SUPPLEMENTARY BENEFIT

Resources—deduction of outstanding debt or mortgage secured on capital resources: Scottish incorporeal moveable property

The claimant claimed supplementary benefit, and the question arose whether she was disentitled because her capital resources exceeded £3,000. The social security appeal tribunal so held, and the Commissioner found that its decision was not erroneous in law.

By regulation 5 of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527] so far as material—

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

The claimant owned shares in a private company. Members of her family advanced money to meet the balance of the nursing home charges for the claimant not covered by her other resources. The claimant signed a formal document duly attested certifying that she had earlier given a verbal undertaking to one of those members that the repayment of their advances or loan towards the cost of her maintenance would be a first charge on the proceeds of sale of all or part of her share holding. There was difficulty over realisation of the claimant's shares, which were subject to an option in favour of the company's managing director. A blank transfer of the shareholding had been considered but found not to be feasible, although possession of the share certificate had been taken to safeguard the interests of the family members concerned.

The issue was whether by the law of Scotland the advances were "secured" on the shares. The claimant relied on the position under English law as stated in Decision R(SB)18/83 at paragraph 13.

The only part of the decision material to the issue is that part reproduced below.

6....The question of whether the debt in the present case was "secured" over the shares must be determined according to the law of Scotland and the observations of the Commissioner in paragraph 13 of R(SB)18/83 as to the law of England have no application. A distinction in this respect over the requisites for the creation of a valid security over incorporeal moveable property according to the law of each country is well recognised. See e.g. *Walker*, Principles of the Private Law of Scotland, 3rd Ed., Vol. III, p. 561. The designation of a fund out of which a debt is to be paid, as was done in this case, does not constitute a security under the law of Scotland. It creates no preference although it does constitute an obligation to apply the fund in a particular way—see *Graham & Co. v. Raeburn & Verel,* 1895, 23 R 84. It is unnecessary to decide whether delivery of the share certificate together with a blank transfer would have constituted a valid security since this was not achieved in the present case. It may well be that this would have been sufficient although the security could theoretically have been defeated by a subsequent arrestment of fraudulent transfer—*Guild v. Young, 1884, 22 S.L.R.* 520. I am bound to hold that no valid security was created over the claimant's shares in the present case....

Commissioner's File No: CSSB 187/84 (Signed) J. G. Mitchell
Commissioner