementary benefit, or an increase thereof, was her predominant motive.

23. If the tribunal are satisfied that the claimant has deprived himself of a resource for the purpose of securing supplementary benefit, they must then address their minds to the exercise of the discretion, which they clearly have, as to whether to treat the claimant as still possessed of the resource in question: see the word "may" in regulation 4(1). Ms Webster argued before me that that discretion was not of the "very limited" nature referred to in paragraph 11 of Commissioner's decision CSB 199/1981 (unreported). I agree with her. There is nothing in the language of regulation 4(1) or its context to indicate that the discretion is "very limited". Such a discretion must however, be exercised in a judicial manner, taking into account all the circumstances of the case. It is essential for the tribunal specifically to consider in what way they propose to exercise their discretion and why, and for the chairman to record the way in which it has been exercised, the reasons for doing so and the facts on which the exercise is founded. Actual and notional resources should not be counted twice over. If, therefore, a claimant deprives himself of actual resources which exceed the prescribed limit and turns that resource into another actual resource of a value which does not bring him above the prescribed limit, if the adjudication authority were to find that the purpose was to secure supplementary benefit and decided to apply regulation 4(1) against the claimant, they should only apply the regulation to treat the claimant as still possessing the balance of the original resource, that is to say the difference between its value and that of the resource which it replaces. Otherwise, there would be double counting. When exercising the discretion, some indication should be given as to the appropriate time for reconsideration of the refusal of supplementary benefit. It should be emphasised however, that the discretion is, in my judgment, quite unlimited, provided that it is exercised judicially.

24. Ms Webster gave a helpful list of the facts which it is desirable that the tribunal should find, when considering the question whether the claimant who had deprived himself of a resource had the purpose of obtain-

ing supplementary benefit or increasing it, and, if this is established, when deciding how the discretion under section 4(1) should be exercised. I agree with her and the following is based on her submissions from which Mrs. Stockton did not dissent. Findings should be made on the following:

(1) On how the deprivation actually occurred. While not accepting that there is any actual presumption that a gift of a resource should be taken to be for the purpose of obtaining supplementary benefit or that payment for a service (e.g. a surgical operation) should be taken to have no such object, these are clearly material facts. Findings as to what actually happened, with dates and amounts are clearly material.

(2) The personal circumstances of the claimant. For example, his age, state of health, and his future employment prospects may affect the conclusion reached as to the claimant's objects in repaying loans, or otherwise disposing of his resources, and the way in which the adjudicating authority's discretion is exercised. He may have urgent requirements which can only be met out of his capital and in no other way.

(3) The reason why the claimant acted in the way that he did, in depriving himself of the resource in question. For example, where a loan is repaid, was there any pressure being applied to repay? Where a gift is made, why was it made at that time?

(4) The dates and period over which the disposal occurred. The nearness, or distance, from the date of claim has obvious relevance.

25. The record of the tribunal's decision should ensure that the material facts and the reasons on which findings on the above points, and all other relevant points raised by or on behalf of the claimant or the adjudication officer are recorded by the chairman as required by regulation 19(2)(b) of the Social Security (Adjudication) Regulations 1984 as amended.

(Signed) V. G. H. Hallett
Commissioner
