SUPPLEMENTARY BENEFIT

Computation of overpayment—for periods before 24 November 1980 and in respect of cash found at date of death.
Decision of judge of High Court not binding on Commissioner.

The deceased claimant had been in receipt of supplementary benefit from 2 March 1970 until 11 May 1981. After his death it came to light that throughout the period he had been in possession of 2 undisclosed bank accounts and that at his death he had in addition £1,589.14 in cash. The benefit, now adjudication, officer decided that the deceased had been overpaid supplementary benefit of £4,383, which was recoverable under Section 20 of the Supplementary Benefits Act 1976. In calculating the overpayment he assumed that the cash had been accumulated at a regular rate throughout the period. On appeal the tribunal upheld the decision on the grounds that the appellant could not provide evidence of how the cash found at death had accrued and that the method of calculation was reasonable in the circumstances. The administrator of the estate of the deceased appealed to a Social Security Commissioner.

Held that:

1. while the burden of proving that a sum is recoverable under Section 20 falls on the adjudication officer, the personal representative must not simply rely on that principle but must make vigorous attempts to ascertain the source of cash found at death; decision R(SB) 34/83 followed (paragraphs 5 and 6);

2. a decision of the High Court of an appeal under the Tribunals and Inquiries Act 1971 from a decision of a Supplementary Benefit Appeal Tribunal has persuasive authority but is not binding on the Social Security Commissioners as it arises out of a co-ordinate and not a superior jurisdiction (paragraph 11);

3. in the absence of specific provision in Schedule 1 to the Act (which was in force prior to 24 November 1980) for dealing with a particular resource, paragraph 27 of the Schedule allowed that resource to be reduced by such amount as might be reasonable in the circumstances (paragraph 16).

The appeal was allowed.

Note. An appeal by the adjudication officer from the decision of the Commissioners to the Court of Appeal was dismissed. See Appendix hereto.

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1. For the reasons hereinafter appearing, the decision of the supplementary benefit appeal tribunal given on 18 December 1981 is erroneous in point of law, and accordingly we set it aside. We direct that the matter be re-heard by a differently constituted tribunal.

2. This is an appeal brought, with the leave of a Commissioner, by the legal personal representative of T L deceased ("the deceased") against the decision of the appeal tribunal of 18 December 1981. The deceased had been in receipt of supplementary benefit from 2 March 1970 to 11 May 1981 on the basis of his statement that his only capital consisted of a National Savings Bank account and one Premium Savings Bond. However, after his death it came to light that he had throughout the relevant period been in possession of two Midland Bank accounts and also that he had £1,589.14 in cash at his death. The benefit officer decided that the deceased had, as a result, been overpaid supplementary benefit to the extent of £4,383, and that this sum was recoverable under section 20 of the Supplementary Benefits Act 1976.

3. The figure of £4,383 was arrived at in accordance with a schedule produced by the benefit officer and included in the papers. However, the personal representative appealed to the supplementary benefit appeal tribunal, who in the event upheld the benefit officer, giving as the reasons for their decision the following:

> "The appellant could not provide evidence of how the cash in the house accrued. The Tribunal consider that under the circumstances the Department's method of calculation is a reasonable one".

4. It is important to note that, in arriving at the figure of £4,383 the benefit officer proceeded on the basis that the cash found at the death of the deceased had been accumulated at a regular rate throughout the entirety of the period under consideration. Accordingly, he divided the £1,589.14 by 133, that being the number of months making up the period, and assumed that the sum in question had been saved up at the rate of £11.94 per calendar month. In his appeal against the tribunal's decision the personal representative of the deceased contended that the benefit officer was not at liberty to deal with the cash found at the deceased's premises on his death in the way actually adopted in the above computation. In resisting the appeal, the benefit officer produced an alternative schedule, in which, whilst still treating to cash of £1,589.14 as having been accumulated at the rate of £11.94 per month, he calculated the extent of the overpayment by adopting the principle laid down in the unreported decision of a Tribunal of Commissioners on Commissioner's file No. CSB 53/1981. He deducted from the assets of the deceased at yearly intervals the sum then representing the overpayment, on the basis that such overpayment would have to be repaid in due course, and that there was power, under paragraph 27 of Schedule 1 to the Supplementary Benefits Act 1976, to reduce the deceased's resources so as to take this factor into account. In view of the very difficult and important point, to which the above interpretation of paragraph 27 gave rise, the Chief Commissioner directed that there should be an oral hearing of the appeal, and that it should take place before a Tribunal of Commissioners. At that hearing the personal representative of the deceased was represented by Mrs. J. King and the benefit officer was represented by Mr. E. O. F. Stocker. This appeal was heard in conjunction with the appeal on Commissioner's file CSB 475/1982 to be reported as R(SB) 5/85, where the same point was also in issue.

5. As to the personal representative's contention that the benefit officer was not entitled to include, in the way he had, the cash discovered at the deceased's death, we consider that we can deal with this matter shortly. There was no evidence before the tribunal as to how the cash came into existence. It was suggested in the submission made to us on behalf of the personal representative that it might be the result of the deceased's selling off certain items of furniture, but this is not a question for us. We are only concerned with matters of law, not of fact. Certainly, at the hearing before

the appeal tribunal no suggestion of the kind now postulated had been made, and there simply was no evidence at all as to the actual source of the cash. Now, it must be remembered that, in cases of recovery under section 20 of the Supplementary Benefits Act 1976, the onus of proof rests on the benefit officer (see the decision on Commissioner's file CSB 733/1982 reported as R(SB) 34/83). The first sentence of the reasons given by the tribunal for their decision suggests that they misunderstood where the onus of proof properly lay. The implication is that the personal representative of the deceased had to establish where the money came from. But, in any event, the second sentence of the reasons for their decision is wholly unsatisfactory, in that the tribunal have failed to explain why in the circumstances the Department's method of calculation, which proceeded on the basis that cash was accumulated at a regular rate throughout the relevant period, was a reasonable one. The appellant is entitled not to be left in the dark as to the reasons for the tribunal's decision. Moreover, it is incumbent on the tribunal to make appropriate findings of fact on which to base their determination. In the present case, the tribunal failed to comply with their duty in this respect. The tribunal are in clear breach of rule 7(2)(b) of the Appeals Rules. Accordingly, their decision is erroneous in point of law and we must set it aside. We direct that the matter be re-heard by a differently constituted tribunal.

6. However, before leaving the above point, we should emphasise that, when the new tribunal come to consider this matter, they must bear in mind that, where, as here, the deceased has failed to make proper disclosure of his resources (however innocently this may have come about), it is not open to the personal representative to defeat the benefit officer's attempt to arrive at the sum to be recovered under section 20 of the Supplementary Benefits Act 1976 by the simple device of:

(i) failing to make any or any adequate enquiry as to the time when the deceased first acquired the resources not disclosed, and then

(ii) relying on the principle that the burden of proof falls on the benefit officer.

The personal representative must make vigorous attempts to ascertain where the cash came from. It will not be enough for him merely to sit back and say that he has no information. In the words of paragraphs 9 and 10 of the decision on Commissioner's file CSB 733/1982 (to be reported as R(SB) 34/83):

> "It may be that, in the event, [the personal representative] is unable to ascertain anything for certain, but [he] must at least present evidence of all the effort that [he] has made and all the enquiries [he] has undertaken to ascertain the origin of the money in question. If [he] provides no evidence that [he] has done anything, then the position is substantially no different from that of a claimant who is alive and refuses to be forthcoming. The tribunal, which will rehear the appeal, must be satisfied that the [personal representative] has taken all reasonable steps to ascertain the history of the sum in question. They will approach the matter from the standpoint that the deceased was a wrongdoer and that public money is at stake.
>
> 10. Of course, if the [personal representative] has made every reasonable effort to find out where the money came from, and the tribunal are wholly satisfied that [he] is unable to discover anything that resolves the matter, then the benefit officer will not have discharged the burden of proof laid on him".

If in the present case the origin of the cash cannot be determined, notwithstanding proper efforts have been made to ascertain its source, then there

is no necessary reason why the cash should have existed at any earlier time than the date of the deceased's death, and the consequence is that it must not be taken into account in determining the amount of benefit to be recovered.

7. However, the really difficult question at issue in this case is whether the benefit officer was entitled to make the concession he did in his second method of calculating the amount of benefit overpaid. Under this method the benefit officer deducted from the capital resources of the deceased with annual rests the amount of benefit overpaid. The correctness of this approach depends upon the correctness of the decision on which it was based, namely CSB 53/1981. This was a decision of a Tribunal of Commissioners, which was considered in conjunction with R(SB) 2/83. The real issue which fell to be determined by the Tribunal of Commissioners in those two cases was whether or not, in computing entitlement to supplementary benefit, a deduction could be made from capital resources to take account of liabilities. In the event, the Tribunal decided that the relevant statutory provisions did not allow a deduction of this kind. However, after the hearing it transpired that, although the Tribunal of Commissioners had directed their minds to the effect of the Supplementary Benefits Act 1976 as amended by the Social Security Act 1980, the relevant period falling for determination in the case of CSB 53/1981 extended from 17 March 1969 to 5 November 1979, and accordingly fell partly within the provisions of the Supplementary Benefits Act 1976 as originally enacted and partly within the Supplementary Benefits Act 1966 which it replaced. Accordingly, it became necessary to consider the effect of paragraph 27 of Schedule 1 to the 1976 Act and paragraph 26 of the 1966 Act, both of which read as follows:

> "Any resources not specified in the [foregoing] [preceding] provisions of this Schedule may be treated as reduced by such amount (if any) as may be reasonable in the circumstances of the case."

8. As in the present appeal, the issue there was the extent to which any overpayment could be recovered under section 20 from the estate of a deceased claimant. No submissions were directed at this point during the hearing before the Tribunal of Commissioners, and at the time it was thought that the relevant provision had become obsolete by the operation of the 1980 legislation which came into force on 24 November 1980. As was said in paragraph 12 of that decision:

> "The point on paragraph 26 (and 27) was not canvassed at the hearing, and we have considered whether it would be right to give the benefit officer an opportunity of making a submission on it. Had the paragraph or one like it been still in force, we should have regarded it as necessary to do this. But we are dealing with provisions that are now obsolete, we think it best to deal with the matter ourselves without more delay. We consider further that this is a case in which it is appropriate for us, who have all the relevant facts before us, to determine the matter ourselves. So determining it we think that it would have been right had the existence of the premium bonds been before the determining authority at a time when it was known that the claimant had been overpaid, but had not yet repaid the amount found to be overpaid, for them to treat his resources as reduced by the amount he was bound to [repay] ."

9. It has since been brought to the Commissioners' attention by the Department that in fact millions of pounds are involved in the failure of deceased claimants to disclose the full extent of their resources, and that, although paragraph 27 has not been re-enacted in the subsequent legislation, it is still operative in respect of the estates of deceased claimants

who failed to make proper disclosure of their resources prior to 24 November 1980, and therefore its construction remains of paramount importance. It is against this background that we are invited to consider the correctness or otherwise of CSB 53/1981.

10. Mr. Stocker was in the somewhat embarrassing position of having to repudiate the written submissions of the benefit officer, and to contend that the second method of computation adopted by the benefit officer was erroneous. It was, he submitted, erroneous because the decision CSB 53/1981, on which it was based, proceeded on a misinterpretation of the effect of paragraph 27 of Schedule 1. He argued that there was no power under paragraph 27 to reduce the value of resources, whether such resources were capital or income, but that this particular provision was there as a long-stop to catch items, which, for some reason or other, had not already been included in the resources previously mentioned in this Schedule. He had in mind casual receipts, eg birthday presents, or winnings on football pools or horse racing.

11. In support of his contention Mr. Stocker cited a decision of Sir Douglas Frank, QC, sitting as a Deputy Judge of the Queen's Bench Division of the High Court in *Musgrove v The Secretary of State for Social Services*. This case was decided on 3 July 1981 in exercise of the jurisdiction now falling to be exercised by the Social Security Commissioners. Before 24 November 1980 appeals from supplementary benefit appeal tribunals lay in England to a judge of the High Court and in Scotland to a judge of the Court of Session pursuant to section 15 of the Tribunals and Inquiries Act 1971, but since that date the relevant jurisdiction has been exercised by the Social Security Commissioners. Accordingly, although the *Musgrove* case is a decision of the High Court, it arises out of a co-ordinate and not a superior jurisdiction, and is therefore not binding upon us. There is no statute or common law rule by which one Court is bound to abide by the decision of another Court of co-ordinate jurisdiction (*The Vera Cruz (No. 2)* (1884) 9 PD 96 at 98 CA; *Palmer v Johnson* (1884) 13 QBD 351 at 355, CA; *Chapman v Goonvean and Rostowrack China Clay Co Ltd* [1973] 1 All ER 218 at 223, 224 (affirmed [1973] 2 All ER 1063, CA); [*Portec (UK) Ltd v Mogensen* [1976] 3 All ER 565 at 568, EAT). In our view, the weight to be attached to the decision in the *Musgrove* case is the same as the weight attaching to any previous decision of a Commissioner. It has a persuasive, but not a binding, force. We regret that in the present instance we are unable to follow Sir Douglas Frank QC's decision.

12. In the course of his judgment Sir Douglas Frank, QC observed as follows:

> "It seems to me that it is clear from the scheme of the Schedule that what paragraphs 17 onwards are doing are to set out what resources shall or shall not be taken into account, and there is there a reference to capital resources. The reason for the opening words of paragraph 20 'Capital resources taken into account' is to exclude the capital resources comprising the claimant's own dwelling. That is why it is phrased in that way, otherwise it is clear to me that all capital resources are to be taken into account.
>
> Paragraph 27 just refers to any resources, and of course it can mean capital or income. One of the fallacies of the Appellant's argument would be that if the argument is right then any resources, whether they be capital or income, would first have to be considered under paragraph 20 [presumably an error for 27] unless there is a mandatory provision as, for example, under paragraph 21 which says: 'For the purposes of this Schedule a person's net weekly earnings shall be calculated or estimated in such manner as the Secretary of State may,

by regulations made under this paragraph, prescribe.' Again, applying [the appellant's] argument, before paragraph 21 could be looked at you would first have to say how much would have to be taken into account.

Be that as it may, I think that paragraph 27 is no more than a long stop, that it would apply to cash earnings as opposed to weekly income. In my judgment that is the effect of the purposes of paragraph 27 and accordingly this appeal must fail".

13. It may be that, when the learned judge made reference to "cash earnings", he meant "casual earnings", but in any event earnings of any sort must be income resources, and earnings are specified in paragraph 22 of the Schedule. Probably, the learned judge meant, not earnings, but receipts. Presumably, he had in mind casual receipts, such as birthday presents or winnings from gambling. However, here again these receipts will in the hands of the recipient become, in our judgment, capital resources; they may not be particularly large, but they will still take upon themselves this nature and, if Sir Douglas Frank, QC is right in his earlier assertion that "Capital resources taken into account" comprise all capital resources save and except a claimant's home, then "casual receipts" must necessarily have been specified in the Schedule.

14. Mr. Stocker freely accepted that the judgment left much to be desired. However, he contended that historically, ie from 1948 onwards, paragraph 27 and its statutory predecessors had always been given by the Secretary of State the same interpretation as that adopted by Sir Douglas Frank, QC. But against this it must be remembered that the Secretary of State's interpretation had never, we understand, been tested in the Courts prior to the *Musgrove* case, and in any event the Secretary of State had always been able to rely on paragraph 4(1)(b) of the Schedule for the elasticity which Mr. Stocker contended was not available under paragraph 27.

15. Mr. Stocker argued that the assets not disclosed by the deceased, namely his Midland Bank accounts and, in so far as it is relevant the cash, were capital resources, and that such resources were specifically mentioned in the Schedule prior to paragraph 27. He contended that, as a result, they could not fall within paragraph 27 and therefore could not in any way be reduced in value. The difficulty about this contention is that, if the words "any resources not specified in the foregoing provisions of this Schedule" are to be construed as meaning only resources not included in the resources referred to in the previous part of this Schedule, then it is difficult to see what resources could possibly fall within paragraph 27. Undoubtedly, the earlier provisions of this Schedule referred to capital resources, albeit indirectly, and to income resources. Mr. Stocker's approach means that paragraph 27 cannot take in anything that is a capital resource or an income resource, and although he endeavoured to follow Sir Douglas Frank, QC by saying that paragraph 27 was a long-stop embracing receipts, which do not fall within either of the foregoing types of resources, for the reasons already set out we do not accept that casual receipts can be other than capital resources. In other words, the effect of Mr. Stocker's submission is to render paragraph 27 of no practical effect.

16. Although the drafting of paragraph 27 leaves much to be desired, nevertheless we think that the proper interpretation to be given to it, the interpretation which was in effect adopted by the Tribunal of Commissioners in CSB 53/1981, is to regard the words "any resources not specified in the foregoing provisions of this Schedule" as meaning any resources not specifically catered for in the foregoing provisions of this Schedule. A close examination of the Schedule shows that certain specific

resources are to be dealt with in a specific fashion. For example, the capital value of a dwelling occupied by the claimant will be disregarded. So too will any maternity grant, any death grant or any sums payable to any person as a holder of the Victoria Cross or the George Cross. Again, capital resources below £1,200 are to be disregarded. Furthermore, there are specific provisions dealing with how earnings are to be computed, and again there is a disregard of £4 a week from certain forms of income, and in addition there is a limited disregard of occupational pensions. Moreover, paragraph 26 deals with certain specific resources falling to be treated as income. However, in our view, where there is no specific provision dealing with a specific resource, then paragraph 27 allows that resource to be "reduced by such amount (if any) as may be reasonable in the circumstances of the case". This way meaning is given to paragraph 27.

17. Accordingly, in our judgment, the resources not disclosed by the deceased in the present case, namely his Midland Bank accounts (or, for that matter, the cash found on his death, if this proves as a matter of fact to be a relevant consideration) are "not specified in the foregoing provisions of [the] Schedule", and it will be open to the new tribunal, when they come to consider this appeal afresh, to treat such resources, if they are so minded, as reduced by such amount as may be reasonable in the circumstances of the case. It will be a matter entirely for them. It may be that what is reasonable in the circumstances of this case is to do what the benefit officer did in his second computation, namely to reduce on an annual basis the capital resources of the deceased by deducting therefrom the amount of accrued overpayment. It may be that the tribunal will take the same view as the benefit officer, and regard the liability to make repayment pursuant to section 20 as something which can properly be deducted from the deceased's resources pursuant to paragraph 27. However, this is a matter for the tribunal, and not for us. It must, of course, be remembered that paragraph 27 can only apply in respect of the period up to and including 23 November 1980. For the period thereafter regard will have to be had to the relevant provisions of the Supplementary Benefit (Resources) Regulations 1980 in accordance with the principles expounded by a Tribunal of Commissioners in their decision on Commissioner's file CSB 531/1982.

18. Our decision is as set out in paragraph 1.

(Signed) I. O. Griffiths
Chief Commissioner

(Signed) V. G. H. Hallett
Commissioner

(Signed) D. G. Rice
Commissioner

NOTE ISSUED ON THE AUTHORITY OF THE CHIEF COMMISSIONER

The Chief Supplementary Benefits Officer appealed to the Court of Appeal. On 18 October 1984 the Court of Appeal (Lawton, Kerr and Slade L. J. J.) dismissed the appeal. The judgments of the members of the Court of Appeal are printed in full in the Appendix hereto.

APPENDIX TO R(SB) 6/85

THE CHIEF SUPPLEMENTARY BENEFIT OFFICER Appellant

and

A. J. LEARY

(*The personal representative of Timothy Leary deceased*)

Respondent

(Transcript of the Shorthand Notes of the Association of Official Shorthandwriters Ltd, Room 392 Royal Courts of Justice and 2 New Square, Lincoln's Inn, London WC2A 3RU. Tel: 01 405 9884/5)

MR. ROBERT CARNWATH (instructed by The Solicitor for the Department of Health and Social Security, London EC4A 3AD) appeared on behalf of the Appellant

MR. RICHARD DRABBLE (instructed by Mr. Roger Smith, Child Poverty Action Group, London WC2B 5MM) appeared on behalf of the Respondent

JUDGMENT

LORD JUSTICE LAWTON: This is the judgment of the court on an appeal by the Chief Supplementary Benefit Officer against a decision of the Tribunal of Social Security Commissioners ("the Commissioners") given on 25th July 1983, whereby they adjudged that the decision of the Supplementary Benefit Tribunal given on 18th December 1981 was erroneous in point of law and should be set aside and the claim for benefit re-heard. The appellant did not submit that the decision was not erroneous in point of law. What has concerned him is the directions which the

Commissioners gave as to how a differently constituted tribunal was to treat the claim when it was re-heard. The appellant submitted that in giving these directions the Commissioners misconstrued Part IV of the First Schedule to the Supplementary Benefits Act 1976 and failed to follow a decision of the High Court which was binding on them.

THE FACTS

On 2nd March 1970 the late Mr. Timothy Leary ("the deceased") began to receive supplementary benefit. This was on the basis that his only capital consisted of a National Savings Bank account and one premium bond. He went on receiving supplementary benefit until his death on 11th May 1981. After his death it was discovered that he had had £1,589.14 cash in his possession and current and deposit accounts with the Midland Bank which were in credit in a total sum of £3,513.31. Had the Department of Health and Social Security ("DHSS") known these facts, the deceased would not have been paid the amounts of supplementary benefit which were paid. The overpayment was alleged to be £4,383. This sum was claimed, pursuant to s.20 of the 1976 Act, from the deceased's personal representative, the respondent to this appeal. He appealed to the Supplementary Benefit Appeal Tribunal. That tribunal dismissed the appeal on the ground that "he could not provide evidence of how the cash in the house accrued". The Commissioners adjudged, and the appellant has accepted, that the tribunal misdirected themselves as to the burden of proof. This was the main reason why a re-hearing was ordered. The Commissioners, in paragraphs 5 and 6 of their decision, set out their reasons for deciding as they did about the burden of proof. Neither party in this court has criticised their reasons. When the case is re-heard by a new appeal tribunal there will be an issue as to the origin of the cash sum of £1,589.14 and when it was acquired by the deceased. Another issue before the Commissioners was the method by which the DHSS had calculated the alleged overpayment. It was accepted in this court that a wrong method of calculating the overpayment had been used and that the correct method would take into account the fact that any financial resources the deceased had would have diminished as time went by because he would have had to use some of them to get the money which he would have required week by week to live. We do not find it necessary to say anything more about how, as a matter of accounting, the overpayment (and there was clearly some) should be calculated. What is relevant for the purposes of this appeal is the statutory basis for adopting this accounting method.

A

THE APPEAL ISSUES

The Commissioners thought the statutory basis was derived from paragraph 27 of the First Schedule to the 1976 Act which is in these terms:

> "Any resources not specified in the foregoing provisions of this
B Schedule may be treated as reduced by such amount (if any) as may be reasonable in the circumstances of the case".

The appellant has submitted that the agreed accounting method involve nothing more than the application of the arithmetical principle of diminishing returns to paragraph 20 of that Schedule which provides as
C follows:

> "The capital resources taken into account, together with any income derived from them, shall be treated as equivalent to a weekly income of 25p for each complete £50 of the excess of the value of the capital resources over £1,200".

D

He submitted that paragraph 27 of that Schedule is wholly irrelevant in the present case, on the grounds that the cash sum of £1,589.14 and the monies totalling £3,513.31 standing in the two bank accounts, while constituting "capital resources" within paragraph 20, do not constitute "resources not specified in the foregoing provisions of this Schedule" within paragraph 27.
E On the facts of this case in terms of money it will probably matter little to the respondent whether paragraph 20 or 27 applies; but to the DHSS it matters a great deal because cases of overpayment involve millions of pounds of public money.

In deciding as they did about the construction and relevance of paragraph 27, the Commissioners adjudged that they were not bound by a decision of
F Sir Douglas Frank, QC, sitting as a Deputy Judge of the High Court in *Musgrove v. The Secretary of State for Social Services,* (1981) which was to the contrary effect. Mr. Carnwath on behalf of the appellant submitted that they were bound by that decision. He told us that this problem of precedent was of importance to the administration of the supplementary benefit legislation because between 1st January 1978 and 24th November
G 1980 appeals from Appeals Tribunals went to the High Court, not as now to the Commissioners. The DHSS want to know whether such High Court judgments as were given during this period on appeal from Appeal Tribunals are binding on the Commissioners. It was not in dispute before us that all judgments given by the High Court under its supervisory jurisdiction are binding on the Commissioners.

H

As we have said, the appellant's claim was made under s. 20(1) of the 1976 Act which is in these terms:

"If, whether fraudulently or otherwise, any person misrepresents or fails to disclose, any material fact, and in consequence of the misrepresentation or failure—

(a) The Secretary of State incurs any expenditure under this Act.... the Secretary of State will be entitled to recover the amount thereof from that person".

The DHSS did incur expenditure because the deceased had failed to disclose material facts, namely his two bank accounts and possibly the cash found in his house. What the DHSS can recover will depend upon the expenditure they would have incurred had the deceased made the disclosures he should have made. Supplementary benefit to which a person is entitled is the amount by which his resources fall short of his requirements: see paragraph 1(1) of Part I of Schedule I to the Act. The method of calculating requirements is set out in Part II of that Schedule and of calculating resources in Part III. The word "resources", however, is not defined. It includes assets of all kinds. Some resources, however, are to be disregarded—interest in a dwelling house (paragraph 17), maternity and death grants and sums payable to a person as the holder of the V.C. or G.C. (paragraph 18) and the value of capital resources which do not exceed £1,200 (paragraph 19). Capital resources which are to be taken into account are to be treated as equivalent to a weekly income of 25p for each complete £50 of the excess of the capital resources over £1,200: see paragraph 20. If the capital resources to be taken into account are in the form of bank or building society credits, as they usually are, paragraph 20 is easy to apply; but if they are in the form of movable property such property will have to be valued, and if it is owned jointly by the claimant with someone else who refuses to agree to a sale there will be difficulty as to how much, if any, of the value is to be taken into account. Even if the claimant is the sole owner of movable property, it may be unreasonable to take particular items into account in applying paragraph 20. For example, he may be a disabled person, unable to earn, who needs a motor car to get about. It would be surprising in such a case if the DHSS had to give a value to the motor car and take it into account when making the calculation required under paragraph 20. Part III of Schedule I sets out in paragraphs 17–19 and 21–26 how particular kinds of resources are to be dealt with. Insofar as these paragraphs apply in any particular case the DHSS is left with no discretion.

Then comes paragraph 27. We construe this paragraph as meaning that when assessing the amount of the claimant's resources, the DHSS *must* disregard the specific resources mentioned in paragraphs 17–19 but *must* take into account those specified in paragraphs 21–26. Any other resources

(and they would include capital resources not specifically mentioned in paragraphs 17–19 and 21–26) may be treated as reduced by such amount, if any, as may be reasonable in all the circumstances of the case. If the DHSS has this discretion (as we adjudge it has) the calculation required by paragraph 20 becomes easier and more reasonable. The value of the motor car for example used by the disabled person can be disregarded, as can an interest in a valuable asset jointly owned. On the other hand, such discretion as there is in the DHSS would be used unreasonably if the official exercising it disregarded the intention of the Act, namely that those persons who have resources over the prescribed limits should use them for their own requirements. We can find nothing in Schedule I to justify the DHSS's submission that paragraph 27 cannot apply to the cash sum and other monies in question merely because they are "capital resources" within paragraph 20. Paragraphs 20 and 27, in our judgment, are not mutually exclusive. It was suggested that paragraph 27 should be construed as applying to casual receipts such as birthday presents and money won by gambling and was a "long stop". This was based on what Sir Douglas Frank, QC had said in *Musgrove*. We can find nothing in Part III of the First Schedule to justify this restricted construction. In our judgment Sir Douglas Frank, QC misconstrued paragraph 27 and the Commissioners construed it correctly. We should add that paragraph 27 has been repealed by the amendments made to the 1976 Act by the Social Security Act 1980; but it is still applicable to overpayments made before 24th November 1980.

THE PROBLEM OF PRECEDENCE

Were the Commissioners entitled to treat *Musgrove* as not binding them? An inferior court is not entitled to disregard a decision of a superior court, however sure it may be that it has been wrongly decided: see *Farrell v. Alexander,* (1977) Appeal Cases 59. The Commissioners considered that they were entitled to treat as having no more than persuasive force the decisions of the High Court on points of law made between 1st January 1978 and 24th November 1980 under the jurisdiction conferred upon that court by the combined operation of the Tribunals and Inquiries Act 1971 and the Tribunals and Inquiries (Supplementary Benefit Appeal Tribunals) Order 1977 (1977 Statutory Instrument No. 1735) because during that period the High Court was exercising a jurisdiction which since 24th November 1980 has been vested in them by the Tribunals and Inquiries (Supplementary Benefit Appeal Tribunals (Revocation) Order 1980 (1980 Statutory Instrument 1601)).

A distinction has to be drawn between decisions of the High Court exercising its supervisory jurisdiction which are, and always have been, binding on the Commissioners and the particular jurisdiction conferred on

A the High Court by the Act and the statutory instrument to which we have referred. The supervisory jurisdiction of the High Court is wide and discretionary. That given to the High Court between 1st January 1978 and 24th November 1980 was much narrower and was not discretionary. The effect of the 1980 Order was to transfer the narrow jurisdiction from the High Court to the Commissioners, probably for reasons of convenience. In
B these circumstances, it cannot, in our judgment, have been intended that when exercising this same jurisdiction the Commissioners should be bound by earlier decisions of the High Court. In our judgment the Commissioners were entitled to decide, as they did, that the decision in *Musgrove* was not binding on them.

C We dismiss the appeal.

(*ORDER: Appeal dismissed; no order as to costs*)