SUPPLEMENTARY BENEFIT

Resources—loans from a third party.

At the date of claim, 23.4.85, the claimant was a resident in a private nursing home. Until 1.4.85 the home had been registered as a residential home and the claimant had been "sponsored" by the local authority who had paid the fees. However from 1.4.85 sponsorship was withdrawn pending re-examination of the position following the change in the nature of the home; nevertheless they continued to assist her financially. On 21.8.85 the adjudication officer decided that she was not entitled to supplementary benefit from 23.4.85 because her resources were sufficient to meet her requirements and also because her capital assets were, for the period from 23.4.85 to 14.8.85 in excess of £3,000. On appeal the claimant contended that she was entitled to have her assets regarded as diminished in accordance with the extent to which the local authority discharged her fees to the home and correspondingly at no time did she have capital in excess of £3,000. In the event the tribunal revised the adjudication officer's decision and allowed benefit from 30.4.85. The adjudication officer appealed to the Commissioner.

Held that:

1. the payments made by the local authority are not deductible as liabilities (paragraph 5);

2. the tribunal erred in law in considering regulation 6(1)(i) of the Supplementary Benefit (Resources) Regulations 1981 (paragraph 6);

3. a loan constitutes income as much as earnings, R(SB) 20/83 affirmed (paragraph 9);

4. if a claimant actually repays loans made by third party it will be open to the adjudication officer to review and revise any earlier decision treating the loans as income (paragraph 11).

The appeal was allowed.

1. For the reasons hereinafter appearing, the decision of the social security appeal tribunal given on 3 March 1986 is erroneous in point of law, and accordingly I set it aside. I direct that the appeal be reheard by a differently constituted tribunal who will have regard to the matters mentioned below.

2. This is an appeal by the adjudication officer, brought with my leave, against the decision of the social security appeal tribunal of 3 March 1986.

Owing to the complexity of the matter I directed an oral hearing. At that hearing the claimant, who was not present, was represented by Miss C. Harding of Counsel, whilst the adjudication officer appeared by Mrs. Ann Saxon of the Solicitor's Office of the Department of Health and Social Security. I am indebted to both of them for their submissions.

3. The facts of this case are not in dispute. The claimant has been resident at M. H. since February 1981. Prior to 1 April 1985 it had been registered as a residential home, and the claimant had been "sponsored" by the London Borough of Islington who had paid the fees. However, with effect from 1 April 1985 M. H. was re-registered as a private nursing home and the sponsorship was withdrawn, pending re-examination of the position. Until 1 April 1985 the local authority had paid the claimant's fees amounting to £180 per week. Whilst the Social Security Department of the local council were deciding whether or not to continue the claimant's sponsorship, notwithstanding the change in the nature of the home, the local authority nevertheless thought it in the claimant's best interest that she should, for the time being at least, remain there, and in accordance with that policy they decided to continue to assist her financially. On 23 April 1985 she made a claim for supplementary benefit. The local authority intended to top up the claimant's entitlement to supplementary benefit, so that she would be able to pay the fees in full and remain there. In the event, for reasons which are obscure and in respect of which neither Miss Harding nor Mrs. Saxon was able to assist me, no decision was made by the adjudication officer for several months, but in order that the claimant might still stay on at M. H. the local authority continued to pay the fees in full, anticipating that in due course, when an award of supplementary benefit was made, they would be able to recoup their expenditure to that extent.

4. However, on 21 August 1985 the adjudication officer decided that the claimant was not entitled to supplementary benefit from 23 April 1985, because her resources were sufficient to meet her requirements, and also because her capital assets were for the period from 23 April 1985 to 14 August 1985 in excess of £3,000. In due course, the claimant appealed to the tribunal who in the event revised the adjudication officer's decision, so as to allow benefit from 30 April 1985. It is against that decision that the present appeal lies.

5. The first ground of appeal is that in the period up to 14 August 1985 the claimant had capital resources in excess of £3,000, and as a result was precluded from entitlement to benefit. The sum in excess of £3,000 is arrived at by adding together the claimant's national savings (valued at £2,510.30) and the sum standing to the credit of her receiver's account in the Co-operative Bank amounting to £551.09. During the period from the date of claim to 14 August 1985 there were fluctuations in the amount in the Co-operative Bank but at no time did it fall below £551.09. Miss Harding contended that, to the extent that the local authority discharged the claimant's fees to the home, the claimant was correspondingly indebted to the authority, and her assets had to be regarded as diminished accordingly. It followed that at no time during the relevant period had she resources in excess of £3,000. I will assume, for the purposes of this argument, that the payments made by the local authority were by way of loan, and not gift. Unfortunately for the claimant, in this legislation liabilities are not deductible from assets, save and except to the extent permitted specifically by the relevant statutory provisions. As was said in R(SB) 53/83 at paragraph 4:—

"...there is 'no general provision in the supplementary benefit legislation providing for the deduction of debts in ascertaining a claimant's capital or income resources' (paragraph 6 of R(SB) 14/81."

It is not in dispute in this case that there can be no question of the application of regulation 5(a)(ii) of the Supplementary Benefit (Resources) Regulations 1981 [S.I. 1981 No. 1527]. Accordingly, the payments made by the local authority are not deductible as liabilities, so as to bring the capital resources of the claimant below £3,000.

6. However, that is not the end of the matter. Miss Harding sought to rely on regulation 6(1)(i). This provision reads as follows:—

"6.—(1) In calculating a claimant's capital resources the following shall be disregarded:—

(i) any sum attributable to savings made out of income for the purpose of meeting any periodically recurring liability in respect of such personal living expenses and expenses of the home as are reasonable in the opinion of the adjudicating officer, including in particular charges for:—

(i) rent

(ii) rates

(iii) fuel

(iv) telephone rental or calls

for such a period and up to such an amount as are reasonable in the opinion of the adjudication officer, having regard respectively to the time when the liability falls to be met and its expected amount."

Unfortunately, the tribunal did not consider this provision. They mistakenly proceeded on the basis that it was accepted—which manifestly it was not—that the capital at the end of April 1985 had been reduced to £2,905.50, so that the bar imposed by regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 ceased to apply. The tribunal should have concluded that the capital resources of the claimant *prima facie* were in excess of £3,000 until 14 August 1985, but should have gone on to consider regulation 6(1)(j), in order to determine whether, and if so to what extent, there was a disregard to be taken into account, which might bring the claimant's capital resources below the prescribed limit. They should have determined:—

(i) the origin of the money in the receivership accounts, and, in particular, whether it constituted savings from income

(ii) the purpose of the money held in that account

(iii) whether the claimant actually had any reasonable periodically recurring liability for personal living or home expenses at that time, and if so, the nature of the liability, the amount(s) due and the due dates(s), and,

(iv) if the claimant could satisfy head (iii), the amount, if any, of the sum which it was reasonable to disregard and the period involved, giving full reasons for the exercise of their discretion.

7. It follows from what has been said above that the tribunal erred in point of law and I must set aside their decision. I direct that the appeal be reheard by a differently constituted tribunal who will have to consider whether, and if so, for what period the claimant had resources in excess of £3,000.

8. The second ground of appeal is that, on the basis that the claimant's capital resources did, taking into account any disregard, fall short of the statutory limit of £3,000, the tribunal made no findings of fact as to the nature of the payments made by the local authority to meet the claimant's fees. They should have determined whether they were loans or gifts. Miss Harding argued that the payments made by the local authority were in the nature of loans and that the claimant was required to make repayment as and when supplementary benefit was paid to her. This may well have been the arrangement. However, problems arise as to the authority under which these payments were made. Miss Harding suggested that the local authority had some discretion to make payments to keep in a home someone who was no longer "sponsored", and if this was so, the thought suggests itself that the payments might have been in the nature of gifts rather than loans. However, this is a matter on which I cannot speculate. It was for the tribunal to determine whether or not the payments in question were loans requiring repayment or outright gifts. This will be an issue for the new tribunal. Presumably, if they were gifts, the implication of regulation 11(4)(i) is that they be treated as income. I will however, for the purposes of guidance, assume that such payments were not gifts but rather in the nature of loans.

9. Miss Harding argued that loans could not be treated as income. It defied commonsense that a payment which had to be repaid could be regarded as a source of revenue. However, the supplementary benefit legislation has its own rules. What must always be borne in mind is that the supplementary benefit fund is the fund of last resort. As I said in a dissenting decision in R(SB) 23/84, being subsequently upheld by the Court of Appeal:—

> "Supplementary benefit is the benefit of last resort. Its purpose is to safeguard everyone from falling below a standard of living accepted by society at large as being the minimum subsistence level, and it is paid for out of public funds without any contribution on the part of the beneficiary. Not surprisingly, safeguards have been built into the system, so as to ensure that a claimant does not need to have resort to supplementary benefit if he already has adequate income or capital resources of his own." (Paragraph 30)

It follows that if a third party is prepared to lend money to a claimant, so that he is able to satisfy a particular need, the supplementary benefit fund is relieved of any obligation to render financial support in respect of that need. Accordingly, a loan constitutes income as much as earnings. As was said in paragraph 9(8) of decision R(SB) 20/83:—

> "...I am unable to accept the claimant's contentions as to a loan not being capable of constituting 'income' in the relevant contexts."

Moreover the same approach was adopted in *R v. West Dorset District Council, Ex parte Poupard* [1987] 19 H. L. R. 254, on appeal *The Times* newspaper 5 January 1988.

10. It follows that it will be necessary for the new tribunal to determine how the local authority's payments shall be treated. If they are loans, this does not prevent them from being regarded as income. A subsidiary point arises, namely as to whether these payments were made to the claimant's receiver or directly to the nursing home. If to the latter the new tribunal will have to determine whether the claimant had to be treated as possessing those payments by virtue of regulation 4(5)(a) of the Resources Regulations. In the event that they decide that the payments were made to the claimant's receiver or alternatively that they fall to be treated as possessed by the claimant pursuant to regulation 4(5)(a), the new tribunal will have to

consider how such payments should be treated under the provisions of regulation 11. There can be no question of the disregard provided for in regulation 11(4)(j) applying, in that the payments in question were intended, and in fact used, to meet the claimant's nursing home fees, an item falling within her normal requirements, and not being a leisure or amenity item. The payments will be regarded as income in accordance with regulation 11(5)(e), subject only to the weekly disregard of £4.

11. For completeness, I should say that if a particular claimant actually repays loans made by a third party, it will be open to the adjudication officer to review and revise his earlier decisions treating the loans as income. Accordingly, in the present instance if the claimant's receiver applied an appropriate amount from the claimant's national savings certificates in repayment of the "loans" made by the local authority, on the face of it the adjudication officer could be expected to review and revise his original decisions, so as to unlock entitlement to the relevant amount of supplementary benefit. However, in the present case, unfortunately for the claimant, the decisions sought to be reviewed and revised were made more than 12 months ago, and accordingly revision is precluded by regulation 87 of the Social Security (Adjudication) Regulations 1984 [S.I. 1984 No. 451].

12. This is not a satisfactory case. For reasons unknown to me, the adjudication officer failed to determine the claim for supplementary benefit before 21 August 1985, notwithstanding that the benefit is a weekly benefit, and notwithstanding that the claim was made as long ago as 23 April 1985; and as a result of the delay the local authority made payments which may well be regarded by the new tribunal as loans. Moreover, if they were loans their effect was to deprive the claimant (assuming her resources did not exceed the statutory limit) of supplementary benefit which would otherwise have been payable. Furthermore, if these "loans" are repaid out of the claimant's national savings, there will still be no opportunity to have the original refusals of an award revised. This may be a case—it is a matter entirely for the Secretary of State, and not for me—where some *ex gratia* payment is called for.

13. My decision is as set out in paragraph 1.

Commissioner's File No: CSB 0602/86

(Signed) D. G. Rice
Commissioner