

Supplementary Benefit

Contents

Part 1: Requirements	
Normal and modified requirements	30.1.1
Additional requirements	30.1.2
Housing requirements	30.1.3
Part 2: Resources	
Notional resources	30.2.1
Capital resources	30.2.2
Income resources	30.2.3
Part 3: Single Payments	
Matters affecting basic entitlement to single payments	30.3.1
Maternity needs	30.3.2
Funeral expenses	30.3.3
Household expenses	30.3.4
Housing expenses	30.3.5
Miscellaneous expenses	30.3.6
Normal, additional and housing requirements	30.3.7
Discretionary payments	30.3.8
Part 4: Conditions of entitlement	
Registration and availability for employment (<i>see also Chapter 1.2 above</i>)	30.4.1
Engaged in remunerative full-time work	30.4.2
Relevant education	30.4.3
Temporary absence from Great Britain	30.4.4
Part 5: Urgent cases	
General considerations for entitlement	30.5.1
Emergency relief	30.5.2
Other urgent cases	30.5.3
Discretionary amounts	30.5.4
Recovery	30.5.5
Part 6: Trade disputes	
Urgent trade disputes cases	30.6.1
Recovery by deduction from earnings	30.6.2
Exception from disregard and deduction from benefit under s.6(1) of the SS (No. 2) Act 1980	30.6.3
Part 7: Aggregation	
Married couples (<i>see also Chapters 4.1.2, 4.1.4, 4.1.5, 4.1.7, 4.1.8, 5.3.4, 5.3.5 above</i>)	30.7.1
Unmarried couples (<i>see also Chapter 4.2 above</i>)	30.7.2
Dependants	30.7.3
Nomination of claimant	30.7.4
Part 8: Claims and Payments	
Claims	30.8.1
Payments	30.8.2
Deductions and payments to third parties	30.8.3
Persons unable to act through age, incapacity, death or for other reasons	30.8.4

Part 9: Determination of questions

Commencement and duration of awards

30.9.1

Decisions not included

30 Annex

CHAPTER 30

Supplementary Benefit

Part 1: Requirements

Sections 1 and 2(2) of, the paras. 1(2) and 2 of Sch. 1 to, the 1976 Act and the Requirements Regs. 1980 and 1983.

1 Normal and Modified requirements

i Under reg. 8(1)(b) of the Requirements Regs. 1980 it is for the benefit officer to form an opinion that a question as to disqualification under s. 20(1) of the SS Act 1975 has arisen (disqualification by reference to conduct resulting in unemployment or conducing to its continuance). But the question whether the claimant would be so disqualified is for the insurance officer to determine. It is no part of an AT's function to predict or pre-empt his decision. See also 17.2.1: and 17.3.2viii *above*. R(SB) 18/81

ii A claimant left his employment voluntarily after having been in it for two weeks. He then claimed supplementary allowance and declared that he had capital of £150.12. The benefit officer formed the opinion that a question as to disqualification for UB and arisen within the meaning of reg. 8(1)(b) of the Requirements Regs. 1980. Accordingly, under para. (2) of that reg. he decided that the claimant's requirements should be reduced by 40%. On appeal, the AT decided that under reg. 8(3)(b)(iii) the reduction should be reduced by one half. They overlooked reg. 8(3)(a) (which, in effect, imposed a condition on the application of reg. 8(3)(b) that the claimant's available capital did not exceed £100) and they recorded no finding of fact on that matter or, if this had been the case, reasons for finding that by the relevant time his available capital did not exceed £100. The Commissioner held that the decision was on this ground plainly erroneous in point of law and he set it aside. See also 17.2.2iii, 17.3.2.x *above* and R(SB) 26/83, 30.3.1x *below*. R(SB) 1/82

iii A claimant lived in a house with three friends, two of whom bought the property in their joint names. The fourth occupant and the claimant had each formally been leased a room together with access to other parts of the house and garden. All four shared equally the cost of electricity, telephone, cleaning and food. The benefit officer decided that the claimant was not a householder for the purposes of the Requirements Regs. 1980. The AT took the same view but increased his requirements under regs. 6(2) and 14(3)(b) to those of a person with shared responsibility for items of housing expenditure. The Commissioner held that: R(SB) 13/82

1. the claimant was a leaseholder within the meaning of reg. 14(3)(1)(a);
2. therefore he was a householder within the meaning of reg. 5(2);
3. therefore it was immaterial that he was contributing to the common expenditure of the other occupants of the house and the final words of reg. 14(3)(a)(i) had no practical effect on his status. See also R(SB) 8/85.

iv The claimant was a single man. He lived with his brother in a flat. The brother was the tenant of the flat, but they shared the rent and household bills. The benefit officer decided that the claimant was a non-householder and assessed his normal requirements under reg. 6(1) of the Requirements Regs. 1980 and his housing requirements under regs. 14(2)(b) and 23 *ibid*. The AT decided that the claimant should be treated as a joint householder and that reg. 6(2) applied. The Commissioner held that: R(SB) 20/82

30.1.1

1. assessment of normal requirements under reg. 6(2) applies only to persons who satisfy conditions (a) and (c) of reg. 5(2) but who do not satisfy condition (b), because they share responsibility or control over household expenses with another member of the same household (para. 13);
2. in considering whether a claimant satisfied the condition in reg. 5(2)(a), reference must be made to reg. 14(3)(a) (para. 13);
3. “such responsibilities” in reg. 5(2)(b) means the kind of responsibilities for expenditure on housing requirements referred to in reg. 14(3)(a) (para. 14);
4. the tribunal decision merely referred to the basis upon which they thought the benefit officer’s decision should be revised but did not go to give a revised assessment. Where a tribunal decision necessitates a revised assessment, the decision will be incomplete unless a revised assessment is provided (para. 16).

R(SB) 24/84 v The claimant came to the UK from Uganda in 1974. He was given successive grants of limited leave to remain in the UK until 31 August 1980. One of the conditions of that leave was that he did not have recourse to public funds. After August 1980, there was *alacuna*. Then on 8 April 1982 the claimant applied for political asylum and on 13 April he claimed Supp. Ben. Enquiry at the Home Office showed that the Home Office allowed the claimant to remain in the UK pending decision of his application for asylum. The question in issue was whether the claimant was precluded from an award of Supp. Ben. by reason of reg. 10(4A) of the Supp. Ben. (Requirements) Regs. 1980, as amended. A tribunal of Commissioners held that the intention of reg. 10(4A)(b) was to treat a person who was not an illegal entrant, because he originally had been granted leave to remain, as not entitled to Supp. Ben. if that permitted leave had expired and he had obtained no further leave. If a person had obtained further leave, it was necessary to establish whether it had been granted in accordance with the Immigration Rules. If so, there would be an expressed or implied condition that the person was to have no recourse to public funds and an award of Supp. Ben. would be precluded. If further leave had been granted without a condition that the claimant should have no recourse to public funds, he would not fall within sub-para. (a) or (b) of the above mentioned reg. 10(4A); in the present case, the wording of the permission given by the Immigration Authorities to allow the claimant to remain pending the outcome of his application for asylum amounted to leave to remain. Such leave was extra-statutory and not given under the Immigration Rules (para. 17). See also R(SB) 25/85 *below*.

R(SB) 2/85 vi In relation to a German national who was in England and in receipt of a supplementary allowance, but whose permission to remain in England had expired, the Commissioner held that, where a claimant had been granted leave under the Immigration Act 1981 to enter the UK, in the absence of any appeal or application for extension of the leave, the original decision of the immigration authorities was conclusive as to its effect (para. 6). A person who required, but did not currently have, permission to be in England was not available for employment within the meaning of s. 5 of the 1976 Act (R(U) 13/57 approved and followed) and that accordingly, apart from relevant provisions of EEC law, the claim for the allowance would fail without it being necessary to invoke reg. 10(4A) of the Requirements Regs. 1980 at all. However, that obstacle to the success of the claimant would be surmounted if he established a title by virtue of EEC law (para. 8). (As to the position under EEC law see 19.2.11 *i above*.)

R(SB) 7/86 vii During the interval between obtaining the tenancy of an LA flat and entering into occupation of the flat the claimant continued to live with her parents, her supplementary allowance being based on assessment as a non-householder. The Commissioner held by a majority that during the interval the claimant could not achieve householder status. It was not possible for premises to be normally occupied as [a claimant’s] home if the claimant had never actually resided in them. A claimant could not have more than one home at a time (R(SB) 30/83 applied) except in the

circumstances of reg. 14(5)(b) of the Requirements Regs. Although the words “other than reg. 23” in reg. 14(5) did not in themselves exclude a non-householder, this exception from the general rule could not assist the present claim because there was no overlapping liability. The words “should retain the accommodation” in reg. 14(4) could not cover a situation where the claimant had never actually lived in the accommodation: a claimant having a non-householder’s contribution under reg. 23 was precluded from having any other housing requirements.

viii The claimant was a boarder who paid separately by means of a slot meter for heating. A tribunal of Commissioners decided that he was not entitled to a payment for heating as part of his normal requirements (it was no longer in dispute that the claimant was not entitled to an additional requirement for heating). The majority of the tribunal held that no allowances could be made for any amounts spent in obtaining adequate heating unless the amounts were part of the board and lodging charge; decision CSB 699/1984 (not reported) had been wrongly decided and should not be followed. R(SB) 18/86

ix The claimant was living with his natural half-sister and paying her an inclusive amount for board and lodging. The Commissioner held that in the definition of “close-relative” in reg. 2(1) of the Supp. Ben. (Requirements) Regs. the words sister and brother included half-sister and half-brother. But the claimant had been legally adopted at an early age and the Commissioner held that this ended his legal relationship with his natural half-sister so that the definition of close relative did not apply to him and he was entitled to be treated as a boarder. R(SB) 22/87

x The claimant entered the UK on 11 July 1982. She was granted limited leave on entry on condition that she did not have recourse to public funds (such a person is treated for Supp. Ben. purposes as having NIL requirements - para. 10(b) of Sch. 3 to the Requirements Regs.). On 3 May 1984 the claimant made a claim for Supp. Ben. for the period starting on 12 July 1982. On 3 January 1985 the Home Office confirmed that there were now no longer any restrictions on the period for which the claimant could remain in the UK. The AO awarded benefit from a current date. An AT decided that the claimant had the right of abode in the UK and was entitled to benefit from 1982. It was eventually accepted that the claimant was in fact a partial who at the time of her entry to the UK did not require leave to enter the country. A Commissioner upheld the decision of the tribunal. In particular he held that the term “without leave” in reg. 10(6) and para. 10 of Sch. 3 to the Requirements Regs. 1983 refers to persons for whom leave is required but has not been obtained. The provisions do not apply to a person who is in fact a partial. See also 17.3.2 *xiii above*. R(SB) 11/88

xi The claimant and his wife resided in a nursing home. The Commissioner held that any averaging process is wrong when estimating the reasonable amount for board and lodging under reg. 9(6) of the Supp. Ben. (Requirements) Regs. 1983 (SI 1983 No. 1399) “the pre-Cotton Regs.” (para. 27). He commented taking as the maximum the highest amount charged by a home which provided a suitable standard for the needs of the occupants and ignoring those charges which were totally out of line with other homes (para. 28). In the event that the estimate cannot be properly and fairly carried out, the claimant must be given the benefit of the doubt and a refund made to him of the differences between the maximum fixed and the charges actually paid (para. 29). Notwithstanding that para. 5(2) of Sch. 1A to the Supp. Ben. (Requirements and Resources) (Miscellaneous Provisions) Regs. 1985 (SI 1985 No. 613, “the Cotton Regs.”) was *ultra vires*, paras. 1 (residential care homes) and two (nursing homes) were valid and effective (para. 41). R(SB) 12/88 (T)

xii The claimant suffered from senile dementia and incontinence and was terminally ill. She resided in a nursing home classified by the Area Health Authority as “General Medicine”. The AO allowed £170 for board and lodging on the grounds that the home was not one for persons in need of personal care by virtue of any particular condition specified in the regs. but was a home providing general care. The award did not meet the actual fees. A tribunal of Commissioners held: R(SB) 13/88 (T)

30.1.1

1. in determining for nursing home cases the relevant category of care and the appropriate amount under Sch. 1A to the Cotton and Camden regs., (second and third Appendices to R(SB) 12/88), see 30.1.1 x and xi, it is crucial to determine whether the home is single or multi-purpose (para. 22);
2. nursing homes are required to register as such but, unlike residential care homes, not for categories of care which correspond to those listed in Sch. 1A (paras. 25 and 26);
3. the purpose or purposes of the home is a question of fact; the facilities and accommodation provided, the certificate(s) of registration and informal contents of any register kept by the Area Health Authority are relevant; the fact that a claimant is being treated for a particular condition is *prima facie* evidence that the home is for persons in need of personal care by virtue of *that* condition but not as to whether or not there are *other* conditions for which the home provides care (para. 29);
4. if the home is single purpose, for only one condition, the amount specified in the corresponding sub-para. in para. 2 of Sch. 1A applies (para. 30);
5. if the home is multi-purpose, then para. 3(4) applies and the appropriate amount is that amount in para. 2, having regard to the nature of the personal care provided, as is consistent with the personal care that the claimant is receiving in the accommodation (para. 13);
6. a home providing care for the generality of persons in need of care does not fall within para. 2(1)(f), but within all the conditions listed in para. 2 (para. 33).

See also R(SB) 12/88 (30.1.1 xiii *above*.)

R(SB) 14/88
(T) xiii A Commissioner held that “physical disablement” has the same meaning as in the Registered Homes Act 1984 and any regs. made thereunder (see para. 6(2) of the “Camden” regs. R(SB) 12/88, third App. 30.1.1 xi *above* also refers). Although “physical disablement” is not defined in that Act, “disablement” is so defined, for the purposes of Part 1 of that Act. See also R(SB) 13/88; (30.1.1 xiv *above*.)

R(SB) 15/88
(T) xiv The claimant resided in a home registered under the Registered Homes Act 1984 under one Category of Care “old age”. A tribunal of Commissioners held that:

1. in determining the relevant category of care and appropriate amount for board and lodging for a claimant in a home registered under the Registered Homes Act 1984, it is crucial to determine, by looking at a copy of the register, whether the home is single or multi-purpose (para. 28);
2. if the register shows that the home provides accommodation for persons in need of personal care by virtue of any one physical or mental condition falling within the categories listed in para. 1 of Sch. 1A, to the Supp. Ben. (Requirements and Resources) (Miscellaneous Provisions) Regs. 1985 (“the Cotton Regs.”) (see R(SB) 12/88 at 30.1.1 xi *above*), the home is single purpose and the maximum amount is the sum set out in para. 1 in relation to that category. The nature of the care actually provided for the claimant should be disregarded (para. 31(5));

3. if the home is multi-purpose, registered in respect of two or more conditions, then para. 3(2) of Sch. 1A applies, and the maximum amount is that in the sub-para. of para. 1(1) which corresponds to the personal care actually received. If that personal care does not correspond with any of the conditions under which the home is registered, apply under para. 3(3) the lesser or least amount appropriate to one of those conditions (para. 31(6));

4. sub-para. (f) of para. (1) of Sch. 1A “any other condition not falling within sub-para. (a) to (e)” applies only to homes not registered under the Act (para. 31(4));

5. in the case of every residential care home which is not registered under the Act as a residential care home, apply the tests set out in R(SB) 13/88 save that in Sch. 1A it is para. 1 not para. 2 that is relevant (para. 31(8));

A synopsis of R(SB) 13/88 is at 30.1.1 xii *above*.

xv The claimant resided in a home where she received personal care by virtue of old age. The AO allowed £110 towards the weekly charge of £154, on the grounds that the home was registered under Part 1 of the Registered Homes Act 1984 as a residential care home providing accommodation for persons in need of such care. A tribunal of Commissioners held that:

R(SB) 16/88
(T)

1. it was for the tribunal to determine the category into which the home fell, not the LA (para. 13(1));

2. in cases where the home is registered under the Registered Homes Act 1984 and restriction of the amount for board and lodging is under consideration, it is essential not to rely on hearsay assertions, but to see a copy of the register (para. 14);

3. the fact that a particular claimant does not fit into the category of persons for whom a home provides care (as shown in the register) e.g., a claimant under 65 years, does not alter the fact that the case is that specified in the regs. (para. 20(1)).

4. the onus is on the claimant to show that she was physically disabled before pensionable age and is still so disabled while in the residential care home (para. 20(5));

5. further findings of fact in relation to the claimant’s alleged physical disablement were required. The circumstances in which such disablement would lead to payment at a higher rate were explained.

See also R(SB) 12/88 (30.1.1 xi), R(SB) 15/88 (30.1.1 xiv) *above* and R(SB) 17/88 (30.1.1 xvi) *below*.

xvi A senile claimant was resident in a residential care home registered under the Registered Homes Act 1984 in one category of care, “old age”. The AO allowed £120 towards the fees of £140 on that basis. A tribunal of Commissioners held that:

R(SB) 17/88
(T)

1. senility is not a mental handicap. That expression has the same meaning in para. 1 of Sch. 1A to the Supp. Ben. (Requirements and Resources) Miscellaneous Provisions (No. 2) Regs. 1985 (SI. 1985 No. 1835) (“the Camden Regs.”) as it has for the purposes of the Registered Homes Act 1984 and regs. made thereunder: See para. 6(2) as set out in R(SB) 12/88, third App. 30.1.1 xi *above*. It is defined in reg. 1(2) of the Residential Care Home Regs. 1984 as a “state of arrested or incomplete development of mind which includes impairment of intelligence and social functioning”. Senility is not a state of arrested or incomplete development of mind, it is a characteristic or infirmity of old age (para. 14);

30.1.1

2. if the infirmities are sufficiently advanced senility may perhaps be a “mental disorder”, defined in s. 29 of the Registered Homes Act 1984 as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind” (para. 14);

3. “disablement” is defined in s. 29 of the Registered Homes Act 1984 as meaning that the person is “blind, deaf or dumb or substantially and permanently handicapped by illness, injury or congenital deformity or any other disability prescribed by the S of S”. In agreement with the decision in CSB 70/86, (unreported) “physical disablement” should be construed in conformity with that definition (para. 15(2)).

See also R(SB) 12/88T (30.1.1 xiii) *above*.

R(SB) 9/89 xvii The claimant's brother and his wife formed a limited liability company ("the Company") of which they were the sole directors. The Company built a nursing home and formed a partnership with Mr. H, who was not related to the claimant, in order to register and run the nursing home on a commercial basis. The claimant's brother took no part in the day to day running and administration of the home, involving himself only in matters of policy and general business. The claimant was admitted to the nursing home and claimed Supp. Ben. The AO decided that the accommodation and meals were provided in part by a close relative. The Commissioner held that the HL in *Saloman v. Saloman & Co* AC 22 decided that a limited company constituted a separate legal entity. The Company and the partnership were not formed with the intention of using the corporate personality improperly. The responsibilities of persons carrying on a nursing home, under s. 52 of the Registered Homes Act 1984, could not be extended beyond the scope of that provision. The definition of “close relative” did not include a limited company of which a close relative was a director. The Company and not the claimant’s brother provided the claimant’s accommodation and meals in part. This decision also applies to IS (General) Regs. 1987, Sch. 4, para. 14. See also R(SB) 22/87, 30.1.1 xi *above*.

R(SB) 11/91 xviii The claimant and his wife lived in a residential care home run by the Abbeyfield Society, who provided accommodation and midday and evening meals. Supp. Ben. was awarded at rates sufficient to cover the cost of board and lodging. The claimant argued that he was entitled to additional allowances to meet the charges of laundry, attendance and domestic assistance in respect of his wife, and extra dietary expenses for himself. These services were provided by third parties, not by the home. It was decided by the Commissioner and confirmed by the CA that under Reg. 9(4A) of the Supp. Ben. (Requirements) Regs. 1983, where a separate charge is made for separate services, that charge can only be met if made by those who provide the board and lodging, and not if made by a third party. (*For a report of the Court's decision see the App. to R(SB) 11/91*).

2 Additional requirements

i A claimant requested that his supplementary allowance be revised to cover the cost of attendance fees at an Adult Training Centre. The claim was made on the basis that by a decision of an appeal tribunal on 10 November 1980 such an increase had been awarded. However, the provision under the Supplementary Benefits Act 1976 under which the increase had been awarded (Schedule 1, Part 1, paragraph 4(1)*ibid* - which had provided wide discretionary powers) had been repealed with effect from 24 November 1980. The Commissioner ruled that there is now 'no provision for flexibility or discretion such as is contended for by the appellant'. The appeal was accordingly dismissed. R(SB) 12/81

ii [Transferred to 31.1.2 ii] R(FIS) 2/82

iii A claimant bought an electric cooker on a credit sales agreement. He then fell out of work and into arrears under the agreement. The Commissioner held that: R(SB) 25/82

1. there is a clear distinction (which he explained) between a hire purchase agreement and a credit sales agreement (paragraph 3);
2. a credit sales agreement is not covered by paragraph 15 of Schedule 3 to the Requirements Regulations 1980;
3. there is no provision under regulation 11 or 13 of those Regulations enabling a tribunal to award an additional requirement in respect of items obtained under an agreement analogous to an hire purchase agreement (paragraph 3).

iv A widow aged about 70 had the exclusive occupancy of 2 rooms in a 5 roomed house rented by a widower ('the claimant'), aged about 67 and she shared with him the bathroom, stairs, corridor and kitchen. There was no suggestion that they were living together as husband and wife. The widow furnished her own 2 rooms; paid for her own lighting and heating and provided her own food and household goods. However, she rendered the claimant some domestic services. In January 1981, for the purposes of calculating the claimant's right to a supplementary pension the benefit officer decided that, because of the shared parts of the claimant's house, he and the widow were not maintaining separate households and consequently she was a 'non-dependant' in his house and that by virtue of regulation 22(4)(d) his housing requirements should be reduced by £4.60. On the other hand he decided that the claimant had an additional requirement for heating which under paragraph 3(a) of Sch. 3 to those Regulations (not more than 4 rooms) was £1.40 and he made an award until 14 August 1981. The appeal tribunal upheld the deduction: they raised the additional requirement for heating to £2.80 under paragraph 3(b) of that Schedule (5 or more rooms) and further decided that, in relation to the domestic services, by virtue of paragraph 14 of that Schedule (exceptional residential assistance for which a charge is made), he had a further additional requirement of £4.60. The Commissioner held that: R(SB) 4/83

1. for the purpose of calculating normal and additional requirements, claimants are classified as relevant persons, single householders, boarders and any other persons (paragraph 14);
2. for the purpose of calculating housing requirements, the category of those who are not non-householders and who qualify for housing requirements is wider than the category of 'householders' who qualify for normal requirements (paragraph 16);
3. in the context of housing requirements, claimants can be classified only as:
 - (a) persons who derive their entitlement from regulation 14(2)(a); or
 - (b) non-householders (paragraph 17);
4. the terms 'household' and 'members of the same household' must be given their normal everyday meaning (paragraph 19);

5. the widow was herself a householder in the claimant's house; she was not a member of his household; consequently she was not a 'non-dependant' in any part of his 'home' and no deduction under regulation 22(4)(d) should be made from the claimant's housing requirements (paragraphs 18, 19 and 20);

6. the benefit officer's decision that for heating the claimant had an additional requirement of £1.40 was correct (paragraphs 28 and 29);

7. the widow was not 'residential' in the claimant's home; nor was there any evidence of any charge for her domestic services; accordingly the claimant had no additional requirements under paragraph 14 of Schedule 3 to the Requirement Regulations 1980 (paragraphs 21-27 and 29);

8. the benefit officer had no power to make his award for a finite period (paragraph 30).

R(SB) 11/83 v In the case of a man who claimed an additional requirement for (gas) central heating some 10 to 15 months after his gas supply had been cut off for non-payment of his gas bill, the Commissioner held that the additional requirement was a *weekly* addition payment for homes which *are* centrally heated by a single system which is the normal means of heating the relevant part of the premises (not for homes which *were* or *will* be so heated); that that could reasonably be held to be the position during the summer when the heating is not switched on or in respect of short periods when the heating has broken down and is awaiting repair or, depending on circumstances, even the Gas Board has cut off the supply's after a substantial lapse of time there must come a stage when it is no longer possible to say this; when that stage is reached is a question of degree. On the facts of this case the Commissioner held that the conditions of the requirement had ceased to be satisfied and he concluded that the appeal tribunal (who had found to the contrary) must have been under a misconception as to the law (in that no person acting judicially and properly instructed as to the relevant law could have come to the determination in question - see 17.3.5 vii *above*), and accordingly that their decision was erroneous in point of law (paragraphs 16-18). See R(SB); 1/87, 30.1.2 xii *below*, with regard to estate rate heating additions.

R(SB) 13/83 vi Where regulation 9(8) of the Requirements Regulations 1980 applies to make the long term rate applicable to a boarder, the long term rate is not applicable under regulation 7. Therefore, 50p does not fall to be deducted under regulation 13(5) from the aggregate amount awarded for additional requirements (paragraph 11). See also 17.3.7 x *above*, and R(SB) 31/84, 30.1.2 viii *below*.

R(SB) 39/83 vii A claimant does not have heavy family responsibilities within the meaning of paragraph 14 of Schedule 3 to the Requirements Regulations 1980 merely because she has a child to look after and chose to undertake a training course. See also 30.2.3 viii *below*.

R(SB) 31/84 viii The claimant, aged 24, was mentally handicapped. He was in receipt of a supplementary allowance, which included an additional requirement for additional wear and tear on his clothing. His mother, as his appointee, requested a review of the amount of the additional requirement. Ultimately the benefit officer reviewed that amount, but continued the deduction of 50p a week as required by regulation 13(5) of the Requirements Regulations 1980. It was contended that it was wrong to make this deduction from the additional requirement. The Commissioner held that the decision was correct; the words 'but for this paragraph' in the context of the regulation, meant that the total amounts under the relevant paragraphs of Part II of Schedule 3 to those Regulations had to be ascertained and 50p then deducted from the total. R(SB) 13/83 referred to: see 30.1.2 vi *above*.

R(SB) 42/84 ix A local authority tenant claimed additional heating requirement at the higher rate for supplementary benefit purposes. Before the appeal tribunal he adduced his architect's and other evidence upon the structure and situation of his home etc. The tribunal found as facts simply that the local authority had recently carried

out work to try and solve a damp problem, but that the claimant had stated that on inspection the work had not been carried out properly; and they recorded that evidence had been put forward on the claimant's behalf that his home was very difficult to heat, because it was stated to be in a very exposed position; and they dismissed the appeal on the grounds that they did not consider his home to be in a very exposed position and so he did not satisfy the conditions for additional heating requirement at the higher rate; they further added that, if he was having trouble with dampness and ventilation, he should apply to his local authority. The Commissioner held that this decision was erroneous in point of law, because it was incumbent upon the tribunal to make findings upon matters material to the question whether the home was 'exceptionally difficult to heat adequately', not merely to record contentions and statements made in that connection (paras. 5-8). See R(SB) 18/87 on the application of paragraph 13 of this decision.

x The term 'laundry' for the purposes of a laundry addition under paragraph 18 of Schedule 4 to the Requirements Regulations does not include dry-cleaning. The Commissioner also held that to satisfy the condition in paragraph 18(a) of that Schedule it was sufficient for the claimant to show that either his washing facilities or his drying facilities were unsuitable; there was no warrant for breaking down the claimant's estimated average weekly laundry costs to separate the cost of washing from the cost of drying. R(SB) 19/86

xi The costs of a washing machine, whether by rental or purchase, are not to be regarded as 'weekly laundry costs' for the purposes of an additional requirement for laundry under paragraph 18 of Schedule 4 to the Requirements Regulations 1983. R(SB) 20/86

xii The claimant had been refused an 'estate rate heating addition'; the heating system built into the housing estate on which she lived had been recognised as having disproportionately high running costs, but the claimant was not currently using the system because her fuel supply had been disconnected. The Commissioner held that an addition under paragraph 6 of Schedule 4 to the Supplementary Benefit Requirements Regulations depended on the Secretary of State's certificate recognised the running costs of the heating system as being disproportionately high, and on decisions of the adjudicating authorities on the questions whether (1) the claimant was a 'householder', (2) the home was part of an estate, and (3) the estate was built with the heating system; the addition did not cease to be applicable because a claimant's fuel supply was disconnected, even where disconnection had occurred before the Secretary of State's certificate was given. R(SB) 11/83 distinguished. See also 17.3.5 xv *above*. R(SB) 1/87

xiii A married claimant with six young children, and living in a local authority house with a rear garden, had been awarded a laundry addition by the appeal tribunal on the basis that there were no suitable drying facilities. Held that, for the purposes of paragraph 18(a) of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983, the question whether a garden provided a suitable drying facility had to be considered as a matter of fact having regard to all the circumstances, for example whether the garden was suitably equipped, the composition of the family and the frequency with which washing had to be done. R(SB) 10/87

xiv The Commissioner held that an appeal tribunal had erred in confirming a refusal to award a higher rate heating addition because they were unable to identify a single extreme or exceptional factor that applied to the claimant's home so as to make it exceptionally difficult to heat. They had taken paragraph 13 of decision R(SB) 42/84 (30.1.2 ix *above*) too literally. Consideration must also be given to the combined effect of all the factors taken together. R(SB) 18/87

- R(SB) 20/87 xv An additional requirement was claimed when, as a consequence of the claimant's wife having given up her job to care for a daughter needing constant attendance, the family suffered a loss of resources to the extent of the £4 formerly disregarded from her earnings. Held that the word 'cost' as used in paragraph 10 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations 1983 refers to expenditure rather than loss of resources. Court of Appeal Judgement.
- R(SB) 21/87 xvi A weekly addition was claimed for the cost of special wear and tear on a child's clothing (paragraph 19 of Schedule 4 to the Supplementary Benefit (Requirements) Regulations) because the child, who suffered from ectopic eczema, had to wear cotton clothing which had to be washed daily. Held by the Commissioner that for paragraph 19 to operate it was immaterial that the clothing was of a particular kind due to a medical need. The question was not why particular clothing was worn but whether it wore out quickly because of physical or mental condition. Where the conditions for an addition were satisfied, neither section 1(3) of the Supplementary Benefits Act nor regulation 11(3) of the Requirements Regulations prevented the estimated extra cost of replacement being based on the cost of the actual clothing needed in the case.
- R(SB) 28/87 xvii A husband and wife separated on 28 August 1985 when the husband left the home. Until then he had received supplementary allowance, which included an additional requirement for central heating, for the assessment unit. After the separation the wife became the claimant and supplementary allowance was awarded to her. The question at issue was whether, for the purposes of an additional requirement for central heating, she satisfied regulation 12(2)(j) of the Requirements Regulations 1983 which related to a continuous period starting before 5 August 1985. The Commissioner held that:-
1. regulation 12(5) defined 'householder' for the purposes of Part I of the regulations and this definition did not incorporate the opening words of regulation 5(6) (paragraph 13);
 2. any person could qualify as a householder under paragraph 3 of Schedule 4 whether or not he or she was the claimant but the assessment unit would not benefit unless the householder was a member of that unit (paragraph 13);
 3. the words 'applicable to' in regulation 12(2)(j) referred to entitlement and not to the award of benefit (paragraph 18).
- R(SB) 3/88 xviii The claimant sought an additional requirement because her dependent son needed a special diet. The Tribunal held that:-
1. a claimant could sustain a claim under more than one sub-paragraph of paragraph 14 of Schedule 4 to the Requirements Regulations and by virtue of regulation 13(2) of those regulations could be entitled to the higher or highest amount applicable (paragraph 10);
 2. an illness requiring a diet analogous to that required for the other illnesses specified in paragraph 14(a) was not an illness specified in that paragraph and thus of itself did not prevent a person from also falling within sub-paragraphs (b) and (e) (paragraph 10);
 3. whether one diet was analogous to another for the purposes of paragraph 14(a) was a question of fact and must be understood to mean that a diet had to be of a similar type to that required for the other illnesses specified in that sub-paragraph - the similarity of attributes could include similarity in the extent to which the diets differed from the normal diet, similarity in costs and similarities in the degree of difficulty attaching to the choosing, obtaining or preparing of them (paragraph 11);
 4. the words 'extra cost' in sub-paragraph (e) of paragraph 14 meant the cost in excess of that of a normal diet for a person of the claimant's age and other circumstances (paragraph 12). See R(SB) 16/89(T), 30.1.2 xx *below*.

xix The claimant, a healthy man who needed extra food because of his size (6 feet 10 inches) tall and weighing 23 stones), applied for an additional requirement for a special diet. The Commissioner held that the appeal tribunal had misdirected themselves in law on the meaning of sub-paragraph 14(e) of Schedule 4 to the Requirements Regulations 1983. She held that that sub-paragraph was limited to a class of pathological conditions analogous to those specified in sub-paragraph (a) where the special diet required as a result involved extra cost substantially in excess of the amount prescribed in sub-paragraph (a), and that a person could not establish that he needed a special diet by showing that he consumed 'across the board' a greater amount of foodstuffs than a normal person required. On appeal the Court of Appeal held that:

R(SB) 4/88

1. suffering from a condition in sub-paragraph (e) meant a condition which was either physically or mentally abnormal and was one for which a treatment was that the sufferer had to follow a special diet - it was not limited to a pathological condition;
2. special diet within sub-paragraph (e) must refer to some articles of nourishment which were more expensive than those ordinarily required - an item included in a normal diet could qualify as a special diet if it was required in special circumstances in sufficiently large quantities to meet the requirements of the rest of sub-paragraph (e);
3. the Commissioner was right in her conclusion that eating more than an ordinary person 'across the board' did not bring the claimant within a special diet.

Only the Court of Appeal's decision was reported. For another synopsis of this decision **see 18.6.2 vii** *above*.

xx The claimant sought payment of the total cost of a 'whole cost diet' under Part II, Schedule 4, paragraph 14(e) of the Requirements Regulations for his dependent son who suffered from sickle cell anaemia. The Tribunal of Commissioners held that the appeal tribunal had correctly found as fact that there was a need for the special diet but that they erred in law in not stating with sufficient clarity the basis on which the dietary addition should be calculated. The Tribunal also held that the amount to be allowed for a 'whole cost diet' under paragraph 14(e) is the whole cost of the foodstuffs provided for in the diet. R(SB) 3/88 (T) referred to: see 30.1.2 xviii *above*.

R(SB) 16/89
(T)

3 Housing requirements

- R(SB) 4/81 i A claimant, on becoming unemployed, returned to live in his mother's house of which he was not the householder. His return was upon the clear understanding that he would contribute to the housing expenses of the household a sum which was in fact in excess of the basic amount to which, as a non-householder, he was entitled for the purposes of contributing to those expenses (see regulation 23(1)(a) of the Requirements Regulations 1980). The appeal tribunal awarded him an additional amount under regulation 23(1)(b). The Commissioner held that the claimant was not entitled to an additional amount under regulation 23(1)(b) unless he could establish that he satisfied all three of the conditions of that provision, that is to say, not only the clear understanding referred to above, but also that the amount to which he was entitled under regulation 23(1)(a) was insufficient having regard to his actual contribution to the housing expenses of the household and also that, having regard to the resources of the household as a whole, hardship would otherwise occur.
- R(SB) 11/81 ii For a non-householder to qualify under regulation 23(1)(b) of the Requirements Regulations 1981 for an additional amount of supplementary benefit in respect of his contribution to the housing expenses of the household of which he is a member, it is necessary that he establishes not only that the basic amount of benefit under regulation 23(1)(a) is insufficient, having regard to his actual contribution to those housing expenses, but also that, having regard to the resources of the household as a whole, hardship would otherwise occur *and* that his entry into the household was on the clear understanding that a contribution to the housing expenses of the household in excess of the above basic amount would be required - those three conditions being cumulative. As regards the third condition, the reference to 'entry into the household' might be difficult to apply where close relatives are living together and one is the householder. In the case of a son and a mother, the son may have 'entered' the household only in the sense that he was born into it. In that situation, if there is clear and cogent evidence that a mother and adult son had genuinely agreed that the son could no longer continue to live in the household unless he contributed to the household expenses more than the basic amount referred to above, then from the date of that agreement the son could establish the satisfaction of the third condition. See also R(SB) 8/55.
- R(SB) 16/81 iii A claimant went to live with a friend as a member of his household. He paid him £11.50 a week for the use of one room and access to others. (This was more than the basic amount allowed for a non-householder's contribution to housing costs under the Requirements Regulations 1980 then in force.) He claimed an allowance for his payments to his friend and was awarded one at the basic rate. He appealed and the appeal tribunal awarded him an additional weekly payment under regulation 23(1)(b) at the maximum rate, but recorded no evidence supporting the conclusion that the conditions prescribed in regulation 23(1)(b) had been satisfied. The Commissioner held that for such entitlement all three of the conditions must be satisfied.
- R(SB) 13/82 iv A claimant lived in a house with 3 friends, 2 of whom bought the property in their joint names. The fourth occupant and the claimant had each formally been leased a room together with access to other parts of the house and garden. All 4 shared equally the cost of electricity, telephone, cleaning and food. The benefit

officer decided that the claimant was not a householder for the purposes of the Requirements Regulations 1980. The appeal tribunal took the same view but increased his requirement under regulations 6(2) and 14(3)(b) to those of a person that shared responsibility for items of housing expenditure. The Commissioner held that:-

1. the claimant was a leaseholder within the meaning of regulation 14(3)(1)(a);
2. therefore he was a householder within the meaning of regulation 5(2);
3. therefore it was immaterial that he was contributing to the common expenditure of the other occupant of the house and the final words of regulation 14(3)(a)(i) had no practical effect on his status. See also R(SB) 8/85.

v A claimant, who was a householder, contended that he was blind and that therefore by virtue of regulations 2(1) and 22(5) of the Requirements Regulations 1980 his housing requirements should not be reduced by the housing contributions made by his sister who occupied his home as a 'non-dependant' within the meaning of those Regulations. The evidence was that the claimant was partially sighted and unable to do much of the work which a normally sighted person could do. The main question in issue was whether the claimant was blind within the meaning of regulation 22(5) (for the purposes of regulation 22(3)). The Commissioner held:-

R(SB) 16/82

1. the definition of 'blind' in regulation 2(1) was not based on any fixed medical criteria: the yardstick was non-technical and was purely and simply whether the claimant was able to do any work for which eyesight was essential (paragraph 4);
2. 'work' in regulation 2(1) should not be construed in a technical or restricted way; it was not confined to work for which somebody was willing to pay money; it meant any activity (other than that undertaken for pure pleasure without any necessity for its performance) involving some degree of exertion (paragraph 5);
3. 'essential' meant indisputably requisite, so that without eyesight the job in question just simply could not be done. It should not be restricted in scope so as to be deemed synonymous with 'important' (paragraph 5);
4. the appeal tribunal were entitled to hold that the claimant was not blind within the meaning of regulation 22(5) (paragraph 13).

vi The claimant was a single man. He lived with his brother in a flat. The brother was the tenant of the flat, but they shared the rent and household bills. The benefit officer decided that the claimant was a 'non-householder' and assessed his normal requirements under regulation 6(1) of the Requirements Regulations 1980 and his housing requirements under regulations 14(2)(b) and 23 *ibid*. The appeal tribunal decided that the claimant should be treated as a joint householder and that regulation 6(2) applied. The Commissioner held that:-

R(SB) 20/82

1. assessment of normal requirements under regulation 6(2) applies only to persons who satisfy conditions (a) and (c) of regulation 5(2) but who do not satisfy condition (b), because they share responsibility of control over household expenses with another member of the same household (paragraph 13);
2. in considering whether a claimant satisfied the condition in regulation 5(2)(a), reference must be made to regulation 14(3)(a) (paragraph 13);
3. 'such responsibility' in regulation 5(2)(b) means the kind of responsibility for expenditure on housing requirements referred to in regulation 14(3)(a) (paragraph 14);
4. the tribunal decision merely referred to the basis upon which they thought the benefit officer's decision should be revised but did not go on to give a revised assessment. Where a tribunal decision necessitates a revised assessment, the decision will be incomplete unless a revised assessment is provided (paragraph 16).

R(SB) 4/83 vii A widow aged about 70 had the exclusive occupancy of 2 rooms in a 5 roomed house rented by a widower ('the claimant'), aged about 67 and she shared with him a bathroom, stairs, corridor and kitchen. There was no suggestion that they were living together as a husband and wife. The widow furnished her own 2 rooms; paid for her own lighting and heating and provided her own food and household goods. However, she rendered the claimant some domestic services. In January 1981, for the purposes of calculating the claimant's right to a supplementary pension the benefit officer decided that, because of the shared parts of the claimant's house, he and the widow were not maintaining separate households and consequently she was a 'non-dependant' in his house and that by virtue of regulation 22(4)(d) his housing requirements should be reduced by £4.60. On the other hand he decided that the claimant had an additional requirement for heating which under paragraph 3(a) of Schedule 3 to those Regulations (not more than 4 rooms) was £1.40 and he made an award until 13 August 1981. The appeal tribunal upheld the deduction: they raised the additional requirement for heating to £2.80 under paragraph 3(b) of that Schedule (5 or more rooms) and further decided that, in relation to the domestic services, by virtue of paragraph 14 of that Schedule (exceptional residential assistance for which a charge is made), he had a further additional requirement of £4.60. The Commissioner held that:-

1. for the purpose of calculating normal and additional requirements claimants are classified as relevant persons, single householders, boarders and any other persons (paragraph 14);
2. for the purpose of calculating housing requirements, the category of those who are not non-householders and who qualify for housing requirements is wider than the category of 'householders' who qualify for normal requirements (paragraph 16);
3. in the context of housing requirements, claimants can be classified only as:
 - (a) persons who derive their entitlement from regulation 14(2)(a); or
 - (b) non-householders (paragraph 17);
4. the terms 'household' and 'members of the same household' must be given their normal everyday meaning (paragraph 19);
5. the widow was herself a householder in the claimant's house; she was not a member of his household; consequently she was not a 'non-dependant' in any part of his 'home' and no deduction under regulation 22(4)(d) should be made from the claimant's housing requirements (paragraphs 18, 19 and 29);
6. the benefit officer's decision that for heating the claimant had an additional requirement of £1.40 was correct (paragraphs 28 and 29);
7. the widow was not 'residential' in the claimant's home; nor was there any evidence of any charge for her domestic services; accordingly the claimant had no additional requirement under paragraph 14 of Schedule 3 to the Requirement Regulations 1980 (paragraphs 21-27 and 29);
8. the benefit officer had no power to make his award for a finite period (paragraph 30).

R(SB) 9/83 viii The claimant was a local authority tenant. He was required to pay rent for only 48 weeks of the year. The rental year ran from 6 April of one year to 5 April of the next. From 5 January 1981 his rent was increased from £11.35 to £12.64 for each of the relevant 48 weeks. Because of the 4 'free weeks' in each year the benefit officer under regulation 15(4) of the Requirements Regulations 1980 increased the requirement for rent from £10.48 to £11.67 from 5 January 1981 by projecting the increased rent forward from the date and dividing the annual sum by 52. The claimant complained that between 5 January 1981 and 5 April 1982 he had no 'free week' with the result that in the 1980/81 rental year the total rent paid by him exceeded the amount allowed for his rent by £1.14. The Commissioner held that, under regulation 15(4), anomalies were unavoidable, but arise not so much from the particular 'year' which was used, but rather from

the timing and duration of any claim (paragraph 6): that administratively it was easier to calculate forward for 12 months from the date of change in rent than to terminate the computation at the end of the rental year and make any necessary adjustments in respect of the preceding part of the year; that whichever method was used, normally it would only be fortuitous if benefit awarded corresponded exactly with rent paid, and as overall the discrepancy would not be too great, administrative convenience should prevail (paragraph 7).

ix The claimant lived with his fiancée in rented accommodation during university vacations. The fiancée lived separately from him during term time. Then she lived in a bed-sitting room near the university. She received a local authority student grant. The Commissioner considered in some detail the meaning of 'living together as man and wife' in the above context (paragraph 5) and he held that the claimant and his fiancée were an 'unmarried couple' for the purposes of the Resources Regulations 1980 even during term time; that the fiancée's grant should be taken into account as part of the claimant's resources, but the outgoings in respect of the fiancée's bed-sitting room were not part of the claimant's requirements. See also R(SB) 19/85, and R(SB) 7/86, 30.1.3 xii *below*. R(SB) 30/83

x Within the terms of Regulation 16(1) of the Requirements Regulations 1981, collateral insurance policies in favour of the mortgage on the claimant's life cannot be required as a mortgage or a loan. Nor can the premiums payable be regarded as interest on a mortgage or loan. Such premiums are not covered by any provision: see Part IV of those Regulations (housing requirements). (Paragraphs 9 and 10). R(SB) 46/83

xi The claimant was the owner occupier of his home, which he had bought jointly with his wife in the 1960s with the aid of a mortgage of some £6,000 charged upon it. The marriage was subsequently dissolved and in 1976 the claimant obtained a mortgage of some £10,000 charged upon the home and with that money he bought his wife's interest in the home and discharged the outstanding capital and interest owed on the earlier mortgage. In 1982 he obtained another mortgage of some £30,000 charged on the home and with this he redeemed the 1976 mortgage, cleared a number of outstanding debts and used the balance for other purposes. The question in issue was whether the 1982 mortgage, or any part of it, was a 'mortgage or other loan taken out for the purpose of acquiring an interest in the home' within the meaning of r.15(1) of the Requirements Regulations 1983. The Commissioner held that the term 'any mortgage or other loan' in r.15(1) was to be construed as if it were phrased 'any mortgage loan or other loan' (para 7(4)); the word 'mortgage' in that regulation was not to be construed in any technical sense, but in accordance with what an ordinary layman with reasonable awareness of what is involved in buying and selling a house and raising a mortgage might be presumed to know (para 9); the regulation applied only to the interest on loans 'taken out for the purpose of acquiring an interest in the home'; it did not apply to loans taken out for any purpose and in particular it did not apply to the interest on a loan taken out to repay an earlier loan, which had itself been obtained for the purpose of acquiring an interest in the home (para. 12(1)). R(SB) 27/84 distinguished. R(SB) 21/85

xii The claimant obtained the tenancy of a local authority flat. During the interval until she moved into the flat the claimant continued to live with her parents and her supplementary allowance continued to be assessed on the basis of a non-householder. The Commissioner held that during the interval the claimant could not achieve householder status and thereby come within the scope of the housing benefit scheme. A claimant having a non-householder's requirement under regulation 23 of the Requirements Regulations was precluded from having any other housing requirement. R(SB) 30/83, 30.1.3 ix *above*, in relation to a plurality of homes applied. See 30.1.1 ix for a fuller account of this decision. R(SB) 7/86 (T)

- R(SB) 3/87 xiii An owner-occupier had opted to pay by annual instalments a charge for 'private street works' carried out by the local authority, each of the instalments including interest. The Commissioner held that the interest payments, but not the instalments, were a housing requirement under Part IV of the Supplementary Benefits (Requirements) Regulations 1983, being outgoings on the home (regulation 18) which were analogous (regulation 18(g)) to 'improvements which are reasonable in the circumstances' (regulation 17(3)(k)). But the amount of interest allowable as a housing requirement would be subject to adjustment if the claimant had disregarded capital in excess of £500 (regulation 17(2)).
- R(SB) 6/89 xiv The claimant and her husband had for many years lived in their own property which consisted of a six bedroomed main house and a three bedroomed annex cottage. Her husband had received supplementary benefit for both of them and for housing costs. The housing costs were paid on a loan used to repair and renovate the property which was at that time in danger of falling down. After her husband's death the claimant made a claim for supplementary benefit. The adjudication officer decided the property was unnecessarily large for her needs and that the housing costs were excessive and should be restricted under Regulation 21 of the Supplementary Benefit (Requirement) Regulations, see R(SB) 10/88. Regulation 12(1) was made *intra vires* the enabling powers conferred by the Social Security Act 1986. That it is not the function of statutory adjudicating authorities to consider the reasonableness of the legislation. See also R(SB) 7/89, *xv below*.
- R(SB) 7/89 xv The claimant, his wife and their non-dependant daughter lived in a seven bedroomed house. The claimant received supplementary benefit for himself, his wife and housing costs on a loan of £38,500 used to purchase the home. Without any prior notification the adjudication officer restricted the amount of housing costs to those payable on a loan of £17,750, sufficient to purchase a two bedroomed house half a mile away. The adjudication officer's decision was made on the grounds that the home was larger than required by the claimant and his family. In remitting the appeal the Commissioner held that paragraph 21(4) of the Supplementary Benefit (Requirement) Regulations gives an implicit requirement for the claimant to be notified in advance of a restriction being applied. That the availability of suitable accommodation in Regulation 21(5)(a) means that other accommodation is for sale in the area and the "relevant factors" in Regulation 21(5)(b) cover the claimant's ability to obtain that accommodation. In R(SB) 6/89 *xiv above*, the Commissioner also decided that "relevant factors" covers all the circumstances of the family.
- R(SB) 14/89 xvi The claimant moved from a property on which there was a mortgage of £25,000 to her present home on which there is a mortgage of £69,890. An officer of the DHSS sent a letter to the claimant's building society confirming the housing costs payable on the increased loan would be allowed. The adjudication officer restricted the housing costs under Regulation 21 of the Supplementary Benefit (Requirements) Regulations. In remitting the appeal the Commissioner held the adjudication officer could not be bound by advice given by some other official of the DHSS. In reaching this decision the Commissioner considered R(SB) 8/83, R(SB) 14/88, R(I) 12/75 and *Robertson v. Ministry of Pensions* [1949] 1 KB 227; [1948] 2 All ER 767 as authorities on estoppel.
- R(SB) 15/89 xvii From April 1988 entitlement to Housing Benefit Supplement ceased on the introduction of Regulation 12(1) of the Housing Benefit (Transitional) Regulations. In this case the adjudication officer decided that the claimant was not entitled to Housing Benefit Supplement from 4.4.88. In upholding the claimant's appeal the tribunal decided regulation 12(1) was *ultra vires* the enabling powers. The tribunal found regulation 12(1) to be so unreasonable that Parliament could not have intended legislative power to be used in this way. A Tribunal of Commissioners was convened and held that the adjudicating authority must question the legal existence of a regulation when that existence is challenged. This is more fully covered in R(SB) 10/88. Regulation 12(1) was made *intra vires* the enabling powers conferred by the Social Security Act 1986. That it is not the function of statutory adjudicating authorities to consider the reasonableness of the legislation.

Part 2: Resources

Section 1 and 2(2) of, and paragraph 1(2) and (3) of Schedule 1 to, the 1976 Act and the Resources Regulations 1981.

1 Notional resources

R(SB) 11/82 i A claimant for supplementary benefit from 24.11.80 had in September 1978 with-drawn £8,900 from an investment, leaving only £1,000 in it. He alleged that he had spend £5,000 on major repairs to his own occupied home and £3,929 on gambling, but there was no evidence to substantiate this. In January 1980 an appeal tribunal held that he had 'notional' capital of £4,929. In November 1980 the benefit officer decided that the claimant was no longer entitled to a supplementary allowance and in 1981 the tribunal held that there was no evidence on which to review the 1980 decision and that the 'notional' capital 'deemed' in 1980 must stand. The Commissioner held that:-

1. The tribunal's decision in 1981 was insufficient to show whether it was based on:-

(a) the claimant's actual capital (Resources Regulations 1980, regulation 7); or

(b) his 'notional' capital (regulation 4(1) *ibid*), nor, if so, was there any finding that he had deprived himself of resources for the purposes of securing supplementary benefit or increasing such benefit (paragraphs 11 and 12);

2. this amounted to an error of law (paragraphs 12 and 14); and

3. as three were more facts to be found the case should be remitted for rehearing by another (paragraph 17);

See R(SB) 1/84, 17,3,5 *ixabove*, and 30.3.1 *xvbelow*, and R(SB) 41/84, 30.3.4 *xbelow*.

R(SB) 15/83 ii The discretion in regulation 4(2) of the Resources Regulations 1980 (subsequently included in amended form in regulation 4(1)(a) of the Resources Regulations 1981) should be exercised judicially on the basis of what is reasonable in the circumstances. This includes taking all relevant factors into consideration, not merely some of them. Where potential resources have not been acquired or paid, careful consideration should be given to the probability of their being forthcoming. Where a claim for Social Security benefit has been made, but the decision is still outstanding, it should seldom be taken into account as a resource. There is better reason to take it into account when the benefit has been awarded, although not yet paid (Paragraph 7.)

R(SB) 25/83 (T) iii On a question as to how a claimant is to be treated as notionally entitled to resources held under a discretionary trust and how any share of such resources is to be ascertained and valued, a Tribunal of Commissioners explained the meaning of 'trust' for the purposes of regulation 4(6) and (8) of the Resources Regulations 1981 and the meaning of 'beneficiary' in regulation 4(8) (paragraphs 15 and 16). They also explained how the claimant's appropriate share of the trust fund should be ascertained and determined (paragraphs 17 to 21). See R(SB) 2/84, 30.2.2 *xiv below*, and R(SB) 11/84, 30.2.1 *vi*, 30.2.3 *xi below*, and R(SB) 43/84, 30.2.3 *xiv below*. See R(SB) 25/86, 30.2.2 *xxix below*, with regard to under Scots law.

iv A claimant sold property (other than that occupied by him as his home), but left a substantial amount of the purchase price on mortgage by the purchaser 'to facilitate' the sale of the property. The Commissioner held that the amount left on mortgage was not a notional resource of the claimant under regulation 4(2)(b) of the Resources Regulations 1981, but was a capital resource falling within regulation 5, from which, for the purposes of those regulations, the claimant's unsecured debts could not be deducted (paragraphs 6, 10, 12 and 17). See also 30.2.2 vii *below* and R(SB) 2/83, 17.3.8 vii, 17.3.9 xvi *above*, 30.2.2 v *below*. R(SB) 31/83

v In considering the amount of a person's capital resources for the purposes of determining whether they exceed the prescribed amount, regulation 5 of the Resources Regulations 1981 (calculation of actual capital resources) should be considered first. Only if the actual capital resources do not exceed the prescribed amount, need regulation 4 (notional resources) be considered. See also 30.2.2 x *below* for full summary of case. See R(SB) 2/84, 30.2.2 xiv *below*. R(SB) 45/83 (T)

vi A claimant for supplementary benefit had a business which was no longer active and a business account at the bank which was overdrawn. He had given his bankers all 'all monies charge' entitling them to set off against his overdrawn account any credit balance on any other account of his. He had a holding of ordinary shares to the value of some £575 and these were held by his bankers. It was common ground that his only source of income was that from a quarter share of capital under a 'protected life interest' from the Will Trusts of his late mother. On the question of his capital resources, the Commissioner expressed the view that it was open to question whether any of the £575 constituted a reckonable capital resource and he held that the protected life interest was not a resource to which a current market value fell to be attributed as an actual capital resource: if the claimant had incurred a forfeiture, the question then arose as to whether or not he had a notional capital resource which fell to be attributed to him under regulation 4(6) of the Supp. Ben. (Resources) Regulations 1981 and in relation to the interpretation and application of that regulation, he observed that reference to the Tribunal Decision R(SB) 25/83 provides much helpful guidance. He also held that in regulation 4(6) the phrase 'under which the trustees have any express or implied discretion' had to be interpreted as referring to powers or discretions which, at the time, were currently exercisable. (Paragraphs 9 and 10(2).) (For the Commissioner's decision on the claimant's income resources see 30.2.3 xi *below*.) See R(SB) 21/83, 30.2.2 vii *below*. R(SB) 11/84

vii A full-time student on a residential course resided with his wife and two children. He received a discretionary grant from a local authority and he claimed a supplementary allowance for the Christmas vacation. The question arose whether in the calculation of his resources there should be included in respect of the grant an amount equal to the entitlement of a single person who was a non-householder in accordance with regulation 4(12) of the Supp. Ben. (Resources) Regulations 1981. The Commissioner held that regulation 4(12) only related to a mandatory grant or award. However, under regulation 11(2)(1) the whole of the claimant's grant (less the £2 disregard under head (ii) of that regulation) had to be taken into account in so far as that grant was applicable to the period for which the claim was made. That fell to be calculated under regulation 9. R(SB) 19/84

viii On 11 January 1983, while on vacation, a student on a degree course for a B.sc. in dietetics at an institute of higher education claimed supplementary benefit. In that year, as part of her course, she had to undertake clinical training from mid-April to mid-November with only 3 weeks holiday in that time. Accordingly, according to her course tutor, in compensation, vacation was taken in the Spring. The claimant was in receipt of a mandatory grant from the local education authority and accordingly, by virtue of regulation 4(12) of the Resources Regulations 1981, during the Christmas and Easter vacations she had to be treated as in receipt of a weekly income equal to a prescribed amount. The amount, for the R(SB) 47/84

purposes of her claim, would have made her resources exceed her requirements and so have disentitled her to benefit. The claimant contended that she was obliged to take part of her summer vacation entitlement during the inclusive period from 10.1.83 to 13.2.83 because of difficulties in organising placements; that there was no provision in her grant for this 'summer vacation' and that her resources during that period were nil. The Commissioner held that for the purposes of regulation 4(12) the term 'Christmas vacation' should be interpreted to mean the vacation during which Christmas day falls and similarly the term 'Easter vacation' should be interpreted to mean the whole period of vacation during which Easter day falls; the duration of those two vacations was a question of fact to be determined by reference to the particular course and year of study under consideration (paragraphs 17 and 18).

R(SB) 16/85 ix The claimant was a full-time student at an English university. He claimed supp. ben. during an Easter vacation. He was in receipt of a discretionary maintenance grant from the States of Jersey Education Authority. The questions in issue were whether the grant was paid by an 'education authority' (in this case by a 'government department') within the meaning of r.2(1) of the Resources Regs 1981 and whether a notional resource was to be deducted from the claimant's requirements under r.4 of those Regs in respect of his weekly vacation maintenance. The Commissioner held that the expression 'government department' in reg.2(1) could not include any government department outside the UK (para. 11(1)); the concepts of parental contributions and mandatory grants in reg 4(4) and (12) related to the British educational system and could not have been intended to have been imported into foreign grants and awards (para. 11(2) and (5)); and that, where a grant was received from a body outside GB, the claimant's weekly resources had to be calculated by reference to r.11(2)(m) of the above Regs (para. 12(4)).

R(SB) 38/85 x A claimant's house was compulsorily purchased by a local authority for £18,700. This exceeded the prescribed limit for entitlement to a supplementary allowance, of which he was at the time in receipt. However, the money he used to repay creditors. An appeal tribunal held as a fact that he had deprived himself of capital assets in order to claim a continuation of supplementary benefit, but did not explain how they reached the conclusion that, because he had used the above money to repay his creditors, he had done so in order to claim a continuation of the benefit. For that reason the Commissioner set the decision aside and, in referring the matter to another tribunal to determine, he ruled that 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 satisfactory explanation, it was open to the tribunal to find that he still had that resource (para. 18); that, if it was found that he still retained the resource and had not disposed of it, so that his actual resources were above the prescribed limit, r.4(1) of the Resources Regs 1981 was not required to be considered; if, on the other hand, it was been disposed of, it was necessary to consider the regulation (para. 20); that the expression 'Any resource of which a member of the assessment unit had deprived himself' in the regulation should be given its ordinary and natural meaning in the context in which it occurred (para. 21); that any deprivation must have been for the purpose of securing supplementary benefit or increasing the amount of such benefit (for the regulation to apply), but that purpose did not need to be the predominant motive (para. 22); that, 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 had to exercise its discretion as to whether to treat the claimant as still possessed of the resource in question; that discretion was unlimited, but had to be exercised judicially, taking into account all the circumstances of the case (paras. 22 and 23); and lastly that, if an adjudicating authority found that the regulation fell to be applied against the claimant in circumstances where an actual resource had been converted into another actual resource of a lesser value, than they should only apply the regulation to treat the claimant as still possessed of the difference between the value of the new resource and that which it had replaced (para. 23). Followed in R(SB) 40/85.

xi A claimant was made redundant in April 1984 and received sums totalling over £8,000 in connection with the termination of his employment. He claimed supp. ben. on 10 July 1984, but then his actual capital resources were assessed at £4,014.06 (which was over the prescribed limit for entitlement to that benefit). On 19 July 1984, these resources had reduced to £2,004.06 and it appeared that he had withdrawn £1,500 on the 17th. The adjudication officer concluded that the claimant had deprived himself of capital in order to receive the benefit and in the exercise of his discretion under r.4(1) of the Resources Regs. 1981 he decided that the claimant should be treated as still possessing those capital resources and he disallowed benefit. The appeal tribunal upheld that decision. The main purposes of the expenditure of £1,500 had been, it would seem, expenditure on a holiday, which the claimant said been booked before he had been made redundant and on furniture and furnishings for, and improvement to, his home. Before the Commissioner the adjudication officer then concerned with the case submitted that it had wrongly been held that the claimant had deprived himself of any resources in the purchase of house items as that was simply a conversion of a resource into a different form; the question which should have been considered was whether the provisions of reg. 6(1)(c) for disregarding any resources consisting of personal possessions were excluded by virtue of head (ii) of that regulation (which, unlike reg. 4(1), was not the subject of a discretion). The Commissioner held that-

R(SB) 40/85

(a) for the purposes of reg. 4(1) 3 things had to be established: (i) that the claimant had deprived himself of a resource; (ii) that he had done so for the purpose of securing or increasing supplementary benefit: and (iii) that it was appropriate to exercise the discretion to treat the resource as still possessed by him (R(SB) 38/85) (and in that connection the Commissioner observed that in the present case the adjudication officer had pointed out that by 10 July 1984 the claimant had substantially reduced his capital and the latter had furnished full particulars of how it had been spent (para. 4));

(b) the word 'deprive' was an ordinary English word whose meaning was not a question of law and did not change by reference to the consequences of deprivation; any act, as a result of which a claimant no longer possessed a resource whether or not he acquired another resource in its place, could be considered as deprivation (para. 8);

(c) whether its purpose was to secure or increase benefit was ordinarily a matter of inference from primary facts and the facts for or against that conclusion had to be included in the findings of facts; findings also were essential on the reasons tendered by the claimant for various items of expenditure and, if in issue, on the extent of the claimant's knowledge of the capital limits (para. 9);

(d) the purpose of securing benefits or increasing the amount thereof did not have to be the sole purpose of the deprivation, but it had to be a significant, operative purpose (R(SB), para 22) (para 10);

(e) If the tribunal that there had been deprivation or conversion of any resource for either the above purposes, they would, or might have to, assess the effect of first reg. 6(1)(c)(ii) and then reg 4(1); if they concluded that reg 6(1)(c)(ii) applied, they would include such personal possessions among the claimant's capital resources, but under reg 5(a) they would do so at their current market value, less any amount which would be attributable to the expense of sale (para 11);

(f) if further the tribunal concluded that the claimant had deprived himself of any resource (in that case cash) for either of the two above purposes they would have to go and consider under reg 4(1) of exercise of the discretion to treat the claimant as retaining such resource or part thereof, but that a discretion which had to be exercised judicially in the light of the manifest intention of preventing persons from securing or increasing the amount of supplementary benefit from securing or increasing the amount of supplementary benefit by transactions having that purpose; that discretion, though, ordinarily, had to be exercised to put the claimant vis-a-vis that benefit as nearly as was practicable in the position in which he would have been if the transaction had

not been entered into, but not to penalise him further; if the inclusion of a notional resource caused the claimant hardship of living without the benefit for a time, that hardship could not ordinarily be a ground for exercising the discretion in the claimant's favour without nullifying the purpose of the regulation (para 12);

(g) the discretion, however, should not be exercised so as to count the resource twice; if the claimant had deprived himself of cash in the purchase of an item which was not disregarded, the discretion had to be used to limit the amount of such cash notionally still possessed to the excess of the value of the case over that of the item; also the resources should not be treated as possessed for all time - had the claimant retained the capital resource, he would have had to meet his requirements out of that resource (R(SB) 38/85, para 23) (para 13).

- R(SB) 13/86 xii Special investigation had confirmed that a claimant was working 7 hours on each of 4 days a week. The claimant reported earnings of £8 for 2 days work and his employer said in a letter that the claimant was paid £4 for each day he worked. For supplementary benefit purposes earnings were assumed of £10.50 a day based on an estimate of 'a reasonable working wage'. For the application of regulation 4(3) of the Resources Regulations the Commissioner, following decision CSB 92/84 (unreported, the relevant paragraphs being appended to the present decision), held that it was necessary to establish the identify of the employer, the particular of the services provided for the employer, the actual payment in cash and/or kind of those services and the amount which would be paid for comparable employment; that 'notional earnings' should be reduced by the amount actually paid by the employer and according to his ability to pay; and that the onus of proof lay throughout with the adjudication officer. Another synopsis of this decision is at 17.3.5 xiii *above*.
- R(SB) 25/86 xiii In a case in which a 'parental contribution' to a student was provided by means of a deed of covenant the Commissioner held that the notional income under regulation 4(4) of the Supplementary Benefit (Resources) Regulations 1981 was subsumed into the actual income contributed, i.e. the student could not be assumed to have both the notional income and the contributed income. The principal effect of regulation 4(4) was that, to the extent of the assessed parental contribution, covenanted income fell to be taken into account in full and was not subject to the £4 disregard which would have applied had it been income only under the regulation 11(5) of the Resources Regulations.
- Note* that with effect from 3.1.1.86 the regulations applicable to a student's resources were amended. See 30.2.3 xxiii *below*.
- R(SB) 26/86 xiv Two young children were awarded by the Court shares in their late father's estate to be held in trust absolutely until they were 21. The Commissioner held that an absolute share in a trust fund was an actual resource notwithstanding that the person was an infant and had not attained full age (18); regulations 4(6), (7) and (8) of the Supplementary Benefit (Resources) Regulations 1981 were therefore not applicable. Further synopses of this decision are at 17.8.1 xvi and 30.2.2 xxx.
- R(SB) 17/87 xv Whilst the claimant was in receipt of supplementary benefit his solicitors received on his behalf £12,000 in settlement of his claim for damages for personal injuries arising out of a road traffic accident. This was not disclosed by the claimant who continued to receive benefit for 10 months whilst his solicitors held the £12,000. The Commissioner remitted the case for rehearing by a tribunal and gave certain directions for the rehearing. The claimant applied to the Court of Appeal for leave to appeal to that court, the Commissioner having refused leave to appeal. The Court of Appeal refused the application and held (confirming the Commissioner) that the sum of £12,000 held by a solicitor for the claimant was an actual resource of his, not a notional resource. *David Edward Thomas v. The Chief Adjudication Officer*. For another synopsis of this decision see 17.8.1 xvii *above*.

xvi The claimant had been in receipt of supplementary benefit since 1981. In 1985 he became entitled to exercise an option to take an 'early pension' of £394.20 per year or £7.50 per week. There was a penalty for taking the pension early. Instead of receiving £12.86 from age 60 the claimant would continue to receive £7.50. The Commissioner held that:

1. the underlying purpose of Regulation 4 was to prevent claimant who had resources or could acquire them from relying on supplementary benefit instead (paragraph 9);
2. in deciding whether the claimant should be treated as possessing a resource which was available to him on application regard must be had to the personal circumstances of the claimant as well as the public interest and the mischief against which the regulation was directed (paragraph 10);
3. although on the face of it an early pension should be taken into account, it was open to the adjudication authority in the exercise of its discretion not to treat the claimant as possessing the pension if the consequence would otherwise be unduly severe (paragraph 11).

xvii The claimant was a single parent, with 3 children, who was receiving supplementary benefit. There was a court order for the maintenance of the youngest child and the amount payable under the order was paid direct to the child's school for her fees. It was held that:

1. the question whether, under Regulation 4(5)(b), it was unreasonable to treat the payments to the school as possessed by the member of the assessment until in respect of whom they were made was just as much a question of fact as the question of reasonableness, and the court had held what was reasonable was a question of fact (paragraph 15);
2. the tribunal were required to have regard to the purpose of the payments, the terms under which it was made, its amount and any other relevant circumstances (paragraph 16);
3. in the circumstances of the case the tribunal did not err in law in deciding that it was unreasonable to deem the payments to be possessed by the child in respect of whom they were made (paragraph 16).

For another synopsis of this decision see 17.3.5 xvii *above*.

xviii The claimant had been in receipt of supplementary benefit for several years. During a period when the claimant was not in receipt of supplementary benefit the claimant had transferred to her two daughters by Deed of Gift the property which had been her home. In addition one of her daughters was appointed by the Secretary of State to act on behalf of the claimant. The claimant was mentally but not physically capable. The property which the claimant had given to her daughters was eventually sold. Following the sale of the property the AO decided that the claimant was no longer entitled to supplementary benefit. The point at issue was whether the claimant should be treated as possessing the property which she had gifted to her two daughters. The Commissioner said a positive intention to secure benefit must be shown in order for Regulation 4(1) of the supplementary benefit (Resources) Regulations 1981 to apply. It was not enough to say, as did the Tribunal, that a natural consequence of giving the property away was to secure benefit. The intention to secure benefit need not to be the predominant purpose, paragraph 22 of R(SB) 38/85, but it must be the significant operative purpose. In this case the predominant purpose was to benefit the claimant's daughters. On the balance of probability the significant operative purpose was to secure entitlement to benefit. The Commissioner based this view on the fact that the claimant was mentally capable, had been in receipt of supplementary benefit for a number of years and so should be reasonably familiar with the supplementary benefit system. Because of this he considered the claimant would have realised that if she still owned the property she would not be entitled to supplementary benefit.

Although the daughter had been appointed to act on behalf of the claimant and would have made the claim for income support the Commissioner took the view that the daughter was only carrying out the mechanics of making the claim. The claimant was mentally capable and as such was in control when the claim for benefit was made. Having decided that the claimant should be treated as still owning the property the Commissioner went on to consider whether the value of the property should be disregarded from the calculation of capital. The Commissioner said that the value would be disregarded for the period it was occupied as the home by the claimant. In addition the value should be disregarded under paragraph 6(1)(a)(iii) of the Resources Regulations up to the time it was sold. This was because there was no delay in the selling of the property. When the value of the property can no longer be disregarded from the calculation of capital the notional resource should be diminished in accordance with paragraph 13 of R(SB) 40/85. See R(SB) 38/85 30.2.1 x and R(SB) 40/85 30.2.1 xi.

R(SB) 12/91 xix Following a claim for Supplementary Benefit the claimant received £3,847.30 which was the net proceeds of a matured insurance policy. Shortly after this the claimant gave a total of £3,700.00 of his capital to his two daughters in repayment of loans made by them to his business. By the time the money was paid the business had been taken over by one of the daughters. In consideration of the transfer of the assets of the business the daughter had assumed all the liabilities of the business. The point at issue is whether the claimant should be treated as possessing the money which he had given to his daughters.

The Commissioner said that without a knowledge of the capital limit Regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 could not apply. The Commissioner considered the fact that the claimant had been issued with form B3 which refers to UBL18 and SB9 would be material when deciding whether the claimant had the necessary knowledge. He also considered another factor in deciding knowledge would be that the claimant is an accountant with a corresponding educational standing.

The Commissioner considered that Regulation 4(1) would not apply if a person had done no more than pay a legally enforceable debt which is immediately repayable. This is because one has no choice in the matter other than to pay such a debt. When a debt is repaid early the Commissioner considered the person would have had a choice in the matter. Where there is a choice a decision has to be made as to whether the significant operative purpose, which may not be the predominant purpose, behind the expenditure was to secure entitlement to supplementary benefit or increase the amount of benefit.

The Commissioner emphasised that a bland statement of debts owed by a claimant should be approached with grave suspicion. Such statements should be supported by documentary evidence or failing this should be supported by particular evidence as to the amount owed and how and when the debt was "created".

See R(SB) 38/85 30.2.1.x; R(SB) 40/85 30.2.1 xi and R(SB) 9/91 30.2.1 xviii.

R(SB) 3/92 xx The Commissioner decided that:

- a. in considering notional earnings under Regulation 4(3) of the Supp Ben (Resources) Regs 1981, where a service is given out of love and affection for no financial return, such generosity should not be at the expense of the supplementary benefit fund;
- b. if the recipient of the services has the means to pay for or make a contribution to the cost of those services, the discretion conferred by Regulation 4(3) should be exercised to ensure that the recipient makes an appropriate payment;
- c. notional earnings will be determined by the amount which the recipient of the services can afford to pay.

The claimant appealed to the Court of Appeal who decided that:

- a. a service is being performed even where there is a close family relationship;
- b. the maximum amount of notional earnings will be the lower of the market rate for comparable employment and the means of the person to pay;
- c. “means” simply means monetary resources and not the amount by which income exceeds a notional supplementary benefit level;
- d. it is for the adjudicating authorities to make an informed judgment as to what are a person’s means.

2 Capital resources

i In deciding whether a sum of money ordered by a court to be paid to a divorced wife by her former husband in weekly instalments for her share of property and business standing in his name constituted a capital or income resource for the purposes of a claim for supplementary benefit, the question arose whether this was a ‘lump sum’ within the meaning of Regulations 3(2)(b) or (c) at 11(3) of the Resource Regulations 1980. The Commissioner held that it was not. It was simple a ‘sum’ - an amount of money which measured the proprietary entitlement of the wife to the relevant matrimonial assets. A lump sum is a commutation of a periodic payment and, in particular in matrimonial procedures a payment which the recipient is willing to accept in satisfaction of entitlement to maintenance for life or until remarriage. (Compare contrast *Lillystone v. the Supplementary Benefit Commission* [1982] 3 FLR 12). [Regulations 3(2)(b) and (c) and 13 of the 1980 Regulations were subsequently consolidated in Regulations 3(2)(b) and (c) of the Resources Regulations 1981]. (This decision was set aside by the *Court of Appeal, sub nom. Chief Supplementary Benefits Officer v. Whitlam*, see Appendix 2 below - the sum was a lump sum within the meaning of regulation 3(2)(c)).

R(SB) 7/81

ii A claimant had more than £2,000 invested in a building society, the sum being the balance of a loan made to him for rebuilding and improving his home and being secured by a mortgage on his home. It was held that that balance was a capital resource for the purpose of calculating whether the claimant’s resources exceeded the maximum amount for entitlement to supplementary benefit (see Regulation 7 of the Resources Regulations 1981). For a debit to be deductible for the above purpose it must be secured on the capital resources (see Regulation 5(a)(ii) *ibid*). The phrase “secured on” means that the actual resources must be charged or mortgaged. In this case the balance itself was not, and the claimant was not entitled to supplementary benefit.

R(SB) 14/81

iii A claimant for supplementary benefit from 24.11.80 had in September 1978 withdrawn £8,900 from an investment, leaving only £1,000 in it. He alleged that he had spent £5,000 on major repairs to his own occupied home and £3,929 on gambling, but there was no evidence to substantiate this. In January 1980 an appeal tribunal held that he had “notional” capital of £4,929. In November 1980 the benefit officer decided that the claimant was no longer entitled to a supplementary allowance and in 1981 the tribunal held that there was no evidence on which to review the 1980 decision that the “notional” capital “deemed” in 1980 must stand. The Commissioner held that:

R(SB) 11/82

1. the tribunal’s decision in 1981 was insufficient to show whether it was based on:

(a) the claimant’s actual capital (the Resources Regulations 1980, Regulation 7);

or (b) his “notional” capital (Regulation 4(1) *ibid*), nor, if so, was there any finding that he had deprived himself of resources for the purposes of securing supplementary benefit or increase such benefit (paragraphs 11 and 12);

2. this amounted to an error of law (paragraphs 13 and 14);
- and
3. as they were more facts to be found the case should be remitted for rehearing by another tribunal (paragraph 17).

See R(SB) 1/84, 17.3.5 *ix above*, 30.3.1 *xv below*, and R(SB) 41/48, 30.3.4 *xbelow*.

R(SB) 18/82 iv In 1979, on being made redundant, the claimant sold his home for £23,000 and brought a business with living accommodation and its good-will and stock in hand for £12,000. Some 2 years later he sold the business for £7,260.92 which he put into his building society account which on 17 June 1981 stood at £18,331. The claimant had previously surrendered 2 insurance policies for £857.20 and £116.80 respectively. He claimed supplementary benefit stating that he intended to use his capital towards buying a house for £22,500 for which he would also be obtaining a mortgage for £3,500. The question arose which in essence was whether in buying the business with its associated living accommodation the claimant was buying a home which, in the calculation of his resources, fell to be disregarded under Regulation 6(1)(b) of the Resources Regulations 1980 or was buying simply a business which did not. The Commissioner held the subject matter of the original purchase consisted of two elements, the business in its strict sense and the living accommodation which went with it and that these had to be separately valued. He added that he was not suggesting that any professional valuation was called for; the tribunal merely to use their endeavours to assess the position on the evidence before them, (paragraph 11).

R(SB) 2/83 v A claimant for supplementary benefit was, at the time of his claim, closing down (T) his business. He declared capital assets of some £2,000 invested in his own name in a building society account and some £300 in a business account in a bank. Later on the same day he withdrew £1,000 from his building society account and paid part of his outstanding tax liability. At some stage also the claimant produced a letter from his accountant indicating that at the date of the claim the claimant had tax liabilities of about £2,000. The benefit officer disallowed the claim on the grounds that the claimant's capital resources exceeded £2,000 (Regulations 5(a)(ii) and 7 of the Resource Regulations 1980 refer). At the hearing of his appeal before the appeal tribunal the claimant also contended that the £2,000 were business assets and that Regulation 6(1)(a)(v) applied. The tribunal dismissed the appeal on the grounds that 'the money in question was held in a personal account and could be drawn at any time for any purpose' and 'therefore that the appellant had held capital assets available to him in excess of £2,000 at the time of his claim'. On appeal to the Commissioners it was further contended that if the appeal tribunal had properly directed their minds to the issue whether the £2,000 were business assets and carried out the appropriate investigation they would have reached the conclusion that they were and should have been disregarded under Regulation 6(1)(a)(v). A Tribunal of Commissioners held that:

1. on the above facts apparently accepted by the claimant before the appeal tribunal and the evidence before them they were wholly justified in reaching the conclusion that the £2,000 did not constitute part of the claimant's business assets (paragraph 8);

2. an appeal tribunal has an inquisitorial function to perform. Its proceedings are not adversarial in nature. It is open to a tribunal, and indeed it is the member's duty, whenever they identify a point in favour of the claimant, notwithstanding that it had not been taken by him, to consider it and reach their decision in the light of it. (Exactly the same principle applied in the case of a Commissioner or Tribunal of Commissioners). However, although a tribunal must investigate any matter which occurs to them as having relevance to the appeal before them, they are not expected to question the facts presented where there is no suggestion that the claimant is unsure of the facts presented by him. The primary duty for making out his case falls on him and the tribunal would not err if they failed to identify an uncanvassed point in favour of the claimant save in the most clear cut of circumstances (paragraphs 10 and 11);

3. there is nothing in Regulation 5 to indicate that capital resources are anything but gross capital resources less only any deduction authorised by that regulation.

See also 17.3.8 vii; 17.3.9 xvi above; R(SB) 31/83, 20.2.1 iv above; 30.2.2 viii, below, R(SB) 35/83, 30.2.3 viii below; R(SB) 2/84, 30.2.2 x below and R(SB) 15/85. Followed in R(SB) 4/85. Distinguished in R(SB) 12/86, 30.2.2 xxvii below.

vi It is undoubtedly the law of England that a contract for valuable consideration that personal property such as shares stand charged with money lent or to be lent to or paid for the benefits of the property owner is capable of constituting a charge on the property for the amount of money so advanced or paid even if not evidenced by any written memorandum or accompanied by the handing over of any document of title; such as a share certificate. But such a contract, though it can be created by informal words, can exist if there was an intention to create legal relations. (Paragraph 13). R(SB) 18/83

The valuation of a minority holding (in the case, one third of the share capital) in a private company cannot properly be valuing the whole of the shares in the company and dividing by three. It usually emerges that the value of a minority holding of shares in a company is well below the appropriate fraction of the whole capital, because the latter confers control of the company and the opportunity, if it seems beneficial to do so, to wind up the company and take its assets. It was the intention of the regulations to require assets to be valued at a figure than anything that a claimant could realise on them. (Paragraphs 14 and 15). See also R(SB) 5/88, 30.2.2 xxxiv below, dealing with the law of Scotland.

vii In relation to the valuation of an undivided (sixth) share in property, consisting of 12 cottages, under a will trust, the Commissioner explained what information needed to be obtained before the will was construed (paragraph 6). He also held that to determine the value of the claimant's undivided share, where he was absolutely entitled in possession, it was necessary first to value the underlying assets in the trust fund, having regard to the position under the Rent Acts and whether sale with vacant possession of all or any of the trust properties was possible (paragraph 8); and that, where the undivided share was held in a trust fund upon trust for sale, the share had to be valued at its current market value under Regulation 5(a) of the Resources Regulations 1980 (then in force), but not as land and therefore a 10% deduction did not apply, that such undivided share had a current market value of less than the amount provided by merely dividing the total value of the trust fund by the number of beneficiaries and the reduction in value was a matter of evidence and argument (paragraph 9); and lastly that, where a beneficiary has an absolute entitlement to an undivided share, it is a broad general principle, whether or not he is trustee, that he can force a sale of the total trust and so secure his share (paragraph 11). See R(SB) 11/84, 30.2.1 vi above and 30.2.3 xi below. R(SB) 21/83

viii A claimant sold property (other than that occupied by him as his home), but left a substantial amount of the purchase price on mortgage by the purchase 'to facilitate the sale of the property'. The Commissioner held that the amount left on mortgage was not a notional resource of the claimant under Regulation 4(2)(b) of the Resource Regulations 1981, but was a capital resource falling within Regulation 5, from which, for the purposes of those regulations, the claimant's unsecured debts could not be deducted (paragraphs 6, 10, 12 and 17). See also R(SB) 2/83, 17.3.8 vii and 30.2.2 v above. R(SB) 31/83

ix For the purposes of Regulation 6(1)(a)(ii) of the Resources Regulations 1981, 'for sale' makes no distinction between property which is for sale privately and that offered on the open market, but the determining authorities must satisfy themselves that private negotiations are not a sham. The property should be regarded as on sale as soon as the owner takes overt action in furtherance of his decision to sell (paragraphs 9 and 10). R(SB) 32/83

x Compensation was paid under the Vaccine Damage Payments Act 1979 to a severely brain damaged claimant for a supplementary allowance to hold on trust for him, as beneficiary, absolutely. The parents were the sole trustees. Under the Trust Deed the trustees were required to apply the income of the Trust Fund (if any) to or R(SB) 45/83 (T)

for the maintenance or benefit of the beneficiary as they thought fit. They also had power to apply the whole or any part or parts of the Trust Fund for his maintenance or benefit as they thought fit. They had unrestricted power of investment, including investment in property not producing any income and could pay or apply any income for the benefit of the beneficiary, notwithstanding that it benefited other with whom the beneficiary was residing. The Trustees also had power to apply income or capital of the Trust Fund in recouping to the parents or parent of the beneficiary monies which the trustees were satisfied were, in a defined period before the date of the Trust Deed, expended by such parents or parent for the benefit of the beneficiary in any manner authorised under the Trust Deed. The appeal tribunal disallowed the claim on the grounds that, having regard to Regulation 4(6), (7) and (8) of the Resources Regulations 1981, the claimant's capital resources were, by reason of the Trust Fund, in excess of the prescribed limit. A Tribunal of Commissioners held that the claimant was the sole beneficiary under the Trust Deed; the power of recoupment was clearly fiduciary and did not authorise the trustees, if they happened to be the parents, to recoup themselves; at any time the beneficiary, or, while he was incapable of managing his own affairs, any receiver appointed by the Court of Protection under s.105 of the Mental Health Act 1959 could, under s.103(1)(a) of that Act, call for the transfer of the entire Trust Fund and income thereof and so put an end to the Trust without reference to the wishes of the settler (in this case, the Secretary of State) or the trustees. They further held that in all cases where the provisions as to capital contained in Regulations 4 and 5 of the Resources Regulations 1981 fall to be applied for the purposes of determining what assets a claimant possesses, Regulation 5 (calculation of actual capital resources) should be applied first; only when those resources do not exceed the prescribed amount need Regulation 4 (notional resources) be considered. Lastly, they held that in the present case the claimant clearly had actual resources with a market value consisting of an equitable interest in the entire Trust Fund, the value of which was capable of being ascertained by reference to a valuer, expert in that field. They also expressed the view that, only if the net amount ascertained in respect of the claimant's equitable interest in the Trust Fund was less than the prescribed amount, did the determining authority need to go on to consider Regulation 4; then Regulation 4(2)(a) would be apt to cover property in the hands of a nominee or trustee holding trust property for the beneficiary absolutely and Regulation 4(6), (7) and (8) would not fall to be considered at all (paragraphs 14 and 15). See R(SB) 2/84, 30.2.2. xiv *below*. See also R(SB) 26/86, 20.2.2 xx *below*, with regard to money held in trust for minors.

- R(SB) 49/83 xi A claimant for supplementary benefit disclosed that he had two dwelling houses registered in his name as legal owner, but contended that he held them on behalf of his sons; that the houses were brought in his name because he was able to obtain the loans necessary to pay for them, a thing which his sons had been unable to do; that the loan for the one house had been paid off; to pay off the other loan one of his sons was trying to obtain the money. The Commissioner explained shortly the difference between legal and beneficial ownership and the concept of resulting trusts and, in remitting the case of a rehearing by a differently constituted appeal tribunal, he listed the questions which the tribunal should carefully examine and upon which they should find facts. Followed in R(SB) 1/85.
- R(SB) 53/83 and Appendix xii After a claimant's death it was found that some time previously his son had transferred £2,850 of his own money to the claimant's Savings Bank account to enable him to take a holiday in India whenever he wished. The claimant never did so and, when claiming supplementary benefit, he had not disclosed this money. The benefit officer decided that as a result there had been an overpayment of £2,172. The appeal tribunal upheld his decision. The Commissioner held that the money was not part of the claimant's resources, but held by him on resulting trust for the son. The court of Appeal subsequently allowed by consent of the parties an appeal by the Chief Supplementary Benefit Officer against this decision. The appeal was not argued on its merits. See Appendix to the decision. Distinguished in R(SB) 1/85, and R(SB) 14/86, 30.2.2 xxviii *below*.
- R(SB) 57/83 xiii A claimant and his wife owned the entire shareholding in a limited company which had ceased to trade, but had a capital account and an income account (overdrawn) at a bank. For a time the claimant was refused supplementary benefit on the

grounds that the company's bank accounts formed part of his resources and that has result these exceeded the statutory limit for the purpose of entitlement to that benefit. The Commissioner held that a limit company is a legal person, separate and distinct from its members, and its assets cannot be directly attributed to its members; members of a limited company have shares in the company and it is the value of these shares as between a willing seller and a willing buyer which should be included in the calculation of the claimant's resources, not the bank accounts of the company (paragraph 6).

xiv A claimant for a supplementary allowance had been left by her mother a pecuniary legacy and a half share of the mother's residuary estates, both, by a later clause in the Will, being put on a protective trust for her for life, and after her death for her children, of whom she had two. The claimant's life interest would terminate immediately she attempted to dispose of it. Her chances of a reversionary interest were negligible. The trustees had lent her £18,000 for the purchase of her home. There was £12,000 left in the Trust Fund. The question arose whether the claimant's capital resources exceeded £2,500. The Commissioner held that the claimant's actual resources should be considered before her notional resources (R(SB) 45/83, 30.1.2 x); her life interest was unsaleable and it had no market value; she could not sell her prospects of being awarded income payments under the discretionary trusts which would arise if she attempted to sell her life interest (para 5); there was a possible interest in the capital of the Trust Fund in that the absolute gift of a life interest would take effect if all the protective trusts engrafted onto it failed, but with two children, they were unlikely to fail and so had negligible market value; as a debtor to the Trust Fund the claimant could assign her interest, but the existence of her debt would be affected in the value of her share (para 6); as a negligible value was attached to the claimant's actual interest under the Will, the tribunal would have to determine what value, if any, was to be attached to her notional interest, applying the principles enunciated in R(SB) 25/83 (para 7). See R(SB) 2/83, 17.3.8 vii, 17.3.9 xvi, 30.2.2 *vabove* and R(SB) 43/84, 30.2.2 *xviiibelow*.

R(SB) 2/84

xv A claimant for supplementary benefit owned a house, other than the one in which he lived. The District Valuer, who was not aware of its internal condition, valued it at £2,750. An estate agent valued it 'for quick sale' at £2,000. The claim was disallowed under regulations 5 and 6 of the Resources Regulations 1980 on the basis that his capital resources exceeded £2,000. The Commissioner held that in regulation 5 'land' referred to both site and buildings on it (para 8(1)); where an asset has both a market and a surrender value it is open to the determining authority to choose which to adopt (para 8(2)); 'current market value' in regulation 5 in relation to an asset such as 'lands with buildings' means the price which the asset commands between a willing buyer and a willing seller in that market at a particular date (expressly identified or implied) - in this case, at the date of claim (para 8(3)); in valuing 'land', account should be taken of the owner's interest - e.g. whether freehold or leasehold and, if the latter, the length of the lease; and whether available with vacant possession or subject to the right of a sitting tenant (para 8(4)).

R(SB) 6/84

xvi A claimant owned property consisting of a farmhouse in which he had lived for 25 years, a garden, some out-buildings, 2 fields totalling 12.6 acres, 10 sheep, 3 cows, a heifer, 2 pigs and some fowls. The District Valuer valued 12 acres of hill land at £5,000. A firm of chartered surveyors valued the land (other than house and garden) at £2,800. The farm was run by the claimant's wife as a hobby and made a loss in the 12 months preceding claim, she expressed the intention eventually to make a profit. For this reason and because of the amount of money invested in the project, the benefit officer decided that this was a business; that it was reasonable to expect its assets to be realised and the land sold separately and that because the claimant's capital resources exceeded £2,500 he was not entitled to a supplementary allowance, but under regulation 6(1)(a)(v) of the Resources Regulations 1981 he should have 13 weeks to sell or lease the land. The Commissioner held, that for valuation

R(SB) 13/84

of property, some evidence of proper valuation should be produced (para 4); the exception in the latter part of Regulation 6(1)(a) applied to all the subparagraphs above it and Regulation 6(1)(a) permitted a discretion under regulation 6(1)(a)(v) that business assets may be disregarded for such period as the benefit officer considers reasonable, but not that the disposal of them might be postponed (paragraph 8). He also held that for outbuildings to be part of the home they do not need to be within its curtilage; whether they can reasonably be considered as part of the house was a question of fact (paragraph 9); and the meaning of 'home' in regulation 2(1) does not confine the definition of 'croft land' exclusively to Scotland; a small-holding may be compared with croft land (paragraph 11) (see also R(SB) 6/84 *above*). See also R(SB) 27/84, 30.2.2 xvii *below*.

R(SB) 27/84 xvii Capital resources - maximum permitted amount under Regulation 7 of the Resources Regulations 1981. A claimant was living with his daughter as a member of her household. He had a house (a bungalow) of his own with a plot of land adjoining it, which, together with the land, he had bought in 1979 for £23,000 with the aid of a mortgage for £16,000, which was secured on both the bungalow and the land. Planning permission had been obtained to develop the land and that accordingly had been valued by the district valuer in July 1982 at £9,000. The mortgage debt had been increased in May 1982 to £18,620 and in February 1983 the amount required to redeem the mortgage was £19,125. There was no evidence in the case papers at any rate that either the claimant or any member of the assessment unit or of the same household had ever in fact occupied the bungalow. However the appeal tribunal found as facts that the claimant had suffered serious injuries from a road accident in March 1981; that he could not be expected to live alone and, but for that, he would have occupied the bungalow as his home. The chairman of the tribunal also noted that the claimant intended to do so when he was well enough to live alone. At about the end of 1982 the claimant put the bungalow and the land onto the market for £32,000, but it had not been sold. The questions in issue were whether the bungalow was the claimant's home within the meaning of Reg 6(1)(a)(i) of the above Regulations; whether the bungalow was his intended home for the purposes of Reg 6(1)(a)(ii); and, if so in either case, whether the land was capable of separate realisation and, if so, how the land should be valued having regard to the fact that the mortgage debt was secured on the land as well as the bungalow. The Commissioner, in remitting the case to a freshly constituted tribunal to hear, held that; accommodation could not be treated as 'the home' in the terms of Reg 6(1)(a)(i) where there was no evidence that the claimant (or any member of the assessment unit or any member of the same household) had ever occupied the property (para 11(1)); if a single mortgage was secured on property the value of which fell to be disregarded under regulation 6 (e.g. as 'the home') and on property the value of which did not fall to be disregarded (e.g. because it was capable of separate realisation), in assessing under regulation 5(a)(ii) the value of the property which did not fall to be disregarded, the entire mortgage debt had to be deducted from its market value, less 10% (para 11(2)); the onus of proving that his property fell to be disregarded as 'the home' or the 'intended home' under regulation 6(1)(a)(i) or (ii) rested on the claimant, but the onus of proving that a part of the property could be realised separately, and was thereby excepted from disregard, rested on the benefit officer (para 14(5)). See also R(SB) 13/84 [para 11(4)], 30.2.2 xvi *above*, and R(SB) 21/85.

R(SB) 43/84 xviii A claimant was a beneficiary under a Will Trust which directed the trustees to invest £10,000 and pay the income therefrom to the claimant during her lifetime, with power at their absolute discretion to use any part of the invested capital for the claimant's maintenance and benefit. The Trust also directed that after the claimant's death the balance of the Trust Fund was to be held in trust for specified remaindermen. The question in issue was whether, by reason of her interest in the Trust Fund, the claimant's capital resources exceeded the amount prescribed in Regulation 7 of the Resources Regulations 1981. A Tribunal of Commissioners considered generally in the light of Regulations 3(2), 4(6), (7) and (8), 5, 6(2), 7 and (T)

11(4)(1) of the above Regulations, the proper method of treating a claimant's life interest in a Trust Fund when calculating his capital and income resources and in particular the complication which occurs when that life interest arises under a Will or settlement containing a power to pay over capital to the claimant at the Trustee's discretion. They held that:-

1. Where a claimant has a simple life interest without restrictions, he has two resources: a saleable capital resource, which is the value of the lifetime right to future income from the Trust Fund, and an income resource, which is the income actually derived from the Trust Fund. The value of the capital resource must be valued under regulation 5. If (when added to other capital assets) it exceeds the amount prescribed by regulation 7, supplementary benefit is not payable. If it does not exceed that amount, the income from the Trust Fund in which the interest subsists is an income resource which does not fall to be disregarded under regulation 11(4)(1). (Para 18(a) and 21).

2. Where the claimant has protected life interest (i.e. one which would be forfeit if certain events occurred, e.g. assignment of the life interest to a third party, which is not subject to any overriding power of appointment or advancement, his interest is unsaleable and valueless and here again his income from the Trust Fund is an income resource which does not fall to be disregarded under regulation 11(4)(1). (para 22).

3. Where the claimant has a simple life interest which is subject to an overriding power of appointment or advancement in respect of capital in favour of beneficiaries other than the claimant, the claimant's life interest has no capital value (para 23).

4. Where the claimant has a life interest as in para 3 above, except that the power of appointment or advancement is exercisable only in his favour, it is within his power to give that life interest a realisable capital value. It should first be valued on the basis that the power of appointment has been released. It will then be an actual capital resource to be valued under regulation 5 (not a notional resource under regulation 4(6), (7) and (8)). If its value, when added to any other capital resources, exceeds the amount prescribed in regulation 7, supplementary benefit will not be payable. If the claimant's life interest, when so valued, does not exceed that prescribed amount, his notional share of the Trust Fund should be ascertained under regulation 4(6), (7) and (8). His share should be established on the principles set out in R(SB) 25/83 and valued in accordance with regulation 5. Where the value of the notional share, when added to other capital resources which fall to be taken into account, exceeds the amount prescribed in regulation 7, supplementary benefit will not be payable. Where they do not, in calculating his income resources, the trust income to the extent that it is produced by the share of the trust capital notionally treated as possessed by the claimant under regulation 4(6), (7) and (8), should be disregarded under regulation 11(4)(1). (Para 23).

5. Where the claimant has a protected life interest which is subject to an overriding power of appointment or advancement, that life interest has no capital value. The appropriate share of the trust which is to be treated as possessed by the claimant under regulation 4(6), (7) and (8) should be calculated and valued in the manner indicated in R(SB) 25/83. Trust income to the extent that it is produced by the share of the Fund which is treated as possessed by the claimant should be disregarded under regulation 11(4)(1). (Paragraph 24). See also R(SB) 2/84, 30.2.2 xiv, R(SB) 25/83, 30.2.1 iii above, and R(SB) 1/85.

See R(SB) 15/86, 30.2.2 xxix below, with regard to treatment of a life interest under Scots law, R(SB) 25/86 and R(SB) 13/87.

xix A claimant for a supplementary benefit allowance lived in local authority accommodation with his wife and mentally handicapped son, aged 23. By 1974, because of his handicap, it was becoming increasingly difficult to find holiday accommodation for the son and so, with money provided by the claimant's mother-in-law for the purpose the claimant bought (or, as the benefit officer stated,

the mother-in-law bought in the claimant's name) the leasehold of a chalet in a holiday camp, so that the claimant's son could spend his holidays there. This the son did from March to September each year. The questions in issue were whether the son 'occupied' the chalet within the meaning of reg 6(1)(a)(iv) of the Resources Regulations 1981 (disregard of 'any premises of which the whole or part is occupied by an aged or incapacitated relative of any member of the assessment unit') and whether the claimant was the beneficial owner of the leasehold. The Commissioner held that the disregard allowable under the regulation could only apply where the premises in question were the residence of the relative and were not merely used as a 'holiday home' (para 6). He further held that the statement that the chalet was bought by the claimant's mother-in-law in the claimant's name was *prima facie* evidence which gave rise to the presumption of a resulting trust in favour of the mother-in-law and that, unless that presumption was rebutted, the claimant had no beneficial interest, i.e. was not the owner of the chalet (para 9); that in this particular case the presumption could be rebutted if evidence established that the money or leasehold had been (a) a gift to the claimant, or (b) a gift to his son, or (c) vested in the claimant to hold in trust for his son (para 1); only in the case of (a) could the claimant be held to be the owner of the chalet (paras 11 to 14). R(SB) 49/83 followed. R(SB) 43/84 referred to. R(SB) 53/83 distinguished. See also R(SB) 13/87.

R(SB) 4/85 xx The claimant, a property developer whose business had run into financial trouble, claimed a supplementary allowance. His claim was disallowed by the benefit officer and subsequently by the appeal tribunal on the grounds that he had capital in excess of the prescribed amount. He appealed to the Commissioner on the grounds that the benefit officer and the tribunal had included in his capital resources certain investments which should have been disregarded under regulation 6(1)(a)(v) of the Resources Regulations 1981 (business assets). The Commissioner held that the test to distinguish between business assets and personal assets was whether the assets was part of a fund employed and risked in the business and the manner in which the item was treated or not treated in the account (if any) of the business was not conclusive (para 11). (Re Rhagg [1983] and *Re White* [1958] Ch.762). R(SB) 5/81, 2/83 and R(U) 3/77 followed. (For adjudication issues in this case relevant to appeal tribunals and adjudication officers see 17.3.8 xii above).

R(SB) 5/85 (T) xxi A deceased claimant has received Supp. Ben. from 18.7.80 to 7.12.80. Her husband bequeathed to her his whole estate which included a house, which since 1951 had been occupied by her so, who had been responsible for all outgoings and had made considerable improvements to the property. The husband died in 1968, but letters of administration had not been granted until 23.6.81, by which time the claimant herself had died. The questions in issue were whether the house constituted a capital asset of the claimant and whether as a result she had been overpaid benefit, which was recoverable. A Tribunal of Commissioners held that the deceased had had no property right in the house, because the estate had not been administered; all she had had was an interest in the unadministered estate and such an interest did not confer entitlement to any beneficial interest in any specific property (para 7); consideration should have been given to whether the son, having expended considerable monies on the property in question, had acquired an interest in it and, if so, the extent to which he had done so would reduce the extent to which the house constituted part of the unadministered estate (para 8). The Tribunal accordingly directed that the appeal be reheard by another appeal tribunal, which should also consider para 27 of Schedule 1 to the 1976 Act in relation to any payments of benefit made to the deceased up to 23.11.80. That paragraph, which was repealed by the Social Security Act 1980, had enabled resources not specified in the Schedule to be reduced (paras 9 to 11).

xxii The Commissioner held that a lump sum redundancy payment constituted a capital resource and therefore was not earnings within the meaning of reg 10 of the Resources Regulations 1981 (para 10(2)). (For full summary of this case see 30.2.3 xvi *below*).

R(SB) 11/85

xxii A claimant, aged 83, sold his home, which was in a good state of repair to join with his son and daughter-in-law buying a dilapidated house next to theirs and to modernise, repair and convert it into two flats, one of which was to be for him. The question in issue was whether the balance of the purchase price paid for the claimant's old home over his share of the purchase price of the new home, which the claimant had set aside for his share of the cost of modernising, repairing and converting the new home, could be disregarded under reg. 6 of the Resources Regs 1981. The Commissioner held that the disregard under that regulation was limited to the proceeds of the sale of the home, which were intended for the purchase of another home; it did not extend to proceeds from such a sale put into an investment account for later use on necessary renovations on the newly purchased home (para 8(1)). He further held that any proceeds of sale used to purchase another property where the vendor was converting or refurbishing it, having agreed to be paid by instalments as the work progressed, might fall to be disregarded under r.6(1)(b) (para 8(4)); money paid for chattels sold with the home and passing by delivery formed no part of the proceeds of the sale of the home for the purposes of regulation; further, in the terms of reg 6 the proceeds of sale were the gross proceeds before deducting solicitor's costs; however, in deciding the amount to be disregarded as the sum attributable to such proceeds which were intended to be used for the purchase of a new home, legal expenses might be deducted from the gross proceeds if there was evidence of the claimant's intention to use for the purchase of his new home the sum received after the deduction of legal expenses (para 9). The Commissioner lastly held that the onus was on the claimant to show that any, and if so how much, of his capital fell to be disregarded under reg 6(1)(b) and that no money spent on repairs, improvements, renovation, refurbishment or conversion should be treated as a sum 'to use in the purchase of another home' for the purposes of that regulation, unless it was shown that such expenditure was part of the agreement to purchase from the vendor and the work involved was carried out by or at the expenses of the vendor (para 11(4) and (13). See R(SB) 30.2.2 xxviii *below*.

R(SB) 14/85

xxiv A woman was alleged to have been overpaid supplementary benefit by reason of her having failed to disclose capital in excess of the prescribed limit. The Commissioner allowed her appeal on the grounds that the appeal tribunal had failed adequately to record their reasons for their decisions and the amount of the excess expenditure incurred by the Secretary of State due to the non-disclosure and, in remitting the case for rehearing by another tribunal, he directed that, in considering whether a claimant was precluded from supp. ben. on the grounds that the claimant's capital exceeded the prescribed limit, the period involved had to be examined week by week; where in any week the claimant's capital exceeded that limit so that he was excluded from benefit, consideration had to be given to whether the Secretary of State's expenditure in the week in question was in consequence of any non-disclosure or misrepresentation by the claimant; notional reductions in the amount of the claimant's capital had to be made at the rate which would have been necessary to have enabled the claimant to make good the reduction or loss of benefit which would have occurred if all the capital had been disclosed on time (para 14(1), (4) and (5)). R(SB) 2/83 (T) and R(SB) 35/83 referred to.

R(SB) 15/85

xxv The claimant's wife had bought 4 houses as an entirety. In 1979 she gave two to her son to convert into one for himself and to do whatever was necessary to make them habitable. For this they needed considerable expenditure on them. The idea was that the son should render them habitable at his own expense and this he did. The transfer of legal ownership was attempted by a 'home made' deed or gift. In

R(SB) 23/85

1984 this was found to be ineffective in passing legal ownership to the son. The adjudication officer, on the valuation of the district value that the property with vacant possession was worth more than £3,000, thereupon stopped the claimant's supplementary benefit. The Commissioner held that (so far from there being sufficient evidence of vacant possession available to the mother) in the circumstances of this case the mother could be compelled by the Court to perfect her gift to her son by conveying the property to him; there was also a legal presumption of advancement between the mother and son: in the circumstances the son fell under the general law to be regarded as the beneficial owner of the property to the exclusion of any beneficial interest of his mother; in the contemplation of the general law the mother was a bare trustee of the legal estate in the property for the sum. The Commissioner accordingly allowed the claimant's appeal (Paras 1 and 7). See also R(SB) 7/87.

- R(SB) 3/86 xxvi The claimant received supplementary benefit during the period March 1980 to March 1982 but failed to disclose until the latter date that in 1979 his wife and adult son had jointly purchased a freehold interest in a house other than their home. When the adult son died in 1981 the claimant's wife became the sole legal and beneficial owner of the property, and then granted a lease of the property to tenants who were initially required to pay the rates and other outgoings on the property but who were later to pay a rent. The Commissioner held that the wife's interest in the property was not a 'reversionary interest' for the purposes of regulation 6(1)(a)(vi) of the Supplementary Benefit (Resources) Regulations and did not fall to be disregarded by virtue of that regulation. A 'reversionary interest' was something which did not afford any present enjoyment but which carried a vested or contingent right to enjoyment in the future. The interest of the claimant's wife in the property contained a reversionary element of a technical character but provided present enjoyment by way of the tenant's payment of the outgoings on the property and later of a rent; her interest was an asset which was readily realisable. The Commissioner also held that the existence of present enjoyment and also a future right of possession did not require apportionment of the interest with disregard of the latter under regulation 6(1)(a)(vi).
- R(SB) 12/86 xxvi A loan of £2,000 to a claimant by a friend on condition that the capital sum was repayable on demand and was not to be used by the claimant, though she could enjoy any interest received from investing it, was held not to be a resource of the claimant and not to affect her entitlement to supplement benefit. R(SB) 2/83, 30.2.2 *above* distinguished.
- R(SB) 14/86 xxviii The claimant, who was incapable of managing his affairs, was joint owner of a bungalow with his nephew who lived in Tasmania. The Commissioner held that the claimant's interest in the bungalow though difficult to realise nevertheless fell to be valued; in the case of a joint interest in land a deduction had to be made for expenses of the sale though the 10% deduction in reg. 5(a)(i) of the Resources Regulations would not apply (R(SB) 21/83 followed); when applying reg. 6(1)(a)(iii) it was the value of the premises which was to be disregarded though the effect would be that the value of the claimant's interest in the premises would also be disregarded. For another synopsis of this decision see 17.3.5 *xiv above*.
- R(SB) 15/86 xxix The claimant enjoyed the liferent of the residue of her late husband's estate. (T) The trustee's were empowered by the terms of the Will to advance capital for her maintenance, which over a period they had done, but they had then intimated that no further advances would be made. The residual beneficiaries of the estate were three children and a niece of the testator. In their decision the Tribunal of Commissioners considered the treatment for supplementary benefit purposes of an ordinary liferent and an alimentary under Scots law, by comparison with

that of a simple life interest and a protected life interest respectively under English law, and by reference to R(SB) 43/84, 30.2.2 xviii *above*. They held that the power of the trustees to advance capital represented a notional capital resource under regulation 4(6) of the Resources Regulations; and that, in deciding the claimant's 'appropriate share', regard must be had to the provisions of regulation 4(8)(a) and to all the relevant circumstances. In the present case such circumstances included the claimant's age and state of health, relationship with the other beneficiaries, and the claimant's capital (including his advances made by the trustees). The Commissioners agreed with the view expressed in R(SB) 25/83, 30.2.1 iii *above*, that a statement by trustees that they no longer intended to advance capital was not material.

xxx A widow with 2 young sons contested her late husband's will. The Court awarded her a lump sum from the estate and directed that the balance be held in trust absolutely for the 2 sons in equal shares. Held by the Commissioner that an absolute share in a trust fund was an actual resource notwithstanding that the person concerned was an infant and had not attained age 18. When capital resources of a dependent fell within regulation 8(1) of the Supplementary Benefit (Resources) Regulations 1981 the capital was disregarded and the dependant was deemed to have an income equal to his requirements, whether those resources produced such an income or not. Further synopses for this decision are at 17.8.1 xvi and 30.2.1 xiv. R(SB) 26/86

xxxi A claimant had subscribed for £11,500 of loan stock as a condition of occupying a home owned by a housing association. The Commissioner held that the word 'deposited' in regulation 6(1)(f) of the Supplementary Benefit (Resources) Regulations 1981 was not to have a technical or narrow meaning and that the claimant's subscription could properly be regarded as a deposit. If reliance was to be placed on regulation 6(1)(f) the claimant had to show, as at the date of claim, both that the money was still deposited and the home to which it related was still occupied. Alternatively, a disregard under regulation 6(1)(b) might be appropriate, provided that a deposit in a housing association could be identified with the proceeds of sale of a former home and that, if applicable, it was reasonable to extend the '6 months' period. R(SB) 4/87

xxxii When she claimed supplementary benefit in October 1983 the claimant was resident in a nursing home and owned a flat which had been put on sale, though not sold. It emerged later that, before claiming benefit, the claimant had decided to give the property to her two sons though no formal legal steps had been taken to transfer the title to the property pending its sale. One of the sons had at his own expense redecorated the flat to enhance the prospects of sale. When the flat was sold in June 1985 the claimant retained £3,000 of the proceeds and gave the remainder to her sons. The main question was whether the property was a resource of the claimant or of the sons. In remitting the case to a differently constituted tribunal the Commissioner held that: R(SB) 7/87

1. the courts would not complete an imperfect gift and on the facts of the case the gift of property was not perfected;
2. the doctrine of proprietary *estoppel* could operate to perfect an imperfect gift (*Crabb v. Arun District Council* [1975] 3AER 865 followed). In this case, however, there was a question whether it had remained the claimant's intention to give the flat and hence whether the doctrine of proprietary *estoppel* was relevant;
3. if the sons were able to avail themselves of proprietary *estoppel*, it would be necessary to consider what interest in the property the son's expenditure on redecoration had given him, whether this amounted to ownership of the property or only a right to compensation;
4. if it was decided that the flat had remained the property of the claimant the distribution of the proceeds of sale would need to be considered in the light of regulation 4(1) of the Supplementary Benefits (Resources) Regulations.

- R(SB) 13/87 xxxiii The claimant had an interest under her late husband's trust deed which fell to be construed under Scottish law. The Commissioner held that the interest constituted an ordinary liferent rather than an alimentary liferent. The capital value of the claimant's interest fell to be evaluated on the alternative assumptions in paragraph 23 of decision R(SB) 43/84 (30.2.2 xviii *above*). See also R(SB) 15/86 (30.2.2 xxix *above*). The Commissioner also considered the application of regulation 6(1)(1) of the Supplementary Benefit (Resources) Regulations which came into operation on 5.8.85.
- R(SB) 5/88 xxxiv 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 that the repayment of the advances would be a first charge on the proceeds of all or part of her share holding. The issue was whether the advances were 'secured' on the shares (Regulation 5(a)(ii)). The Commissioner held that R(SB) 18/83, paragraph 13, which dealt with the law of England had no application. A distinction over the creation of a valid security over incorporeal moveable property according to the law of each country was well recognised, and the designation of a fund out of which a debt was to be paid did not constitute a security under the law of Scotland.
- R(SB) 7/88 xxxv The claimant was a resident in a private nursing home. The local authority paid the fees in full, anticipating that when her claim to supplementary benefit was settled they would be able to recoup some of their expenditure. The issue was whether the claimant's capital resources could be regarded as reduced by the local authority's payments. The Commissioner assumed, for the purposes of the argument, that the payments were by way of loan and not gift. He held that the payments were not deductible as liabilities. For another synopsis of this decision see 30.2.3 xxvi *below*.
- R(SB) 1/89 xxxvi A divorced woman in receipt of supplementary benefit received a payment of £2,500 from her former husband. The payment was made pursuant to a court order which dealt with her claim for a lump sum, maintenance and other matters. The claimant's solicitor confirmed that the payment was, in fact, made on the basis that the claimant gave up any proprietary interest she might have in two houses owned by her former husband. In deciding whether the payment should be treated as income or capital in accordance with regulations 3(2)(b) and 13 of the Resources Regulations 1981, it was necessary to consider whether the payment resulted from "a disposition of property". A Tribunal of Commissioners decided that-
- a. whenever a payment has been made in connection with an agreement to separate or in matrimonial proceedings and such a payment is made in discharge of any proprietary interest of the claimant, or a claim to such interest, the payment will of necessity result from "a disposition of property" and should be treated as capital rather than an income resource (para. 5);
 - b. the prior disposition does not have to be by way of sale (para. 4);
 - c. where a payment is made in discharge of maintenance obligations it could not be said to result from a disposition - it is itself the disposition (para. 5);
 - d. the SSAT had been wrong not to look behind the court order at the considerations which led to the agreement and to the court order itself (para. 6).

The Commissioners decided that the sum of £2,500 did not fall to be taken into account as an income resource under regulations 3(2)(b) and 13 of the Supplementary Benefit (Resources) Regulations 1981. Compare and contrast R(SB) 7/81 at 30.2.3i. For another synopsis of this decision see 30.2.3 xxviii *below*.

xxxvii The claimant's infant grandson suffered amputation to both legs and the digits of his right hand after he contracted meningitis and septicaemia. Approximately £25,000 was raised for the grandson by collection and the money was placed in trust for him until he reached 18 years of age. In the meantime the child had come to live with the claimant who had made a claim for supplementary benefit. In deciding whether the grandson should be treated as possessing the capital in the trust fund under the provisions of regulation 4(7) of the Supplementary Benefit (Resources) Regulations 1981, it was necessary to decide whether the payment was in consequence of a personal or criminal injury. The Commissioner held that:

R(SB) 2/89

- a. the expression 'personal injury' used in Regulations 4(7) and 6(1)(k) of the Resources Regulations must be given its ordinary meaning and is in no way limited because a distinction is drawn between personal and criminal injuries (paragraphs 10 and 16);
- b. the ordinary meaning of 'injury' as part of that expression is wide enough to include a disease and any injuries suffered as a result of a disease (para. 15). (*Jones v Secretary of State for Social Services* [1972 AC p. 944]. *Brinton's Limited v Turvey* [1905 AC p. 230]. *Innes or Grant v G and G Kynoch* [1919 AC p. 765]. CI 83/50 (KL) and CI 159/50 considered).

The Commissioner decided that the grandson's meningitis and amputations were personal injuries and that he was not to be treated as possessing a resource pursuant to Regulation 4(6) of the Resources Regulations.

xxxviii The claimant's three dependant daughters were absolutely entitled under a legacy to sums of £1,455.16, £1,455.16 and £1,455.17 respectively. A trust had been created to hold these sums until each child attained the age of 18. As the total sum was in excess of £3,000 the adjudication officer applied Regulation 8 of the Supplementary Benefit (Resources) Regulations 1981 to disregard the capital of the youngest child and take into account a notional income equal to her requirements. The appeal tribunal allowed the claimant's appeal and on appeal to the Commissioner it was held that capital held in trust for an infant absolutely was an actual resource. The case then went to the Court of Appeal (*Peters v. Chief Adjudication Officer R(SB) 3/89*) which decided:

R(SB) 3/89

- a. Regulations 3 and 4 of the Supplementary Benefit (Resources) Regulations deal with alternative situations of actual and notional capital respectively. Actual assets which can be quantified without difficulty come under Regulation 3; potential assets come within Regulation 4. Both types should be valued in accordance with Regulation 5.
- b. Under the terms of the trust the trustees had a discretion to advance one half of the capital to each beneficiary, pending their majority; each child therefore must be considered to possess a resource comprising an equitable interest under the trust, which could be advanced up to one half until she attained the age of 18 at which point she would be entitled to the whole of the balance.
- c. The value of that interest had to be valued under Regulation 5 and could be more than 50% of the capital value of the trust. (In this particular case, in view of the parties agreement, a value of 50% was adopted).

Note: In the case before the Court of Appeal it was conceded that a trust had been created to pay at age 18 and that sections 31 and 32 of the Trustee Act 1925 applied, but the respondent reserved the right in other cases to argue that on similar provisions there would be an outright gift, not a trust.

R(SB) 10/89 xxxix The claimant, wife and five dependant children lived in one large house. The claimant sold this and bought two smaller houses 3/8ths of a mile apart. The claimant and two elder sons slept in one house, returning for meals to the other house where the rest of the assessment unit lived. The issue was whether both houses constituted the 'home' in terms of Regulation 2(1) of the Supplementary Benefit (Resources) Regulations 1981 for if they did, their total value fell to be disregarded under Regulation 6(1)(a)(i). In deciding this question, the Commissioner considered whether the assessment unit 'normally occupied' the two houses. He held in paragraph 14 that:

- a. although the locality of the houses is an important factor, all other relevant factors must be taken into account. The distance between the two houses in this case was not the crucial issue in deciding whether or not the definition of 'the home' was satisfied;
- b. the assessment unit in this case normally occupied the two houses in question;
- c. a sharp distinction exists between a claimant who owns two houses, each of which is large enough to accommodate all members of the assessment unit and which are used at different times for different purposes and cases where each house is inappropriate for the size of the assessment unit so that by necessity both houses are used to accommodate it;
- d. each case must be determined by reference to its individual facts.

R(SB) 7/86 and R(SB) 30/83 affirmed. *Langford Property Co. Limited v Goldrich* [1949] 1 l.r. 511. cited in support.

R(SB) 12/89 xl The claimant held 3,000 one pound shares in his father's company which he had previously said were worth in excess of £3,000 but were not realisable because they could not be sold without the authority of the directors and this would not be given. His father confirmed that this was the case and that no income was derived from the shares and no dividend paid. The claimant did not produce any evidence of what was contained in the company's memorandum and articles of association so the tribunal decided the shares should be treated as capital worth in excess of £3,000. In deciding what value should be ascribed to the shares, the Commissioner held:

- a. the principle of valuation of shares in a private limited company is that which a willing buyer would pay to a willing seller, R(SB) 57/83 affirmed; detailed assistance in applying this principle is found in R(SB) 18/83 (paragraph 6);
- b. in complex cases there may be a need to examine the company's balance sheets, assets, earnings and dividends and consider the aspect of goodwill (paragraph 6). Some assistance would normally be provided by the company's accountants (paragraph 7);
- c. in the absence of evidence which they considered necessary it was incumbent upon the tribunal to determine the appeal on the basis of the evidence available, R(SB) 29/83 affirmed (paragraph 5);
- d. the tribunal misdirected themselves in assuming that they must reject the claimant's uncorroborated evidence, R(SB) 33/85 affirmed (paragraph 5).

Re: *Hold v IRC* [1953] 2 AER 1499 considered. For another synopsis of this decision see 17.9.4 *iv above*.

3 Income resources

i In deciding whether a sum of money ordered by a court to be paid to a divorced wife by her former husband in weekly instalments for her share of property and business standing in his name constituted a capital resource for the purposes of a claim for supplementary benefit, the question arose whether this was a 'lump sum' within the meaning of regulations 3(2)(b) or (c) at 11(3) of the Resources Regulations 1980. The Commissioner held that it was not. It was simply a 'sum' - an amount of money which measured the proprietary entitlement of the wife to the relevant matrimonial assets. A lump sum is a commutation of a periodic payment and, in particular in matrimonial procedures a payment which the recipient is willing to accept in satisfaction of entitlement to maintenance for life or until remarriage. (Compare and contrast *Lillystone v. the Supplementary Benefit Commission* [1982] 3 FLR 12.) [*Regulations 3(2)(b) and (c) and 13 of 1980 Regulations were subsequently consolidated in regulations 3(2)(b) and (c) of the Resources Regulations 1981.*] This decision was set aside by the Court of Appeal, *sub nom. Chief Supplementary Benefits Officer v. Whitelam*, see Appendix 2 below - the sum was a lump sum within the meaning of regulation 3(2)(c). See R(SB) 1/89 30.2.2 xxvii, xxxvi above. R(SB) 7/81

ii A claimant registered for employment on 15.12.80 after a lengthy period of incapacity for which invalidity benefit was paid. The last weekly payment was made on Wednesday 10.12.80. On 11.12.80 he was certified fit for work after 13.12.80. Final payment of benefit was made on 11.12.80 in respect of 11 to 13.12.80. There was no entitlement for unemployment benefit. He registered for work on 15.12.80 and claimed supplementary benefit on 16.12.80. On consideration of regulation 9 of the Resources Regulations 1980 the benefit officer made an award from 21.12.80 only. The appeal tribunal upheld this on the grounds that the claimant's requirements were met up to and including 20.12.80 by the invalidity benefit payment. The Commissioner held that:- R(SB) 15/82

1. by virtue of regulation 7 of the Determination of Questions Regulations 1980 the claimant was entitled to supplementary benefit from and including 20.12.80 (not 21.12.80);

2. under regulation 9 of the Resources Regulations 1980 the final payment of invalidity benefit was 'payable' on 11.12.80 (in respect of 11 to 13.12.80) and not, as contended, on 17.12.80: even if it had been payable on 17.12.80, it would only have been in respect of 17 to 19.12.80:

3. accordingly, the decision was erroneous at law.

The Commissioner also directed that on rehearing the case, consideration should be given to the possible application of regulation 12(1) of the Urgent Cases Regulations 1980 (subsequently consolidated as regulation 12(1) of the Urgent Cases Regulations 1981) in respect of the period from 16 to 19.12.80 inclusive.

iii A claimant asked for supplementary benefit for the week ending 3 April 1981 (a Friday). On Saturday 21.3.81 he had received £65.94 unemployment benefit, that sum being as to one half a payment in arrears for the week which had ended on 20.3.81 and as to one half a payment in advance for the final week of his entitlement to that benefit which ended on 27.3.81. The question in issue was whether and, if so, how much of that payment of benefit was part of the claimant's resources for the purposes of his claim for supplementary benefit for the ensuing week. The Commissioner held that by virtue of regulation 9(1) and 2(a)(d) of the Resources Regulations 1980 and regulation 7(2)(b) of the Determination of Questions Regulations 1980 one half of the above sum, that is to say £32.97, should be taken into account as the claimant's resources for the week ending 3 April 1980 [notwithstanding that it was actually paid in respect of the previous week]. R(SB) 17/82

R(SB) 7/83 iv A claimant for supplementary benefit, a single woman aged about 60, shared a home with a Miss McF. They also owned another property, a cafe. This they had brought on a mortgage with a bank. At the time of the claim the cafe had for some time been up for sale for the asking price of £25,000. In the meantime it was rented to a tenant for £3,000 a year. A half share of this was payable to the claimant and this in weekly terms amounted to £28.84 a week. The benefit officer disallowed the claim because that amount of income exceeded the claimant's requirements for supplementary benefit purposes. On appeal to the appeal tribunal and subsequently to the Commissioner the claimant contended that, in assessing her resources there should not have been taken into account the 'gross' rent received by her from the cafe, but that there should have been deducted from that rent her 'outgoings'... on the mortgage and in her grounds of appeal she suggested also other 'outgoings' such as estate agents' commission in collecting the rent and the cost of repairs necessarily incurred under the terms of the lease. The claimant's share of the mortgage outgoings, in weekly terms, amounted to £11.54 a week on repayable of capital and £5.47 a week on payment of interest, a total of £17.01 a week. The Commissioner held that:-

1. under regulation 7 of the Resources Regulations 1980 the value of the cafe, less sale expenses and the amount of the mortgage debts secured upon it would, if it exceeded £2,000, normally have been taken into account as capital and extinguished entitlement to benefit. However, under regulation 6(1)(a)(iii) of those Regulations the value of the cafe was disregarded. Therefore the value of the mortgage could not be disregarded under regulation 5(a)(ii) (paragraph 5).

2. the only relevant provision for deduction from income resources was regulation 11(6) of the above Regulations, but there was no provision for the deduction of payments of mortgage interest or capital from the rent paid to the claimant (paragraph 7).

3. the use of the word 'income' in regulations 9 and 11 of the Resources Regulations 1980 might involve the deduction from 'gross' income of reasonable expenses incurred in its collection, although the cost of repairs might not. However such expenses were not analogous to the repayment of mortgage capital or interest, such as in this case (paragraph 8).

4. there was no power either to treat the mortgage outgoings as part of the claimant's requirements because the mortgage was not charged on or taken out for the purpose of acquiring an interest in the claimant's home (see regulation 16(1) and (4) of the Requirements Regulations 1980 (paragraph 10)).

R(SB) 20/83 v The Commissioner held that a discretionary payment made by a local authority to a student for an academic year by way of repayable loan was an income resource for the purposes of regulation 11 of the Resources Regulations 1980. Affirmed in R(SB) 7/88, 30.2.3 xxvi *below*.

R(SB) 30/83 vi A claimant lived with his fiancée in rented accommodation during university vacations. The fiancée lived separately from him during term time. Then she lived in a bed-sitting room near the university. She received a local authority student grant. The Commissioner considered in some detail the meaning of 'living together as man and wife' in the above context (paragraph 5) and he held that the claimant and his fiancée were an 'unmarried couple' for the purposes of the Resources Regulations 1980 even during term time; that the fiancée's grant should be taken into account as part of the claimant's resources, but the outgoings in respect of the fiancée's bed-sitting room were not part of the claimant's requirements. See also R(SB) 19/85.

- vii A claimant for supplementary benefit had been working in France as a part-time teacher until the end of the month immediately preceding that in which she claimed benefit. Her wages were paid by the French Government monthly in arrears. The claimant contended that foreign earnings were not income resources in the terms of the Resources Regulations 1980 and that earnings from part-time employment only counted as resources in respect of the period in respect of which the money was earned. The Commissioner held that not only foreign earnings, but also foreign income, clearly fell within the purview of the above Regulations (paragraph 17). As to the second contention, he held that it was contradicted by the express provision of regulation 9 of those Regulations; income/resources (from whatever source) payable before the benefit week pursuant to the claim were to be treated as income resources for a period equal to the length of the period in respect of which they were payable or, if not paid in respect of a period, in respect of which they were fairly attributable, commencing in both cases on the date on which the payment was made. The date on which a payment was payable would often, no doubt usually, be the date on which it was received. (Paragraph 18.) He also expressed the view that the subsequent amendment and consolidation of the Regulations did not affect the points decided in this case. R(SB) 33/83
- viii For the purposes of regulation 10(4)(a)(i) of the Resources Regulations 1981, before monies saved from past earnings can be treated as capital, all relevant liabilities, in particular income tax liabilities, must first have been deducted. Deduction in respect of income tax under that regulation applies not only to tax already paid but also to tax a person is liable to pay. See also 17.3.9 xvi, 30.2.2 *vabove*, and R(S)B 15/85. R(SB) 35/83
- ix A training allowance is not earnings for the purpose of the Resources Regulations 1981 and falls to be taken into account under Regulation 11 of the Regulations. That regulation does not allow for reduction of child minding or travel expenses. See also 17.3.9 xvi, 30.1.2 viii, 30.2.2 *vabove*. See R(SB) 28/86, 30.2.3 *xxivbelow*, with regard to a MSC allowance. R(SB) 39/83
- x A claimant for a supplementary allowance was the mother (and guardian) of an infant child of a deceased civil servant. It was held that, for the purposes of her entitlement to the allowance, payments made to the claimant under the Civil Service Pension Scheme in respect of the child was an income resource, but was only such a resource to the extent of the child's requirements (paragraph 16). R(SB) 51/83
- xi A claimant for supplementary benefit had a business which was no longer active and his business account at the bank was overdrawn. He had given his bankers an 'all monies charge' entitling them to set off against his overdrawn account any credit balance on any other account of his. He had a holding of ordinary shares to the value of some £575, and these were held by his bankers. It was common ground that his only source of income was that from a quarter share of capital under a protected life interest from the Will Trusts of his late mother. The benefit officer decided to take into account as an income resource, a weekly amount which represented 1/52 of the aggregate income which the claimant had received for the proceeding fiscal year under the Will Trusts, less a weekly disregard of £4. The Commissioner reviewed the relevant regulations under the Supplementary Benefit (Resources) Regulations 1981, and in relation to the claimant's income resources, held that in regulation 11(6), the term 'income tax' bore the wider meaning of 'a tax upon income' without national attribution, and could be applied in the first instance in respect of foreign tax deducted at source and then applied again if and when incremental UK tax was levied (paragraph 18(4) and (5); income derived from stocks and shares on unsecured loan stock fell to be considered under regulation 9(2)(1)(a), as also did such 'other income' as interest on a bank deposit account or Building Society Share Account, credited half yearly in arrear (paragraph 21(2)); in the case of a payment in respect of a period which exceeded a week, but was not attributable to a month, the principles of calculation R(SB) 11/84

in regulation 9(2)(c) were to be used, beginning with the appropriate date ascertained in accordance with regulation 9(2)(b) (paragraph 22(4)); for the proper implementation of regulation 9 each separate income payment constituted a relevant change of circumstances to be reported by the claimant and to be taken into account in a reassessment of his entitlement, and it was not open to the benefit officer to take the claimant's 'other income' simply as the weekly fraction of his aggregate investment income for the previous fiscal year (paragraphs 23 and 25); there was no provision for deducting from an income resource any debt charged or secured upon it (paragraph 26(2)). (For the Commissioner's decision on the claimant's capital resources see 30.2.1 *vi above*). See also R(SB) 21/83, 30.2.2 *vii above*.

R(SB) 15/84 xii Claimant for supplementary benefit retired from his job on account of ill health. There was no suggestion that the ill health was by reason of his service or employment. He was given an occupational pension of £24.05 a month, increased by £66.55 a month, the total amount being calculated at a greater rate than that earned by actual services accumulated at date of retirement, being in accordance with the Local Government Superannuation Scheme Regulations. The question arose whether for the purposes of regulation 11(5) of the Supp. Ben. (Resources) Regulations 1981 the increase was a payment analogous to any disablement or industrial death benefit payable under the Social Security Act 1975 or was other income within the meaning of that regulation. The Commissioner held that:

1. In regulation 2(1) of the Resources Regulations the provision excluding from the definition of 'occupational pension' any element arising out of an accident or disease consequent on the claimant's employment takes in any disease or does not have to be a prescribed disease (within the Social Security (Industrial Injuries) (Prescribed Diseases) Regulations 1980);
2. Any payment by way of compensation arising out of a disease which is not prescribed, but nevertheless has arisen out of employment, falls within regulation 11(5)(e), and is subject to a £4 disregard (para 7);
3. In regulation 11(5)(b), 'analogous payment' means a payment which, though not actually disablement or industrial death benefit under the Social Security Act, is a similar kind of payment likewise arising out of an industrial accident or prescribed disease (para 9);
4. In computing income resources, under regulation 11 it is sum net of tax which must be included pursuant to regulation 11(6) not the gross sum (para 11).

R(SB) 19/84 xiii A full-time student on a residential course resided with his wife and two children. He received a discretionary grant from a local authority and he claimed a supplementary allowance for the Christmas vacation. The question arose whether in the calculation of his resources there should be included in respect of the grant an amount equal to the entitlement of a single person who was a non-householder in accordance with regulation 4(12) of the Supp. Ben. (Resources) Regulations 1981. The Commissioner held that regulation 4(12) only related to a mandatory grant or award. However, under regulation 11(2)(1) the whole of the claimant's grant (less the £2 disregard under head (ii) of that regulation) had to be taken into account in so far as that grant was applicable to the period for which the claim was made. That fell to be calculated under regulation 9.

xiv In a case where a claimant had a life interest in the income of a Trust Fund whose Trustees had power at their absolute discretion to use the capital of the Fund for the claimant's maintenance and benefit, but, subject to that, on the claimant's death, had to hold the balance of the Fund on trust for specified remainder men, the question arose whether, by reason of her life interest, the claimant's capital resources exceeded the amount prescribed in regulation 7 of the Resources Regulations 1981. A Tribunal of Commissioners considered in some detail the proper method of treating a claimant's life interest in a trust fund when calculating his capital and income resources and the complication which occurs when that life interest arises under a Will or settlement containing a power to pay over capital to the claimant at the trustees' discretion. See 30.2.2 xviii *above*. See also R(SB) 1/85. R(SB) 43/84 (T)

xv A claimant started part-time work for £15 a day. The work involved the use of his car and without it he could not have undertaken the work. In the computation of his earnings he claimed an allowance of 10p a mile for the combined cost of the petrol used on the relevant journeys and for wear and tear on the car actually incurred on those journeys. That came to a total of between £8 and £13 a day. The question in issue was whether these expenses were reasonably incurred within the meaning of regulation 10(3) of the Resources Regulations 1980. The Commissioner held that, in determining the amount of reasonably incurred expenses under regulation 10(3), there is obviously some relationship between the amount of the gross earnings and the amount of the expenses incurred or claimed to be incurred in obtaining such earnings that can be regarded as reasonable, but it is not a fixed percentage which is the same for all cases; the proportion which is reasonable will vary with the circumstances and an expenditure of £8 to £13 to earn £15 was not necessarily unreasonable. He further held that the question whether the expenses to be allowed in respect of travelling by car are solely the expenses which are directly attributable to each journey, or should include the cost of the overheads or cost of purchase, might well depend on whether the car was acquired only for use in earning, but that this particular problem did not arise in this case, because the claimant had limited his claim to wear and tear actually incurred in the relevant journeys. (paras 8, 9 and 12.) (See also 17.3.9 xxi *above*.) R(SB) 44/84

xvi On 13.5.83 a claimant for supplementary benefit ceased full-time employment and was paid a week's wages. On 20.5.83 he received another week's wages, representing the week's wages which his employers had kept in hand, plus 4 week's wages in lieu of notice, plus 23 days holiday pay and a lump sum redundancy payment. He claimed supplementary benefit on 17.6.83. The question in issue was how the above payments were to be treated in the context of his claim. The Commissioner held that first the claimant's benefit week had to be established in accordance with reg. 7 of the Determination of Questions Regs 1980 (para 4(2)); a lump sum redundancy payment constituted a capital resource and therefore was not earnings within the meaning of reg. 10 of the Resources Regs 1981 (para 10(2)); for the purposes of reg 9(1) of the Conditions of Entitlement Regs 1981 only earnings of a positive amount after application of regs 10, 11 and 12 of the Resources Regs were relevant, although the amount was immaterial (para 11(1)); in deciding the period to which earnings were to be attributed in accordance with reg 9 of the Resources Regs, the payable date of a payment was the date on which it first became due to be paid, which was not necessarily the date on which it was received (para 16(1)); remuneration of a weekly paid employee became payable on his normal weekly pay day (para 16(3)); pay withheld by an employer under a "week in hand" arrangement became payable upon termination of the employment and where employment was terminated without due notice being given, but with payment in lieu of notice, that payment became payable also upon termination of the employment, as did also an entitlement to holiday pay (para 16(3)). The Commissioner also held that a composite payment of earnings payable on the termination of employment, ie in this case the payments in respect of the 'week in hand', the holiday pay, and in lieu of notice, had to be attributed to an aggregate period of weeks running consecutively from the payable date. He also held that the effect of the judgment in *Chief Supplementary Benefits Officer v. Cunningham* (see Appendix to R(SB) 11/85

R(SB) 23/84) was that the final payment of 'normal' earnings, ie in the present case the payment on 13.5.83, had to be attributed separately from the terminal payments to a period which could run concurrently with and overlap the period attributed to the terminal payments.

- R(SB) 27/85 xvii Owing to trade recession, from 5 January 1981 a claimant had been working for an employer for 3 weeks out of every 4 and had been laid off for the fourth week. However, throughout, his contract of service for full-time employment is never varied (and the intimation was that in March 1984 he in fact resumed full-time working for the employer). After some 10 months the benefit officer had decided that the claimant's pattern of work had become a 'regular pattern of work' within the meaning of r.9(2)(d) of the Resources Regs 1981 and accordingly that his wages received for the 3 week period could be averaged over the 4 week period, an operation which had the effect of disentitling the claimant to benefit. A Tribunal of Commissioners (Mr Reith dissenting) decided that a 'regular pattern of work' within the meaning of reg.9(2)(d) had been established and the benefit officer could average the wages over the 4 week period. They also held that s.27(1) of the Supp. Ben. Act 1976 did not in any way affect the exercise of the discretion under that regulation. (Paras. 7 and 8 and, for dissenting decision, 12 et seq.)
- R(SB) 32/85 xvii A divorced women in receipt of supp. ben. had a court order for payment of maintenance to her by her former husband of £10 a week. This was not paid regularly and the former husband fell into arrears of some £400. On 5.11.83 the claimant received a cheque from her former husband of £40 in respect of the arrears. This she cashed soon afterwards and used the cash to repay loans to relatives. On 14.11.83 she informed the local office of his payment and the next day the adjudication officer decided that the £40 should be treated as an income resource at the rate of £10 a week for the 4 weeks beginning on 7 November 1983 and that during that period she was not entitled to benefit. The Commissioner held that the aggregate of the 4 weeks arrears was a lump sum within the meaning of r.13(5) of the Resources Regs 1981; that the weekly amount to be taken into account under r.13(3)(a) was the sum produced by dividing the lump sum by the number of weeks, ascertained by applying the formula in that reg; that in r.13(4) the words 'in making periodic payments' and 'ceases to make' fell to be applied in the everyday sense and constituted issues of fact; that in applying r.13(4)(a) the words 'but excluding for this purpose the sum of £2.00 there mentioned' should be construed as if the words 'the aggregate of £2.00 and' did not occur in r.13(3)(a)(i); that provision for attributing lump sums paid by liable relatives was to be taken as made by r.13 and no recourse to r.9 was required; and lastly that in r.13(2) the words 'in which' were to be construed as meaning 'as to which' (paras 8, 11(2), 12(3), 13 and 16 to 17).
- R(SB) 36/85 xix A single parent claimed a supplementary allowance. She was in part-time work earning £12.82 a week gross. The question in issue was whether in calculating the single parent's disregard under r.10(5)(b) of the Resources Regs 1981 the expression 'any earnings' in that provision related to the claimant's gross earnings or to her net earnings after deduction of the expenses allowed under r.10(4) *ibid*. The Commissioner held that the disregard had to be calculated on the claimant's net earnings after the allowable expenses had been deducted and that the word 'any' in r.10(5)(b) was to indicate that the additional disregard applied only in so far as the earnings actually exceeded £4 but did not exceed £20 (paras 6 and 8). (Decision upheld in the Court of Appeal, *sub nom. Price v. The Adjudication Officer* [1985], unreported, save in R(SB) 36/85 Appendix, q.v.)

- xx A cash payment in lieu of concessionary coal made by the National Coal Board (NCB) to a striking miner (who was receiving supplementary benefit in respect of his wife and children) constituted 'remuneration of profit derived from any employment' within the meaning of regulation 10(1) of the Supp. Ben. (Resources) Regulations and fell to be taken into account as earnings over the relevant period, subject to the appropriate disregard. The fact that income tax was not payable on the NCB payment did not affect the issue. R(SB) 2/86
- xxi A 29 year old recipient of supp. ben. was awarded a local education authority allowance to attend a full-time course of business studies. The allowance included a payment intended for equipment, books and travel costs. The Commissioner held that reg. 11(4)(g) of the Resources Regulations had been properly applied to that payment; that no specific breakdown of the costs was required from the education authority; and that the claimant had to demonstrate that the expenditure had actually been incurred. Also held that as the claimant was for supp. ben. purposes a student and not in relevant education (see 30.4.3 *vi below*), the appropriate disregard from the maintenance part of her allowance was £2 under reg. 11(2)(1) rather than £9.50 under reg. 11(4)(e). R(SB) 8/86
- xxii The claimant received from an Industrial Tribunal an award in respect of her unfair dismissal, including a compensation award for a period of 36 weeks at £54.15 (her net average weekly wage). The Commissioner held that the compensation award was a payment in lieu of remuneration and fell to be treated as earnings under reg. 10(1)(d) of the Supplementary Benefit (Resources) Regs 1981. *R. v. National Insurance Commissioner, ex parte Stratton* (18.1.2 *viii above*) considered. R(SB) 21/86
- xxiii Where a 'parental contribution' to a student was provided by means of a deed of covenant the Commissioner held that, under the regulations applicable prior to 3.11.86: (1) irrespective of any wording in the deed as to the periods covered by individual instalments, the income payable under the deed was to be attributed to a period of 52 weeks beginning on the date on which that instalment was payable in accordance with regulation 9(2) of the Supplementary Benefit (Resources) Regulations 1981; (2) repayment of income tax deducted by the covenanter was to be treated as income in accordance with regulation 3(2), and attributed to a period of 52 weeks from the date of payment; and (3) repayments of income tax, and income under the deed of covenant in excess of the assessed parental contribution, were 'any other income' in terms of regulation 11(5)(e) and eligible for the disregard of £4. A further synopsis of this decision is at 30.2.1 *xiii above*. R(SB) 25/86
- Note:** With effect from 3.11.86 the regulations relating to the treatment of a student's resources, including payments under a deed of covenant, were amended by the Supplementary Benefit (Requirements and Resources) Miscellaneous Amendment Regulations 1986, SI 1986 No. 1293.
- xxiv A married claimant attending a full-time TOPS course received from the MSC a weekly allowance which comprised a personal allowance, a living away allowance, a mid-day meals allowance and an allowance for dependants. It was held that all but the allowance for dependants were 'for his maintenance' and fell to be taken into account in full under regulation 11(2)(h) of the Supplementary Benefit (Resources) Regulations 1981. The allowance for dependants was to be taken into account as other income subject to the disregard appropriate under regulation 11(5)(e). R(SB) 28/86
- xxv The claimant was a boarder in a residential care home. On the coming into operation of regulation 11(4A) of the Supplementary Benefit (Resources) Regulations 1981, inserted by the Supplementary Benefit (Requirements and Resources) Miscellaneous Provisions Regulations 1985, the claimant's supplementary allowance was revised to take fully into account her attendance allowance which previously had been disregarded. An appeal tribunal reversed that decision on the ground that the amending regulation was *ultra vires*. The Tribunal of Commissioners held that the attendance R(SB) 9/87
(T)

allowance should be taken fully into account and that regulation 11(4A) had been validly applied. Their decision was subsequently upheld by the Court of Appeal (*Kilburn v. The Chief Adjudication Officer*, R(SB) 9/87 Appendix).

R(SB) 1/88 xxvi In April 1982 a County Court ordered her former husband to make payments to the son of £78 per month, payable monthly. The claimant started receiving supplementary benefit in September 1983. The first payment of £78 was received on 20 January 1984. The claimant argued that payments received from January 1984 were arrears properly attributable to the period from April 1982. The Commissioner decided, under r.13 of the Supp. Ben. (Resources) Regs, that periodical payments from liable relatives fall to be treated as income paid in the week in which it was received and projected forward for a period equal to the length of the period represented by the payment. The Court of Appeal held that r.13 made no provision as to the attribution of periodical payments which should therefore be attributed to a period in accordance with r.9(2) of the Resources regs. For a further synopsis of this decision see 19.6.2 xii *above*.

R(SB) 7/88 xxvii The claimant was a resident in a private nursing home. The local authority paid the fees in full, anticipating that when her claim to supplementary benefit was settled they would be able to recoup some of their expenditure. The issue was whether, if the local authority's payments were loans, they could be treated as income. It was held that a loan constituted income as much as earnings. R(SB) 20/83 affirmed. The Commissioner added that if a claimant repaid loans made by a third party it would be open to the adjudication officer to review and revise his earlier decisions treating the loans as income. For another synopsis of this decision see 30.2.2 xxxv *above*.

R(SB) 1/89 xxviii A divorced woman in receipt of supplementary benefit received a payment of £2,500 from her former husband. The payment was made pursuant to a court order which dealt with her claim for a lump sum, maintenance and other matters. The claimant's solicitor confirmed that the payment was, in fact, made on the basis that the claimant gave up any proprietary interest she might have in two houses owned by her former husband. In deciding whether the payment should be treated as income or capital in accordance with regulation 3(2)(b) and 13 of the Resources Regulations 1981, it was necessary to consider whether the payment resulted from "a disposition of property". A Tribunal of Commissioners decided that-

- a. whenever a payment has been made in connection with an agreement to separate or in matrimonial proceedings and such a payment is made in discharge of any proprietary interest of the claimant, or a claim to such interest, the payment will of necessity result from "a disposition of property" and should be treated as capital rather than an income resource (para. 5);
- b. the prior disposition does not have to be by way of sale (para. 4);
- c. where a payment is made in discharge of maintenance obligations it stands alone and forms no part of a chain of causation and could not be said to result from a disposition - it is itself the disposition (para. 5);
- d. the SSAT had been wrong not to look behind the court order at the considerations which led to the agreement and to the court order itself (para. 6).

The Commissioners decided that the sum of £2,500 did not fall to be taken into account as an income resource under regulations 3(2)(b) and 13 of the Supplementary Benefit (Resources) Regulations 1981. Compare and contrast R(SB) 7/81 at 30.2.3*above*. For another synopsis of this decision see 30.2.2.xxxvi *above*.

xxix The claimant was awarded arrears of special hardship allowance covering a two year period, paid in a lump sum of approximately £2,200. In deciding whether this payment fell to be treated as an income or a capital resource, the Commissioner held that:

R(SB) 4/89

- a. even though paid in a lump sum, the payment was a payment of income and not of capital. Special hardship allowance is essentially a weekly benefit and is compensation for loss of earnings. It has the character of income whether paid in arrears or not. It does not come within Regulation 3(2)(a) of the Supplementary Benefit (Resources) Regulations 1981 dealing with grants and gratuities which are one-off payments (paragraph 8);
- b. payment of special hardship allowance comes within Regulation 11(5)(b) being “any disablement... benefit payable under the Social Security Act if paid periodically...”. The word “paid” in that phrase merely means that the benefit must be of a by which it is normally “paid periodically”, as is special hardship allowance, even if ‘attached’ to a disablement gratuity (paragraph 11);

The Court of Appeal case of *McCorquodale v. Chief Adjudication Officer*; R(SB) 1/88 is cited in support.

xxx The claimant had been in receipt of Supplementary Benefit for several years. During a period when the claimant was not in receipt of Supplementary Benefit the claimant had transferred to her two daughters by Deed of Gift the property which had been her home. In addition one of her daughters was appointed by the Secretary of State to act on behalf of the claimant. The claimant was mentally but not physically capable. The property which the claimant had given to her daughters was eventually sold. Following the sale of the property the AO decided that the claimant was no longer entitled to Supplementary Benefit. The point at issue was whether the claimant should be treated as possessing the property which she had gifted to her two daughters. The Commissioner said a positive intention to secure benefit must be shown in order for Regulation 4(1) of the Supplementary Benefit (Resources) Regulations 1981 to apply. It was not enough to say, as did the Tribunal, that a natural consequence of giving the property away was to secure benefit. The intention to secure benefit need not be the predominant purpose, paragraph 22 of R(SB) 38/85, but it must be the significant operative purpose. In this case the predominant purpose was to benefit the claimant’s daughters. On the balance of probability the significant operative purpose was to secure entitlement to benefit. The Commissioner based this view on the fact that the claimant was mentally capable, had been in receipt of Supplementary Benefit for a number of years and so should be reasonably familiar with the supplementary benefit system. Because of this he considered the claimant would have realised that if she still owned the property she would not be entitled to Supplementary Benefit. Although the daughter had been appointed to act on behalf of the claimant and would have made the claim for Income Support the Commissioner took the view that the daughter was only carrying out the mechanics of making the claim. The claimant was mentally capable and as such was in control when the claim for benefit was made. Having decided that the claimant should be treated as still owning the property the Commissioner went on to consider whether the value of the property should be disregarded from the calculation of capital. The Commissioner said that the value would be disregarded for the period it was occupied as the home by the claimant. In addition the value should be disregarded under paragraph 6(1)(a)(iii) of the Resources Regulations up to the time it was sold. This was because there was no delay in the selling of the property. When the value of the property can no longer be disregarded from the calculation of capital the notional resource should be diminished in accordance with paragraph 13 of R(SB) 40/85. See R(SB) 38/85, 30.2.1 x and R(SB) 40/85, 30.2.1 xi.

R(SB) 9/91

Part 3: Single Payments

Sections 3 and 14(2)(c) of, paragraph 2(1) Schedule 1 to, the 1976 Act and the Single Payments Regulations 1981.

R(SB) 8/81 1 Matters affecting basic entitlement to single payments

i A claimant applied for an award of single payment of supplementary benefit to help meet the cost of replacing a pump in the central heating of his home. Before the date of his claim he had already replaced the pump and paid for it with money borrowed from a friend. The appeal tribunal made an award of part of the cost under Regulation 17(1) of the Single Payments Regulations 1980. The Commissioner held that the regulations were designed to meet actual needs not covered by weekly payments of supplementary benefit (e.g. see Regulation 3(2)(b)). Since the claimant's household already possessed a new pump at the date of claim there was no need for it (Regulation 3(2)(a)). Regulation 17(1) did not apply because the claimant had financed the repair in another way within the meaning of Regulation 17(1)(d) by borrowing the money from a friend and there was no provision for repaying such a loan to the lender. Accordingly he held that the appeal tribunal had erred at law and set its decision aside and referred the case for determination by a differently constituted tribunal. He also held that Regulation 30 was subject to Regulation 3(2). [See now Regulations 3(2), 17(1) and 30 of the Single Payments Regulations 1981.] See also R(SB) 23/82; 30.3.4 i; 30.3.7 viii and 30.3.8 iii *below*. See also R(SB) 12/85(T).

R(SB) 15/81 ii A claimant had 3 children. The eldest was in full-time employment and not a member of the claimant's assessment unit. The others were. A single payment was awarded for a bed for the second child. A few months later he gave that bed to the eldest child whose own bed had collapsed. He then claimed a single payment for another for the second child. The appeal tribunal made an award for it on the grounds that it was satisfied that the provision which subsequently on consolidation became Regulation 10(2) of the Single Payments Regulations applied and that there had been a change of circumstances within the meaning of the provision which likewise became Regulation 6(1)(a) of those regulations. The Commissioner held that the claimant was not entitled to the award. He accepted that, taken in isolation, the conditions of the substantive provision (Regulation 10(2)) had manifestly been satisfied but said that it would not be too strongly stressed that no claimant could successfully ground a claim for any of the single payments the subject of Parts II to VIII (Regulation 7 to 30) of the Regulations unless he could first bring himself within the provisions of Part I (Regulations 1 to 6). He accepted that there had been a change of circumstances within the meaning of Regulation 6(1)(a), but under Regulation 3(2) a single payment could only be made in respect of the purchase of a single item 'where the assessment unit does not already possess that item... and has not unreasonably disposed of, or failed to avail itself of, such an item'. (Followed in R(SB) 3/82 and R(SB) 16/86.)

R(SB) 2/82 iii A claimant lived in a Salvation Army Hostel which supplied him with full board and lodging. For a smaller charge he could provide his own meals, using the Hostel's cooker, but supplying his own utensils etc. The Commissioner held that for an award to be made under Regulation 9 of the Single Payments Regulations 1980 the conditions under Regulation 3(2), amongst others, must be satisfied, namely in this case, that it was not unreasonable for the claimant to cease to avail himself of the full board facilities offered by the Hostel. (See now Regulations 3(2), 9 and 10 of the Single Payments Regulations 1981.) See also 30.3.4 iii *below*.

R(SB) 3/82 iv The reference in Regulation 6(2)(j) of the Single Payments Regulations 1980, then in force, to 'travelling expenses, legal fees, fines, costs, damages or subsistence' was held to be by way of example of the 'expenses arising on appearance in a court' referred to at the beginning of that provision. It was not, nor did it

purport to be exhaustive. The cost of providing clothing for community services work ordered by a Magistrates' Court was accordingly held to be covered by that provision and a single payment in respect of such clothing was held to be prohibited. [See now regulation 6(2)(j) of the Single Payments Regulations 1981.] See also 30.3.1 xxiv, 30.3.6 iii and 30.3.8 vi *below*.

v A claimant, aged 72, requested a single payment to meet the cost of a coal bill of £24.40. The fact that there was a serious risk to her health within the meaning of regulation 30 of the Single Payments Regulations 1980, then in force, was not disputed. She had savings of £380, but these she was saving for her funeral expenses and was not prepared to spend them on anything else. The Commissioner held that regulation 30 was subject to regulation 5, as amended, but that regulation 30 was so widely drawn that 'the only means' included, among other resources, any money which was available for the purpose, except when otherwise provided. [See now regulations 5 and 30(1) and (2) of the Single Payments Regulations 1981 and regulation 6(2) of the Resources Regulations 1981.] (*For fuller summary of facts of this case, see 30.3.8 viii below*). See also R(SB) 26/83, 17.3.9 xiii *above*. R(SB) 9/82

vi A claimant asked for a single payment to meet hire-purchase debts for (a) a gas cooker and gas fire; and (b) a carpet, (a) and (b) being under separate agreements. Before the date on which the claim was made the Gas Board had obtained judgment in the County Court in respect of the claimant's breach of agreement relating to the gas cooker and gas fire. The Commissioner held that: R(SB) 19/82

1. by virtue of regulation 6(2)(j) of the Single Payments Regulations 1980 (no single payment to be made for, amongst other things, 'expenses arising from an appearance in court such as... damages...'), the claimant was not entitled to a single payment for the gas cooker or gas fire;

2. a carpet was an 'equivalent' to polyvinal floor coverings within the meaning of regulation 9(4)(h) *ibid* and a single payment could be made in respect of (b) *above*.

(Under the Single Payments Regulations 1981, see regulations 6(2)(j) and 9(h) respectively.) See R(SB) 1/84, 17.3.5 ix *above* and 30.3.1 xv *below*, and R(SB) 37/85, 30.3.1 xxiv *below*.

vii The phrase 'avail itself of' in what, on consolidation, subsequently became regulation 3(2)(b)(ii) of the Single Payments Regulations 1981 was held to mean to make use of or to take advantage of something. It presupposes that the thing is already in existence and to hand. It does not mean to furnish itself with. Accordingly, where, as in this case, a claimant had for some time been unemployed, he could not be said to have failed to avail himself of something merely because he had failed to furnish himself with it while he was in employed (paragraph 9). See also R(SB) 50/83, 30.3.5 vii *below*. R(SB) 10/83

viii Where a man claimed a single payment of supplementary benefit in order to visit his seriously ill mother who was resident in India, it was held that the need (as distinguished from the circumstances) arose outside Great Britain (see regulation 6(1)(d) of the Single Payment Regulations 1980 and regulation 6(1)(f) of the Urgent Cases Regulations 1980) (paragraphs 15(7) and 20(3)). See also 30.3.1 xiii, 30.3.6 iv, 30.3.8 ix, 30.5.1 i, 30.5.3 ii and 30.5.4 i *below*. R(SB) 14/83

ix On the question whether, for the purposes of the Single Payments Regulations 1980 a need was to be adjudged satisfied where the items required were available on loan, the Commissioner held that the extent to which there was a pressing need for the item and the length of time for which the borrowed items were likely to be available were questions of fact; that, if the borrowed items were questions of fact; that, if the borrowed items were available on an indefinite basis, the need was extinguished; if, however, the availability could not be relied upon, except as a short term emergency expedient, the need was not satisfied; all the evidence had to be considered and in the light thereof it had to be decided as a fact, whether, as at the date of the claim, the need had been satisfied or was still subsisting (paragraph 9). R(SB) 10/82 distinguished. See also 30.3.1 xiii *below*. R(SB) 24/83

30.3.1

- R(SB) 26/83 (T) x For the purposes of regulation 3(2)(a) of the Single Payments Regulations 1980 (regulation 3(2)(a) of the Single Payments Regulations 1981) the date of establishing a person's need for any item is the date of claim (not the date of decision of the claim). The question whether the assessment unit already possesses the item claimed or has a suitable alternative or has unreasonably disposed of, or failed to avail itself of, such item should also be determined as at date of claim (paragraph 2 of second decision). The claimant's failure to exercise sufficient care of her possessions while temporarily away could not be regarded as a disposal of them by the assessment unit for the purposes of regulation 3(2) of the Single Payments Regulations 1980 (paragraph 7 of the second decision). In so far, but only in so far, as the decision in R(SB) 23/82 - see 30.3.5 *iv below* - is to the contrary, it should not be followed. The same date is appropriate when determining whether the requirements of regulation 3(2)(9b) have been satisfied. (Paragraphs 17-23 of the first decision). See also 17.2.2 iii, 17.3.2 x, 30.1.1 ii, above, 30.3.1 xi, xiii, 30.3.8 viii, *below*. Followed in R(SB) 30/84, 30.3.7 xi *below*.
- R(SB) 42/83 (T) xi A claim for a single payment has to be determined whether initially or on appeal, by reference to the position at the date of claim (R(SB) 26/83). (This is to be contrasted with a claim for supplementary pension or allowance which has to be determined on the facts as at the date of the decision of the benefit officer or, on appeal, the date of the decision of the appeal tribunal (R(SB) 9/81 and 1/82 and R(FIS) 1/82, para 20). (Paras 6 and 7).
- R(SB) 38/83 xii Where an item, such as clothing, is required in connection with the education or training of a claimant and also in connection with another purpose covered by the Single Payments Regulations 1981 - e.g. in order to be able to start work -, it is only if, as in this case, the primary requirement is in connection with the education or training of the claimant that regulation 6(2)(a) of those Regulations precludes a single payment.
- R(SB) 47/83 (T) xii 'Item' in regulation 3 of the Single Payments Regulations 1981 encompasses not merely a chattel, but everything for which a single payment is available under the relevant statutory provisions (paragraph 8). In the case of a chattel purchased before date of claim no need for it can still exist at that date and the claimant will be unable to satisfy regulation 3(2)(a). However, where the item has only been borrowed, the length of time for which it may be borrowed, the length of time for which it may be borrowed is a crucial factor in determining whether the need has been satisfied: R(SB) 10/82 and R(SB) 24/83 considered). (Paragraphs 9 and 10). In the case of services the single payment is in respect of the costs of such services. If the services have been rendered but the costs have not been paid by the date of the claim, the need for 'the item in question' will not have been satisfied within the meaning of regulation 3. (Paragraph 13). In respect of both chattels and services where the claimant has paid for the items in question by means of borrowed monies before claiming a single payment, there is no provision in the regulations to make a payment which would enable the claimant to repay the lender. (Paragraph 12). See also 17.3.9 xviii, 17.4.1 ix, 30.3. ix, x, *above*, and 30.3.7 *iv below*.
- R(SB) 52/83 (T) xiv A Tribunal of Commissioners held that section 1(3) of the 1976 Act (requirements to be taken into account for the purposes of that Act not to include medical, surgical, optical, aural or dental requirements) did not operate to exclude payment under section 3(1) (single payments to meet exceptional need) in respect of medical act requirements (paragraphs 4 to 11 and 13 to 16). *Supplementary Benefits Commission v. Jul; Y v. supplementary Benefit Commission* [1980] 3 WLR 436; [1980] 3 All ER 65; [1980] SB 40, pages 341 and 353 considered. *Supplementary Benefits Commission v. Lamb* [1979] SB 24, page 185; *R. v. Peterborough Supplementary Benefits Appeal Tribunal, ex parte Supplementary Benefits Commission [re Dobson]* [1978] 3 All ER 887; [1977] SB 9, page 67 and *R. v. West London Supplementary Benefits Appeal Tribunal, ex parte Wyatt* [1978] 2 All

ER 314; [1977] SB 13, page 105, distinguished. See R(SB) 5/84, 30.3.1 xvii, 30.3.8 x, *below*, and R(SB) 37/84, 30.3.8 xi *below*. See also R(SB) 23/87, 30.3.1 xxvi *below*.

[Note Regulation 6 of the Single Payments Regulations 1981 was subsequently amended (See S.I. 1983/1630) specifically to exclude any medical etc needs.]

xv The Commissioner held in relation to the question whether a claimant's existing floor covering was a 'suitable alternative item' in the context of regulation 3(2)(b)(ii) of the Single Payments Regulations 1981, that the question of suitability had to be construed subjectively having regard to the individual needs of the claimant, but not to the point that personal idiosyncrasies were catered for to the exclusion of all objective criteria based on reasonableness (see also 17.3.5 ix above). See R(A) 1/72, 15.1.2 i, R(SB) 11/82, 17.3.9 xii, 30.2.1 i, 30.2.2 iii, R(SB) 19/82, 30.3.1 vi *above* and 30.3.4 iv, *below*. R(SB) 1/84

xvi A claimant lived in a property within the meaning of regulation 6(1)(m) of the Single Payments Regulations 1981, on terms that the local authority landlords were responsible for structural repairs and external paintwork, and the claimant was responsible for internal decoration. The local authority had replaced some windows of the property and a door and painted their outsides. The claimant requested a single payment for the paint for their insides. It was contended by the benefit officer such payment was excluded by the blanket exclusion of the above regulation because the word 'repair' in that regulation included any painting which was 'part and parcel of repair of windows and door'. This contention was rejected by the Commissioner who also held that the expression 'in respect of' in the regulation had no wider meaning than 'for' but he disallowed the claim for other reasons (see 30.3.5 viii, *below*). (Para 8). R(SB) 4/84

xvii A claimant for a single payment of supplementary benefit had 2 dependent children who had between them savings totalling £800 in a building society, which was not available to her in the ordinary meaning of that word. Her claim was disallowed under regulation 5 of the Single Payments Regulation 1981 on the ground (in substance) that she had disregarded capital of £800, notwithstanding that in the ordinary meaning of the words she had no capital at all and it was her children who had the £800 between them. The Commissioner held that the aggregation provision in paragraph 3(2) of Schedule 1 to the Act does not, without further specific provision extend to single payments under section 3 (R(SB) 52/83)(para 5); but 'disregarded capital' includes capital of the claimant, her partner and dependants (para 8). See also R(SB) 52/83, 17.10.1 iii and 30.3.1 xiv, *above*. R(SB) 5/84

xviii A local authority tenant was liable for the repair of, amongst other things, the repair of her fire, the property of the local authority. It needed new parts to replace old ones. The tenant claimed a single payment. The Commissioner held that replacement of parts constituted a 'repair' for the purposes of regulation 6(2)(m) of the Supp. Ben. (Single Payments) Regulations 1981 and accordingly she was not entitled to a single payment. R(SB) 14/84

xix The words 'exceptional need' in section 3(1) of the Supplementary Benefits Act 1976 and regulation 3(1) of the Supp. Ben. (Single Payments) Regulations 1980 do not confer any discretion. They are words stating a requirement, not conferring a discretion. It will generally be a matter of fact and degree whether the case comes within them and in reaching a conclusion on that, the tribunal will not be exercising a discretion, but using its judgment in deciding whether on the facts the case comes within the provision. (See judgment of Court of Appeal printed in Appendix to the Commissioner's Decision. For full summary of the facts and decisions in this case see 30.3.7 ix *below*). See also R(SB) 37/84, 30.3.8 xii *below*. R(SB) 21/84

- R(SB) 22/84 (T) xx In relation to regulation 3(2)(a) of the Single Payments Regulations 1981 and the time when 'need' must exist for the purposes of a single payment of supplementary benefit under regulation 26 of those Regulations to meet fuel costs and the extent of that 'need', a Tribunal of Commissioners held that the 'need' can subsist only if, and so far as, at the claim date, the fuel costs relied upon in support of the claim have not been met by payment paragraph 12(3)). (For full summary of this case see 30.3.7 *x below*).
- R(SB) 33/84 xx i In a case in which claim was made for a single payment to replace a pair of worn out shoes, the claimant had a serviceable pair of boots and a pair of wellingtons. The Commissioner held that in the context of regulation 3(2) of the Single Payments Regulations 1981 'a suitable alternative item' meant something which was a satisfactory substitute for the item for which a single payment was being sought, i.e. satisfactory in the sense that it fulfilled the essential purposes of that item, and he accepted that industrial boots or wellington boots were not the equivalent of shoes, and did not perform the function of shoes (paragraph 11). (For fuller summary of this decision see 30.3.8 *xi below*.)
- R(SB) 12/85 (T) xx ii A claimant was in receipt of a supplementary allowance and had no capital. She claimed a single payment for the cost of decorating materials, which she had already bought and paid for out of her supplementary allowance. Her claim was disallowed on the basis that, as the items had been paid for before the date of claim, at the date she had no existing need for the payment (R(SB) 8/81 and R(SB) 13/81. A Tribunal of Commissioners held that, because the claim had been made after the material had been bought and the claimant had said that she had paid for them out of her allowance, the adjudication officer and the appeal tribunal should have treated the claim as having been made under reg. 28 of the Single Payments Regulations 1981 (para. 11) subject to what is said below, this they should do in such cases, except where it is obvious that such treatment could not give entitlement, eg where payment was made from money borrowed for this purpose (para. 11); since the present claim had been made the Claims and Payments Regulations 1981 had been amended by the insertion of a new reg.5B, which enabled a claim to be treated as made up to 5 days before it was in fact made; in future that regulation should be considered in such cases before regulation 28 of the Single Payments Regs (paras. 13 and 14). (See also 30.3.7 *xi below*.)
- R(SB) 34/85 xx iii It was held that a girl who had left school at age 16 in June 1983 and who by virtue of s.6(2) of the Supp. Ben. Act 1976 was not entitled to a supplementary allowance because at the time of her claim for it she was a person who by virtue of r.10 of the Conditions of Entitlement Regs 1981 fell to be treated as still receiving relevant education for the purposes of s.6(2) of the Supp. Ben. Act 1976, was not entitled either to an award under the Single Payments Regs 1981 because she was not a claimant for the purposes of those Regulations (para. 14). (For fuller summary of this case, see 30.4.3 *v below*.)
- R(SB) 37/85 xx iv A claimant owed £300 under a court order to a hire purchase company. He had not attended the court. He had been served with a warrant for £50 arrears on this order and £8 costs. He claimed an award under the Single Payment Regs 1981 for this, contending that the £50 was due in respect of his debt to the hire purchase company and not as a result of any court appearance within the meaning of r.6(1)(j) of those Regs. The Commissioner held that the intention of r.6(1)(j) was to cover the genus of expenses of any kind which resulted from court proceedings (para. 13); compliance with the bailiff's warrant was an expense arising from a court appearance; the regulation applied with equal effect to a claimant who appeared in court in person and one who did not (para.13); and the expression 'expenses from an appearance in a Court' was a perfectly intelligible way of describing expenses arising from court proceedings (para. 14).

xxv A girocheque for a single payment was encashed but the cash itself was subsequently lost by the claimant's wife. A claim was then made for a second single payment for the same item. The Commissioner held that the loss of the first payment did not constitute a material change in 'the circumstances surrounding that payment' and that a further payment was precluded by regulation 6(1)(a) of the Single Payments Regulations. He gave an example to illustrate how in his view regulation 6(1)(a) fell to be applied in practice; and confirmed what he had said in R(SB) 15/81, 30.3.1 ii *above*, that where a further single payment was awarded for the same item it was necessary to identify the relevant change of circumstances. R(SB) 16/86

xxvi The claimant suffered from multiple sclerosis and as a result was susceptible to cold. He claimed single payments for a number of items including a microwave oven. In considering whether the prohibition of single payments for medical, surgical, optical, aural or dental needs in regulation 6(2)(n) of the Single Payments Regulations applied, the Tribunal of Commissioners held that the regulation did not abrogate or limit single payments regulations which specifically depended on the claimant suffering from some illness or disability. A medical need was a need for a medical item such as an insulin gun, but a need for an item in everyday use, though arising from a medical condition, was not a medical need. The word 'medical' meant 'pertaining or related to medicine,' or matters normally dealt with by a physician. See also R(SB) 52/83, 30.3.1 xiv *above*. R(SB) 23/87 (T)

2 Maternity needs

R(SB) 15/81 i 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6)'. See 30.3.1 ii *above*.

R(SB) 7/82 ii It was held that the tenor of regulation 7 of the Single Payments Regulations 1980 (maternity needs) made it clear that payment was to be made thereunder only for the purposes of the purchase of such items as were necessary to meet the immediate needs of a child whose birth was imminent or who had recently been given birth to by a member of the assessment unit. The 'immediate needs' of a newborn baby had to be considered having regard to the fact that the 'normal requirements' of the child would be met by an increase in the assessment unit's requirements, leaving the 'immediate needs' of the child to be those items of equipment and outfitting needed on the child's becoming a member of the assessment unit. [*See now regulation 7 of the Single Payments Regulations 1981*]. (*For fuller summary of case, see 30.3.7 ii below*). See also R(SB) 29/84, 30.3.7 xi *below*.

3 Funeral expenses

i 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6)'. See 30.3.1 ii *above*. R(SB) 15/81

ii A mother claimed a single payment of supplementary benefit for the funeral expenses of her son. The benefit officer made an award equal in amount to those expenses, less the (gross) value of the dead son's estate and the death grant under the Social Security Act 1975. The question in issue was whether the gross or net value of the son's estate should have been deducted from the amount of the funeral expenses in computing the payment due to the mother. The Commissioner held that for the purposes of the regulation 8(3)(a) of the Supp. Ben. (Single Payments) Regulations 1981, it was the gross value which fell to be deducted before deduction of unsecured debts (paragraph 8). R(SB) 18/84

iii A claimant claimed a single payment for the cost of his mother's funeral. He was obliged by the undertaker to pay £300 in advance. This he obtained from a finance company and paid before making his claim for the single payment. Some of the expenses incurred were admittedly not essential. The essentiality of others was in dispute, e.g. the cost of a coffin with satin robe interior and of the exclusive right of burial in a new earth grave (as apposed to the cost of an ordinary grave in a local authority cemetery). It was contended, amongst other things, on behalf of the claimant that the £300 should be appropriated to the non-essential expenses. The Commissioner held that in regulation 8(2) of the Single Payment Regulations 1981 the term 'necessary documentation' does not include items such as press notices; 'plain coffin' refers to a simple unadorned coffin and not necessarily to the cheapest available; in the context of a 'simple funeral' the word 'simple' means unpretentious. The Commissioner further held that the tribunal should consider each item in regulation 8(2)(a) to (f) and record as fact the reasonable cost of each item, having regard to the circumstances of the case and record the total cost of the items which they accept as 'essential expenses of the funeral' and then proceed to deduct the amounts specified in regulation 8(3) and, in particular, in accordance with regulations 8(3)(a), they should record the gross value of the deceased's estate at the date of death. He further held that in the absence of evidence that separate contracts were placed for essential and non-essential elements of the funeral or that any express arrangements were made whereby the £300 advance payment was to be allocated to the non-essential items only, the appropriate way to deal with that payment was to apportion it rateably between the essential and non-essential expenses of the funeral. R(SB) 46/84

iv A man who had been in receipt of supp. ben. died leaving no estate. He was survived by 3 brothers and a sister. He had lived with one brother who claimed death grant and arranged the funeral, but it was agreed among the 3 brothers and sister that each should pay a share of the funeral bill. One of the other brothers and the sister were in receipt of supp. ben. and both claimed single payments for their respective shares of the funeral costs. Both claims were refused by the adjudication officer, but were allowed on appeal. The adjudication officer appealed from the tribunal decision on the grounds that a person who undertook to pay a part only of the funeral costs could not qualify for a single payment in respect of that part. The Commissioner held that the operation of regulation 8 of the Single Payments Regulations 1981 is not restricted to one single claimant in respect of one given funeral; where there is more than one claimant, it is necessary to read 'amounts' for 'amount' in the opening words of regulation 8(3) and to make any reductions pro rata (para. 15); and that any death grant should be deducted from the undertaker's bill before apportioning each share (para. 18). R(SB) 13/85

v The claimant's mother-in-law died in the UK and he sought a single payment for funeral expenses, including the cost of flying the body to Rawalpindi for burial. It was held by the Commissioner that the word 'funeral' in reg. 8 of the Single Payments Regulations had to be given its ordinary and natural meaning in the con- R(SB) 23/86

text in which it occurred. That context related to expenses of a funeral or cremation. 'Cremation' had the settled meaning of the reduction of a corpse to ashes in lieu of interment. The antithesis of 'cremation' was 'funeral' and it was in that sense that funeral was used. It was not used in the sense of the ceremonies or religious services which accompanied burial. The funeral or cremation must have taken place wholly within the UK.

4 Household expenses

- i A claimant applied for an award of a single payment of supplementary benefit to help meet the cost of replacing a pump in the central heating of his home. Before the date of his claim he had already replaced the pump and paid for it with money borrowed from a friend. The appeal tribunal made an award of part of the cost under regulation 17(1) of the Single Payments Regulations 1980. The Commissioner held that the Regulations were designed to meet actual needs not covered by weekly payments of supplementary benefit (see e.g. regulation 3(2)(b)). Since the claimant's household already possessed a new pump at the date of claim there was no need for it (regulation 3(2)(a)). Regulation 17(1) did not apply because the claimant had financed the repair in another way within the meaning of regulation 17(1)(d) by borrowing the money from a friend and there was no provision for repaying such a loan to the lender. Accordingly he held the appeal tribunal had erred at law and set its decision aside and referred the case for determination by a differently constituted tribunal. He also held that regulation 30 was subject to regulation 3(2). [*See now regulations 3(2), 17(1) and 30 of the Single Payments Regulations 1981.*] See also 30.3.1 *i above* and 30.3.7 viii, 30.3.8 iii *below*. Also R(SB) 23/82 and R(SB) 12/85(T). R(SB) 8/81
- ii 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6).' See 30.3.1 *ii above*. R(SB) 15/81
- iii A claimant lived in a Salvation Army Hostel where residents could either receive full board and lodging, or for a smaller charge, prepare their own meals on a cooker available in the Hostel. The claimant wished to prepare his own meals and requested a single payment for cooking utensils and crockery which the Hostel did not provide. The appeal tribunal made an award under regulation 9(3) of the Supplementary Benefit (Single Payments) Regulations 1980, then in force. The Commissioner held that the decision was erroneous in point of law. An award could not be founded on regulation 9(3) unless the claimant could bring himself within the regulation 9(1) which only applied 'where the claimant has recently become the tenant or owner of an unfurnished or partly furnished home'. The overwhelming inference appeared to be that the claimant was only a licensee. The Commissioner also observed that it was not clear whether the tribunal had had regard to regulation 3(2) and, in that connection, expressed the view that it would have been desirable that the tribunal should have recorded a finding of fact upon the question whether it was unreasonable for the claimant to cease to avail himself of the full board facilities offered by the Hostel. [*See now regulation 3(2) and 10(1)(a)(ii) and (2) of the Single Payments Regulations 1981 and also regulation 9(3) ibid.*] R(SB) 2/82
- iv A claimant asked for a single payment to meet hire-purchase debts for (a) a gas cooker and gas fire; and (b) a carpet, (a) and (b) being under separate agreements. Before the date on which the claim was made the Gas Board had obtained judgment in the Country Court in respect of the claimant's breach of agreement relating to the gas cooker and gas fire. The Commissioner held that:- R(SB) 19/82
1. by virtue of regulation 6(2)(i) of the Single Payments Regulations 1980 (no single payment to be made for, amongst other things, 'expenses arising from an appearance in court such as of damages'), the claimant was not entitled to a single payment for the gas cooker or gas fire;
 2. a carpet was an 'equivalent' to polyvinyl floor coverings within the meaning of regulation 9(4)(h) *ibid* and a single payment could be made in
- r e s p e c t
of (b) above.

(Under the Single Payments Regulations 1981, see regulations 6(2)(j) and 9(h) respectively.)

See R(SB) 1/84, 17.3.5 ix, 30.3.1 xv and R(SB) 37/85, 30.3.1 xxiv *above*.

v A claimant for a single payment of supplementary benefit had recently been separated from her husband. She had remained in the matrimonial home. The tenancy of that home was and had been in her name. Before the separation her husband had been in receipt of supplementary benefit for himself and his wife. The wife now claimed a single payment for certain items of furniture and pots and pans. Ultimately on appeal to the Commissioner, the Commissioner held that:-

1. a person whose requirements and resources had for a period been aggregated with those of another person for supplementary benefit purposes could not be treated as having been 'in receipt of an allowance' for the period within the meaning of regulation 9(2)(c) of the Single Payments Regulations 1980 (see subsequently regulation 10(1)(b)(ii) of the Single Payments Regulations 1981) and that provision also applies in the case of a wife whose requirements and resources were aggregated with those of her husband who was the only person entitled to supplementary benefit in such circumstances (paragraph 4);
2. as the claimant had had the tenancy of the house for all the time she had occupied it, she could not be treated as a person who 'has recently become the tenant or owner of an unfurnished or partly furnished house' in the terms of regulation 9(1) of the Requirements Regulations 1980 (regulation 10(1)(a) of the Requirements Regulations 1981) (paragraph 6).

vi In a claim regarding a repair of a washing machine under regulation 10 of the Single Payments Regulations 1980 it was held that first conditions of regulation 9(4)(i) of those Regulations and Schedule 3, para 17 of the Requirements Regulations 1980 had to be satisfied. However, it was to be noted that paragraph 17(a) of that Schedule referred to 'all adult members of the household' (not only of the assessment unit); that the laundry, however, was that of the assessment unit only (not that of the household) and that the reason why the laundry could not be done at home had to be either that all the adult members of the household were ill, disabled or infirm or that there were no suitable washing or drying facilities. No other reasons could be entertained. (Paragraph 7). (The above provisions of the Single Payments Regulations 1980 were subsequently amended and incorporated in regulations 9 and 10 of the Single Payments Regulations 1981, albeit in different positions.)

In respect of a claim regarding a refrigerator, a member of the assessment unit must, for medical reasons, require a special diet, which, by reason of its special content, must be kept at refrigerated temperatures. The fact that the claimant cannot shop every day is not a relevant consideration. There must be evidence of items in the claimant's diet which would not have been there had she been in perfect health. (Paragraphs 17 to 19). (Regulations 9(4)(k) of the Single Payments Regulations 1980 - regulation 9(k) of the Single Payments Regulations 1981.) See also R(SB) 41/84, 30.3.4 *x below*.

R(SB) 50/83

vii Regulation 10(1)(a) of the Single Payments Regulations 1981 (installation of essential household equipment); sub paragraphs (a) to (f) of regulation 13(1) *ibid.* (removal expenses). An appeal tribunal had disallowed a claim for a single payment of supplementary benefit to meet the costs of installing an electric cooker in the claimant's house in England. He had moved there from France where he had been living and working until termination of his contract there. The disallowance was on the basis that regulation 10(1)(a) required that one or more of sub-paragraphs (a) to (f) of regulation 13(1) applied, but the claimant's removal was not 'within Great Britain' within the meaning of that regulation (see substantive part thereof). The Commissioner held that this was an error of law because, for the purposes of regulation 10(1)(a), only sub-paragraphs (a) to (f) regulation 13(1) were to be applied to or in respect of the

previous home, not the substantive part of that regulation (paragraph 7). See also 30.3.5 vii *below*.

R(SB) 8/84
(T)

viii In a claim for a single payment of supp. ben. under regulation 10(1)(a) of the Single Payments Regulations 1981 for the purposes of furniture and household equipment, a Tribunal of Commissioner held that the question whether 'there was no suitable alternative furnished accommodation available in the area' within the meaning of that regulation was a question of fact for the appeal tribunal to decide, and explained the meaning of each of the words quoted above. They also held that the onus of proving that there was no such suitable alternative accommodation lay on the claimant, but indicated the extent of that onus and how it might be discharged. They also held that a submission by a presenting officer was not evidence unless he had some personal knowledge of the case. The Tribunal in referring the case to another appeal tribunal gave detailed directions as to how the questions involved should be approached and the notes which should be made by the chairman in the record of the proceedings.

R(SB) 26/84

ix Regulation 10(1)(b) of the Supplementary Benefit (Single Payments) Regulations 1981, which were certified as being for the purposes only of consolidating the regulations thereby revoked, provided, amongst other things, that it was a condition of entitlement to a single payment under that regulation that 'the claimant... has not recently become such a tenant or owner' (i.e. a tenant or owner of an unfurnished or partly furnished home). It was contended that that represented a substantive change in the law from that contained in the provision consolidated and accordingly was ultra vires. The Commissioner, after detailed consideration of the relevant law (see Appendix 1 to the decision), held that that condition in that regulation did represent a change in the law which was 'out with the proper scope of a mere consolidation' and was therefore ultra vires; and accordingly in applying that regulation the words 'the claimant ... has not recently become such a tenant or owner and' should be ignored; but that, apart from that, no question arose as to the validity of the remainder of the Regulations. (But NB. *Subsequent to this decision the effect of this regulation was qualified by SI 1984/593, r.2 q.v.*)

R(SB) 41/84

x A claimant for a single payment of the purchase of furniture was registered for employment and suffered from epilepsy. His claim was rejected on the grounds that he was not 'chronically sick' or 'mentally disabled' within the meaning of regulation 10(1)(a)(ii) of the Single Payments Regulations 1981. The Commissioner, on appeal against that rejection, held that both expressions in regulation 10(1)(a)(ii) should be given their ordinary meaning (R(SB) 16/83 applied); and that as the dictionary definition of 'chronic' was a 'disease, deep seated or long continued, as opposed to acute' (see Chambers 20th Century Dictionary) the claimant's epilepsy, as it had continued for a long period, could rightly be described as 'chronic' (para. 6). See also R(SB) 11/82, 17.3.9 xii, 30.2.1 i, 20.2.2 iii *above*, and R(SB) 16/83, 17.4.1 xiii, 30.3.4 vi *above*.

R(SB) 7/85

xi The claimant had lost the sight of one eye. He had been unemployed for some two years and was registered as a Job Centre of the Department of Employment as a disabled person. In 1983 he moved from bed and breakfast accommodation to an unfurnished flat and claimed a single payment of supplementary benefit for furniture and household equipment. An appeal tribunal held, amongst other things, that the claimant did not satisfy the conditions of regulation 10 of the Single Payments Regulations 1981, because he did not meet the criteria of permanent and substantial disablement laid down in the National Assistance Act 1948, which the tribunal adopted in the absence in the Regulations of a definition of the word 'disabled' in regulation 10. The Commissioner held that the tribunal's decision was erroneous at law for several reasons (see para. 11 of the decision) and, in relation to the meaning of 'disabled', he ruled that the tribunal had applied the wrong test: the word 'disabled' in regulation 10(1)(a)(ii) and 10(1)(b)(i) was an ordinary word in the English language and was not

R(SB) 20/85 to be restricted by reference to the criteria laid down in the 1948 Act; whether a claimant is physically disabled is a question of fact for the tribunal to decide (para. 12).

R(SB) 30/85 xii It was held that for the purposes of r.10(1)(b)(ii) of the Single Payments Regs. 1981 the expression 'in receipt of an allowance for a continuous period of 6 months or more' meant the 6 months immediately prior to the date of claim (para. 9).

R(SB) 10/86 xiii In regard to r.10(2), (3) and (5) of the Single Payments Regs. 1981 and the purchase and installation of a reconditioned gas cooker, the question arose whether the cooker actually purchased by the claimant could have been purchased more cheaply. The Commissioner held that it was important to consider whether the item was available to the claimant at the date of claim and in considering availability to take account of whether the claimant lived, her age and other objective circumstances; the amount awarded had to be for a reconditioned, not simply a second hand, cooker, reconditioning required that the appliance should be thoroughly examined (usually 'stripped down') to see what renewable parts were worn and that all such parts which were substantially worn should be renewed (para. 10(2) and (3)). Followed in R(SB) 22/86, 30.3.4 xv *below*.

R(SB) 22/86 xiv An adjudication officer awarded a single payment for bunk beds based on a quotation by a store he had contacted but of an amount lower than the estimates supplied by the claimant. In her appeal the claimant made submissions about the inaccessibility of that store. Held that a claimant was not automatically entitled to the cost of an item at the nearest or most convenient store if a substantial saving could be made by buying the item at another reasonably accessible store. The accessibility of the store was a question of reasonableness. For other synopses of this decision see 17.2.2 vii, 17.3.5 xii and 17.9.4 iii.

R(SB) 10/88 (T) xv On an appeal involving a single payment awarded for a reconditioned cooker, the Commissioner held that the meaning attached by the appeal tribunal to 'reconditioned', namely the standard laid down by the general law of goods, was incompatible with the law laid down in R(SB) 30/85 (which the Commissioner approved and adopted). Reconditioning involving a positive act whereas it would be possible for goods to which nothing had been done to comply with the implied conditions under the Sale of Goods Act. By use of the sale of goods analogy the tribunal had set too low a standard. A further synopsis of this decision is at 17.3.8 xiv.

xvi A claimant whose previous home was furnished had been granted the tenancy of a furnished local authority house. He made a claim for a single payment for various household items including carpets, curtains and a 3-piece suite. The claim was disallowed on the ground that none of the conditions of r.10A of the Single Payments Regs 1981 (Miscellaneous furniture and household equipment needs) were satisfied and that r.30 (Discretionary payments) precluded payment for such miscellaneous items. A Tribunal of Commissioners, by a majority decision, held that r10A is directed to people who must show that they have a range of miscellaneous furniture and household equipment needs, as opposed to a need for an individual item. For other

synopses of this decision see 17.2.1 v, 17.3.2 xxii, 17.4.1 xxiii *above* and 30.3.8 xiv *below*.

5 *Housing expenses*

R(SB) 10/81

i A widow with restricted mobility requested help towards the purchase of wallpaper for her kitchen and living room. It was stated as facts of the case presented to the appeal tribunal that the existing wallpaper was faded in places and rubbed around the doorways and light switches but that it was not dirty, torn or peeling. The claimant in her application had alleged that her kitchen had not been redecorated for 5 years and needed it badly. The tribunal made an award in respect of the kitchen, but not of the living room. The grounds of the decision were recorded as being that the tribunal considered that 'it is essential the kitchen be redecorated after five years but is not satisfied that the same applies to the living room'. The benefit officer appealed contending that there was no evidence to support the tribunal's finding that the redecorating was essential (see regulation 19(1) of the Single Payments Regulations 1980. *The Commissioner held that the word 'essential' in that regulation should be construed as meaning 'necessary' in the sense in which luxuries are differentiated from 'the necessities of life'; there must be a substantial need in terms of the modest general standard of living to which supplementary benefit is directed, although that might fall short of that which is indispensable to sustain life. He also held that it was appropriate to recognise that an elderly widow of impaired mobility, living on her own, was likely to spend a great deal of time in her kitchen and to become seriously depressed by its increasing shabbiness etc, even though this constituted no danger to hygiene or physical health. However the Commissioner in dismissing the appeal said that this decision imported no general principle warranting replacement of items which though still serviceable have become shabby; nor that after an interval of 5 years since last redecoration a claimant is necessarily entitled to a single payment under regulation 19. Followed in R(SB) 2/88.

*[See now regulation 19(1) of the Single Payments Regulations 1981.]

R(SB) 15/81

ii 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6).' See 30.3.1 ii *above*.

R(SB) 4/82

iii A claimant applied for a single payment for decorating material following the insertion of a damp course in his home. The appeal tribunal made an award for emulsion paint 3 months after the completion of the work and for wallpaper, if required, 12 months after that event, the time scale being that recommended by the building contractor concerned. The award was made under regulation 19 of the Single Payments Regulations 1980, then in force, paragraph (1)(c) of which had the effect of restricting such a payment to cases where the need for redecoration was not connected with 'any major repair renovation or alteration to the property'. The tribunal, in relation to that restriction, recorded as its finding of facts only that 'the need for redecoration was not connected with any major repair or renovation, the provision of a damp-proof course not being a major repair or renovation in the present part of the century'. The Commissioner set the decision aside. The award in respect of the wallpaper was erroneous in point of law: a single payment could only be made where 'there is a need for the item in question' (regulation 3(2)(a) *ibid*) and the tribunal expressly left open the question whether the wallpaper would be needed. Further, in regulation 19(1)(c), the epithet 'major' applied not only to 'repair', but also to 'renovation' and 'alteration'. *Prima facie* the work done was an 'alteration' and in contravention of regulation 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980

R(SB) 23/82 insufficient facts had been found to justify the conclusion that the alteration was not major (see paragraph 8 of decision).

iv A claimant, who had temporarily been rehoused while improvements were being carried out on her home by the Housing Association who owned the property, incurred removal expenses in subsequently returning to her home. She borrowed the money with which to pay these expenses and later claimed a single payment of supplementary benefit to cover those expenses and later claimed a single payment of supplementary benefit to cover those expenses, but she had not obtained competitive estimates for the cost of the removal and did not furnish any in pursuance of her claim. The appeal tribunal decided that the claimant was entitled to the single payment on the grounds, amongst others, that the claimant's home 'was structurally deficient and insanitary' and that a need to cover the expenses of moving back to her home still existed, but they recorded no facts upon which either of those 2 conclusions was reached. On appeal by the benefit officer from this decision, the Commissioner held that:-

1. a tribunal must reach and record finding of fact material to their decision in accordance with rule 7(2) of the Supplementary Benefit and Family Income Supplements (Appeals) Rules 1980; this requirement is not satisfied simply by stating a conclusion which follows the wording of the relevant regulation (paragraph 9);

2. it is neither expedient, nor permissible, for a Commissioner to give a decision that a tribunal should have given on the basis of facts which have not been found by the tribunal and which do not appear from the claimant's note of evidence or from documents or other material before them (paragraph 10);

3. it is an essential condition for the award of a single payment that there should be a present need for the item; where the item has already been obtained and paid for, the need has already been satisfied and the conditions of regulation 3(2)(a) of the Single Payments Regulations 1980 cannot be met. Decision R(SB) 8/81 followed (paragraph 11);*

4. the requirement in regulation 13(3) of the Single Payments Regulations 1980 to provide two competitive estimates, unless the Secretary of State directs that only one estimate be furnished, is a pre-condition to the payment of removal expenses. Where no estimates have been obtained, there is no authority to make any payments (paragraph 11).

*[Insofar, but only insofar, as this decision relates to the time as at which the question of 'need' should be determined and is not in accord with the tribunal decision R(SB) 26/83, 30.3.1.x above, it should not be followed (see paragraph 12 *ibid*).]

R(SB) 10/83

v The phrase 'marriage or relationship' in what, on consolidation, subsequently became regulation 13(1)(c) of the Single Payments Regulations 1981 was held to be confined to the marriage or relationship between partners, a partner being one of a married or unmarried couple. The relationship cannot legitimately be expanded to include the relationship between a son and his parents (paragraph 8). See also 30.3.1 vii above, and 30.3.5 vii *below*.

R(SB) 37/83

vi It was held that under regulation 17 of the Single Payments Regulations 1980, as amended, it was the total costs of repairs etc which could not exceed £225, not simply the balance of the costs after *anex gratia* payment by an insurance company towards them and that the conditions of regulation 17 were cumulative, the non-satisfaction of any of them being fatal to a claim under that regulation.

R(SB) 50/83

vii It relation to a claim for a single payment of supplementary benefit to meet the cost of installing an electric cooker in the home to which the claimant had moved from France with the woman with whom he was living as his wife, the claimant contended that he had moved to his new home because of the breakdown of the woman's marriage and her leaving her marital home and terminating her employment. The Commissioner

held that in regard to sub-paragraph (c) of regulation 13(1) of the Single Payments Regulations 1981 (removal expenses in consequence of death of, or divorce from, the claimant's partner or any other breakdown of the marriage or relationship) the breakdown of the marriage or relationship there referred to applied to that of the claimant and his partner as 'an assessment unit' (not to the breakdown of the marriage of the partner to a third person) (R(SB) 10/83). See also 30.3.4. vii *above*.

R(SB) 4/84

viii A claimant rented his house from his local authority. The house was a property within the meaning of regulation 6(1)(m) of the Single Payments Regulations 1981. The local authority was responsible for structural repairs and external paintwork. The claimant was responsible for internal decoration. The local authority replaced some windows and a door and painted the outside of them. The claimant requested a single payment for the paint for the inside of them. This was refused, for forefront of the benefit officer's contention being that any painting which was 'part and parcel of the repair of the windows and door' was a 'repair' within the meaning of the regulation. The Commissioner rejected that contention, but disallowed the claim on the basis that none of the 4 regulations (regs 17, 19, 21 and 30), which might have availed the claimant in the circumstances of this case, did so—regulation 17, because, amongst other reasons, that regulation would only have availed him if he had had a valid claim in respect of the repairs themselves (see reg 17(1)(c) and para 11(b) of decision); regulation 19, because the repair (to the windows and door) had been reasonably held to be a major repair and the need for the (internal) redecoration was connected with that major repair contrary to regulation 19(1)(c) (paras 12 and 13); regulation 21, because that regulation seemed to be directed to charges which were endowed with some element of recurrence (albeit irregular recurrence) and also because its general terms could not be allowed to override the very specific terms of regulation 19(1)(c) (para 15); regulation 30, because there was no evidence that a single payment was the only means by which serious damage or risk to the health or safety of a member of the assessment unit might be prevented (para 16).

R(SB) 35/84

ix A man claimed a single payment of supp. ben. to replace an outside lavatory door which had rotted with age. The estimated cost of the repair was £65 or £100 plus, in either case, VAT, exclusive of glazing or painting. The claimant's capital resources amounted to £103.79. The questions in issue were whether, in those circumstances, he was 'unable to finance the repair in any other way' within the meaning of regulation 17(1)(d) of the Supp. Ben. (Single Payments) Regulations 1981 and as to the effect of regulation 5 of those Regulations (effect of resources on amounts payable). The Commissioner held that it was essential before applying regulation 5 to see whether, apart from that regulation, there was title to the payment claimed (para. 12). Regulation 17(1)(d) has to be construed so as to exclude as a mode of finance the claimant's possession of a sum less than the limit fixed by regulation 5, which was not treated as a resource at all (para. 13); that regulation envisaged financing of repairs by other means than out of capital resources which fell wholly to be disregarded - e.g. by the obtaining of a loan or mortgage on the property (para.14).

R(SB) 39/84

x The claimant was in receipt of a supplementary allowance. He lived in rented accommodation in Chesterfield. He obtained employment in Croydon. That employment began on 8 November 1982. Pending acquisition of permanent accommodation within daily travelling distance from his work, he obtained temporary accommodation in a hostel. On a date which was not in evidence and had not been found, but while he was still in receipt of the allowance, he claimed a single payment for removal expenses. His claim was decided on 22 November 1982 and was rejected on the grounds that he was then in remunerative full-time work. The Commissioner held that the first question to be determined by the adjudicating authority was the date of claim, because the 'need for the item in question' had to be determined as at the date of claim and was unaffected by subsequent events (R(SB) 47/83) (paragraph 4); a 'need' for removal expenses may continue throughout temporary residence, pending removal to unfurnished accommodation (paragraphs 5 and 8(3)); an 'item in question' for the purposes of

regulation 13 of the Single Payments Regulations 1981 is the cost of the removal, as distinct from the need for the removal to be physically carried out (paragraph 7(1)); it is a condition for the payment of removal expenses under regulation 13 that the claimant must provide two competitive estimates, unless the Secretary of State waives the requirement for two, in which case the claimant must still provide one estimate (R(SB) 23/82) the removal has been completed, even though the cost is still outstanding, but the phrase 'is moving' in that regulation means the period between the decision to move and completion of the removal (paragraph 12(1)); for an effective claim for removal expenses, a claimant must know at the date of claim where and approximately when he expects to move (paragraph 12(2)).

R(SB) 45/84

xi Before reconnecting a claimant's gas supply the gas board required him to pay a substantial deposit as security against future default in payment. The appeal tribunal decided that he was entitled to a single payment for this under regulation 20 of the Single Payments Regulations 1981. The Commissioner held that the word 'charges' in that regulation related to the cost involved in the physical connection of supply and all other expenses directly arising from it, but it did not cover charges imposed as a condition of reconnection solely to facilitate payment of future accounts (para. 5); a claim for a security deposit could be founded only on regulation 30 *ibid* (para. 6).

R(SB) 3/85

xii A claimant, who had been unemployed for two years and in receipt of a supplementary allowance, requested a single payment for removal expenses from Rayleigh in Essex to Cambridge, where he was due to begin an honours degree course at the University. The benefit officer disallowed the claim, but the appeal tribunal reversed that decision, because they felt that, on the facts of this case, the claimant's prospects of employment were likely to be very significantly improved as a result of his following his honours degree course. (Regulation 13(1)(d) of the Single Payments Regulations 1981 referred.) The Commissioner held that, in order to satisfy that regulation, a claimant had to show that his prospects of employment would be significantly improved as a direct consequence of the change of home (as opposed to the consequence of entering on a degree course); that the supplementary benefit legislation was directed to short-term considerations; and that regulation 13(1)(d) proceeded on the basis that as a result of the change of home the claimant would either be able to undertake employment at once in the vicinity of the place to which he had moved, or enjoy improved prospects of employment in the near future (paragraphs 6 and 8).

R(SB) 27/87

xiii Held that estimates of removal costs for the purposes of regulation 13(3) of the Single Payments Regulations did not have to be in writing.

R(SB) 2/88

xiv The claimant lived alone in a four bedroomed local house. He had received a single payment for decorating materials for two bedrooms. The appeal before the Commissioner concerned a claim for a single payment for decorating materials for the other two bedrooms. The Commissioner held that regulation 19(1) of the Single Payments Regulations 1981 did not mean that a claimant could automatically receive a single payment to cover all the internal redecoration required by his tenancy agreement - it merely made it clear that the claimant must have some genuine interest in having the home internally decorated. Nor did the word 'essential' mean that a claimant in a home too large for his requirements was entitled to a single payment for internal decoration of the whole of that home. 'Essential' had been defined in R(SB)

10/81. For another synopsis of this decision see 17.3.1 vii *above*.

6 Miscellaneous expenses

R(SB) 15/81

i 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6).' See 30.3.1 ii *above*.

R(SB) 19/81

ii A claimant requested an award for the purchase of tools needed for a 26 week bricklaying course in which he worked under supervision and for which he was paid £39 a week. The question arose whether this was employment within the meaning of regulation 23(1)(a) of the Single Payments Regulations 1980, then in force (expenses on starting work) or a training need within the meaning of regulations 6(2)(a) *ibid* (which precluded payment for an educational or training need). The Commissioner held that, in determining whether this was employment, regulation 2 of those Regulations and regulations 2 and 10 of the Conditions of Entitlement Regulations 1980, then in force, (and in particular paragraphs (d) thereof) required to be considered and on the facts of this case (see 30.10.1 vii below) took the view that this was a training need. He also held that in determining whether or not regulation 23(1) applied to any particular case, it was essential to know whether the claim was made before or after taking up the employment (about which there was no finding by the appeal tribunal in this case); for it was a prerequisite of the application of that regulation that 'without such item the claimant would be unable to take up which has been offered to him'. [*See now regulations 2 and 23(1)(a) of the Single Payments Regulations 1981 and regulations 2 and 9(2)(d) of the Conditions of Entitlement Regulations 1981.*]

R(SB) 3/82

iii Community service work order by a Magistrates' court was held, *obiter* but categorically, not to constitute employment within the meaning of regulation 23 of the Single Payments Regulations 1980. [*See now regulation 23 of the Single Payments Regulations 1981.*] See also 30.3.8 vi below.

R(SB) 14/83

iv For the purpose of regulation 22 of the Single Payments Regulations 1980 'patient' means an in-patient in hospital or similar institution (paragraph 21). See also 30.3.1 viii *above* and 30.3.8 ix, 30.5.1 i, 30.5.3 ii, 30.5.4 i *below*.

R(SB) 16/84

v A claimant for a single payment of supplementary benefit for voluntary repatriation expenses appealed to the Commissioner against a rejection of his claim. Before his appeal was heard he went to live in the Yemen Arab Republic where his wives and children lived, leaving with those who represented him in the matter of this appeal no instructions as to the grounds for appealing. The Commissioner nevertheless heard the appeal (see 17.4.1 xix *above*). He found error of law on the face of the record of the appeal tribunal's decision itself and remitted the case for a rehearing by a freshly constituted tribunal. On the relevant regulation (reg. 25(1) of the Supp. Ben. (Single Payments) Regs. 1981) he held that it is a prerequisite of the proper application of the regulation to make a finding of fact as to the claimant's country of birth and, if that cannot be established, at least to express a finding as to birth in a country other than those prescribed in the regulation; and, if that be established, to make findings as to whether the claimant wished to return to the country of his birth or to go to any other country (paragraph 4); the limitation on entitlement under the regulation that a claimant should have been accepted for settlement in GB applies only to a claimant wishing to return to a country other than the country of his birth (paragraph 5); the phrase 'return to the country of his birth' in the regulation refers to the claimant's return

R(SB) 24/86 to within the geographical boundaries of the country as it was at his birth, notwithstanding that the country is no longer extant (paragraph 6).

vi The claimant had applied for a single payment to meet travelling expenses to collect her daughter from, and later return her to, guardians appointed by the Court pending a hearing to decide on the daughter's custody. The Commissioner held that the claimant could not bring herself with reg. 22(1)(c) of the Single Payments Regulations because the word 'parent' in the context of that regulation meant the

natural mother or natural father, which would include an adoptive mother or adoptive father but not someone who was merely discharging the duties of a parent.

R(SB) 6/81 **7 Normal, additional and housing requirements**

i For an award to be made under the provision which on consolidation became regulation 27(1)(a)(ii) of the Single Payments Regulations 1981 (award to meet the need for new or replacement clothing etc., where the need has arisen otherwise than by normal wear and tear - e.g. heavy wear and tear resulting from any physical disability) there must be evidence of heavy wear and tear. (*For fuller details of this case, see 17.4.4 iv above.*) See also R(SB) 12/82 and 14/82.

R(SB) 15/81

ii 'It cannot be too strongly stressed that no claimant can successfully ground a claim for any of the single payments the subject of Parts II to VIII (regulations 7 to 30) of the [Single Payments] Regulations unless he can first bring himself within the provisions of Part I (regulations 1-6). See 30.3.1 ii *above*.

R(SB) 7/82

iii A claimant requested a single payment in respect of a pair of boots for himself. He was not entitled to an award under regulation 27 of the Single Payments Regulations 1980, then in force, because the need did not arise otherwise than by normal wear and tear. He said he had recently bought coats for his children, then aged about 4 and 3 years, 18 months and 7 months respectively, and that he had not been able to afford to set aside any money for clothing or footwear (for himself). The appeal tribunal made an award, purporting to do so under a combination of regulations 7 (maternity needs) and 26* (under which a single payment could be made upon the basis, amongst others, that the claimant had spent on any item for which, had he claimed it, a single payment would have been made under the regulations, money set aside to provide any item to which the (prescribed) category of normal, additional or housing requirements related). The Commissioner set aside the tribunal's decision as being erroneous in point of law. He held that there was no evidence that the claimant had set aside any money for any category of item. Further, the tenor of regulation 7 made it clear that payment was to be made thereunder only for the purpose of the purchase of such items as were necessary to meet the 'immediate needs' of a child whose birth was imminent or who had recently been given birth to by a member of the assessment unit. The 'immediate needs' of a newborn baby had to be considered having regard to the fact that the 'normal requirements' of the child would be met by an increase in the assessment unit's requirements, leaving the 'immediate needs' of the child to be those items of equipment and outfitting needed on the child's becoming a member of the assessment unit. *[See now regulations 7, 27 and 28 of the Single Payments Regulations 1981.] See also R(SB) 29/84, 30.3.7 xi *below*.

R(SB) 10/82

iv A claimant requested a single payment of supplementary benefit for the purchase of an overcoat for his pregnant wife. Owing to her pregnancy her own coat was too small for her and she had had to borrow one from a relative. The Commissioner held that:-

1. as the wife had the use of a borrowed overcoat she did not have a need for one within the meaning of regulation 27(1)(a)(i) of the Single Payments Regulations 1980; there might be cases where a borrowed item does not satisfy a need, but where the situation giving rise to the need is pregnancy, which is obviously a temporary condition, a borrowed item may well be capable of satisfying the temporary need; however the availability to the claimant's wife of her own overcoat did not, since regulation 27(1)(a)(j) expressly contemplated an item of clothing etc. which needed to be replaced on account of pregnancy (paragraph 14(1));

2. the expression 'possess' in regulation 3(2)(b) means no more than 'have'

(paragraph 14(2)); and

3. in answer to a submission that regulation 3 was inconsistent with regulations 9, 12 and 27(1) and *soultra vires*, even if it were so inconsistent, that would not make it *ultra vires*, but a matter for the determining authorities to deal with by the application of the rules of construction (paragraph 13).

See also R(SB) 24/83, 30.3.1 ix and R(SB) 47/83, 30.3.1 xiii *above*.

R(SB) 3/83

v A claimant, who was tall and big to match and was in receipt of a supplementary allowance, claimed a single payment for clothing on the ground that his clothes cost more than those of an average sized man. There was no medical evidence to indicate that his size was due to any illness. The benefit officer disallowed the claim on the grounds that the claimant had not established need for the clothing. The appeal tribunal allowed it under regulation 27(1)(a)(iv) of the Single Payments Regulations 1980 on the grounds that the claimant's size was a physical disability. The benefit officer appealed. The Commissioner upheld the appeal, holding that a deformity might be a physical disability, but size by itself, in the absence of medical evidence that it is due to illness, is not.

R(SB) 8/83

vi A woman, relying upon a representation of a visiting officer of the Department of Health and Social Security that she would be entitled to a grant of supplementary benefit for the purchase of furniture and, being offered it at a bargain price for a quick sale, bought it by increasing her bank overdraft, was then refused the grant. The Commissioner, after describing the position of the visiting officer vis a vis the benefit officer and the functions of the latter, held that it was the duty of the benefit officer to determine each case solely upon the basis of the relevant legislation; that, if that legislation did not confer entitlement upon the claimant, the benefit officer could not lawfully make an award; and that there was thus little scope for applying the doctrine of *estoppel* to the functions of the benefit officer - least of all where the representations relied upon were made by a party over whom he had no control and for whom he had no responsibility (paragraphs 5 and 6). See 13.6.1 iii *above*. Also, paras 10 to 12 of R(P) 1/80 and para 18 of R(U) 11/80.

R(SB) 27/83

vii The Commissioner held that the need of a new duffle coat for a child in order to enable it to attend nursery school for the first time was out with regulation 27(1) of the Single Payments Regulations 1981, because it arose 'in the normal course of events', namely, because the child concerned was growing up (paragraph 3).

R(SB) 36/83

viii In respect of an item already bought by a claimant a single payment was payable under regulation 26 of the Single Payments Regulations 1980 if the claimant showed (a) that, if he had claimed a single payment for the item before he had bought it, he would have been entitled to the payment under the other provisions of those Regulations; and (b) that he had set aside money from his normal weekly supplementary benefit allowance to provide for any items to which the category of normal, additional or housing requirements relates; and (c) that as a consequence of using the money set aside he could not reasonably be expected to meet the cost of any item or items of that category; and (d) it was essential that he should meet that cost; and (e) he satisfied, in this context, the over-riding requirements of regulation 3 of these Regulations. (On consolidation the provisions of regulations 3 and 26 became regulations 3 and 28 of

R(SB) 21/84 the Single Payments Regulations 1981.) See R(SB) 8/81, 30.3.1 i, 30.3.4 *above* and 30.3.8 iii *below*. Distinguished in R(SB) 30/84, 30.3.7 xi *below*.

ix A claimant seeking clerical employment requested a single payment of supplementary benefit for various items of clothing so that she could appear presentable at job interviews. She said that she only had a few clothes; that these were not suitable for the purpose owing to their existing state; and that she had been borrowing clothes from her sister. The appeal tribunal upheld her appeal from the benefit officer's rejection of her claim and the Commissioner, in relation to regulations 3 and 27 of the Supplementary Benefit (Single Payments) Regulations 1980, held that the phrase 'exceptional need' in regulation 3 conferred a comparatively wide discretion (para. 13); the word 'possess' in regulation 3(2) meant something more than having a transitory right to wear clothes conferred by a temporary loan of them (para. 15); borrowed clothes did not amount to a 'suitable alternative item' within the meaning of regulation 3(2)(b) for a person wishing to attend interviews for responsible jobs (para. 16); and on the evidence available it was open to the tribunal to have reached the conclusion that the need to look presentable for job interviews was a need which arose 'otherwise than by normal wear and tear' within the meaning of regulation 27 (para. 19).

The Court of Appeal (see Appendix to Commissioner's Decision) disagreed with the first and last of the above conclusions and held that 'exceptional need' in section 3(1) of the Supplementary Benefits Act 1976 and regulation 3(1) of the above Regulations did not confer any discretion upon the tribunal; the words stated a requirement and it would generally be a matter of fact and degree whether the case came within the provision and, in reaching a conclusion on that, the tribunal would not be exercising a discretion, but using its judgement. The inferences the Court drew from the facts were that the claimant's clothes were not inherently unsuitable for the job interviews if they had been in a suitable condition, but they were not; accordingly the claimant had not discharged the onus of proof under regulation 27 that her need arose 'otherwise by normal wear and tear' and the tribunal were not entitled to find as they did. The Commissioner's decision was accordingly set aside. See also R(SB) 37/84, 30.3.8 xii *below*.

R(SB) 22/84
(T)

x In relation to regulation 26 of the Single Payments Regulations 1981 (fuel costs) and in particular to the *time* when the relevant need must exist; the extent of that need; and the nature of the requirement that the fuel costs are greater than the amount 'put aside to pay for them', a Tribunal of Commissioners held that the 'need' can subsist only if and so far as at the claim date the fuel costs relied upon in support of the claim have not been met by payment (para. 12(3)); and there is no qualifying requirement that the claimant shall put anything aside; the force of the words 'put aside' is limited to shutting out a claimant who, although faced with an unsatisfied liability for fuel costs at the date of claim, has in fact set aside a sum sufficient to satisfy that liability (para. 15). The Tribunal also held that once a claimant, being otherwise eligible for Supp. Ben., has steered himself through the initial gateway of regulation 26(1), the amount of award prescribed under regulation 26(2) takes no account of the amount (if any) which he has set aside to meet the relevant fuel costs, and any inference to the contrary which might be drawn from (R(SB) 26/83 is to be rejected as at variance with the correct interpretation of the law on the point (para. 19); claims under subparagraphs (a) and (b) of regulation 26(1) can be made at the same time and be embraced in a single claim (para. 21(2) and (3)); the adjudicating authority can hold that the requirements under regulation 26(1)(a) are satisfied notwithstanding that the individual claimant cannot establish a 'norm' by reference to antecedent consumption figures (e.g. because he has only recently moved into the accommodation); they can do this by applying a 'yardstick' by reference to the particular period and to information provided from other sources (para. 23(1)); under regulation 26(2)(a) the amount of an award within

paragraph (1)(a) of that regulation is the amount by which consumption has exceeded the normal (para. 23(2)); under regulation 26(2)(b) the amount of an award is the amount equal to one half of the aggregate costs of fuel incurred from the claimant's use of the heating system during the first 6 months of its use; notwithstanding anything to the contrary in R(SB) 26/83, benefit can be claimed and awarded for each of two successive parts of that period (paragraphs 24(2) and 25(3) and (5)) (but NB since the period concerned in this case, regulation 26(2)(b) was amended so as to make the position 'unequivocal' - see para. 3 of the Tribunal's decision). See also R(SB) 1/86, 30.3.7 xiv. See R(SB) 9/86, 30.3.7 xv *below*, for the application of regulation 26(1)(a). Held in R(SB) 17/86, 30.3.7 xvi *below*, that the words 'outstanding liability' in paragraph 18(1) of R(SB) 22/84 were not intended to embrace a standing charge.

R(SB) 30/84

xi A claimant requested single payment for items of clothing on grounds that he had not received certain additional requirements and single payments in the past to which he was entitled. Requests for these other payments were the subject of separate claims (and appeals). The adjudicating officer refused all the claims, but before the hearing by the appeal tribunal had taken place, he had reviewed one relating to requirements, and the tribunal awarded and backdated two more additional requirements. The single payment decision, which was the last of the appeals to be heard by the tribunal, was confirmed, and against that decision the claimant appealed to the Commissioner. The Commissioner held that, for the purposes of a right to a single payment; the 'need' for its falls to be determined as at the claim date R(SB) 26/83 (paragraph 8(2); in regulation 28(1) of the Single Payments Regulations 1981 the concluding prescription 'and as a consequence....' applies to both sub-paragraphs (a) and (b) of that regulation (paragraph 17(2)); in the context of 'has not received' in sub-paragraph (a), it is unnecessary to consider the non-receipt of some amount before the date of claim for which, by reason of remoteness, no casual link with the item now claimed can be forged; however, that apart, all dated prior to and including the date of claim are prospectively relevant, but no later dates (R(SB) 26/83 (paragraph 18(1)); the tribunal erred in law in taking into account awards made by the adjudicating officer since the date of claim or their own awards or other appeals determined that day; paragraph (3) of the regulation operates only to offset a single payment made under this regulation against the award of arrears of supplementary benefit which formed the basis of that single payment and which is made subsequent to the award of the single payment (paragraphs 19 and 20).

R(SB) 36/83, 30.3.7 viii *above*, distinguished. See also R(SB) 7/82, 30.3.2 ii and 30.3.7 iii *above*.

R(SB) 12/85
(T)

xii A claimant was in receipt of a supplementary allowance and had no capital. She claimed a single payment for the cost of decorating materials, which she had already bought and paid for out of supplementary allowance. Her claim was disallowed on the basis that, as the items had been paid for before the date of claim, at that date she had no existing need for the payment (R(SB) 8/81 and R(SB) 13/81). A Tribunal of Commissioners held that the adjudication officer and the appeal tribunal should have treated this claim as having been made under reg 28 of the Single Payments Regs 1981 and in future Regs. 1981 and in future, subject to the application of reg 5B of the Claims and Payments Regs 1981, as amended, the should so treat such cases (para 11, 13 and 14) (see 30.3.1 xxi *above*); that, in considering reg. 28, that regulation should be construed as if it read 'has spent, on any item for which, had he claimed it, before he acquired or paid for it, a single payment would have been made under these regulations....' (para 16); and lastly that the phrase 'money set aside' should be given a liberal interpretation and there must always be a strong presumption that in any given week the whole of the relevant pension or allowance has been set aside to provide for items

R(SB) 33/85 to which the category of normal, additional or housing requirements applies (para 17).

xiii A man claimed single payments of supp. ben. in respect of clothing on grounds that he had rapidly gained weight (4 stone in 12 months) and his clothes no longer fitted him. His claim was rejected on grounds, amongst others, that 'there was no evidence of rapid weight gain', the adjudicating officer being unable to accept that there had been 'without supportive evidence or that medical evidence would not be available in such circumstances' and the AOs view was that 'the claimant's need for clothing arose through normal wear and tear'. The Commissioner held that at the time when a single payment claim is made the AO should determine and record what was claimed, identify what circumstances required investigation and determination whether the claimant had established a need under reg. 3 of the Single Payment Regs. 1981 for the items claimed (para 7). He also held that under reg 27(1)(a) of those Regs. needs other than those exemplified in that provision might fall to be considered, if they arose other than by normal wear and tear; 'rapid' loss or gain for the purposes of that provision fell to be determined in accordance with the ordinary use of that word and a steady loss or gain was not necessarily precluded (paras 8(2) and 9). He further held that there was no rule in English law that corroboration of the claimant's own evidence was necessary and when adjudicating authority rejected it, it should identify the ground for such rejection. In this matter he commended to the attention of all concerned with adjudicating on supp. ben. claims paras. 6 and 7 of R(I)(2/51 (para 14). He lastly held that reg. 27(1)(a) did not require that a need arising otherwise than by normal wear and tear had to be a need arising from some medical condition (para 16).

R(SB) 1/86

xiv The claimant moved in January 1983 into a house entirely by electric fires; gas central heating was installed in February 1984. In July 1984 the claimant, then receiving supplementary allowance, claimed a single payment to assist with an electricity bill. The Commissioner held that in considering regulation 26 of the Single Payments Regulations 1981 regard must be had to all fuel costs involved in heating the home; it was for the claimant to establish that the fuel costs were greater than the money put aside for them, which could be done by establishing that no amount had been put aside (R(SB) 22/84, 30.3.7 x above, followed); it was necessary for the claimant to have been entitled to supplementary benefit at the date of claim but not throughout the relevant period; the word 'recently' as used in regulation 26(1)(b) was to be given its everyday meaning. The Commissioner also held that the tense used in regulation 26(1)(b) was one which 'in its context defeats the intention of the [Regulations]' (Stocks v. Frank Jones (Tipton) Ltd [1978] 1 WLR 231, at p.239), and that the regulation should be construed and applied as though it read '(b) of the members of the assessment until were unfamiliar with the cost of running the heating system in their home because they had recently moved to that home or the system had recently been installed'. See also R(SB) 22/84 at 30.3.7 x above.

R(SB) 9/86
(T)

xv The Tribunal of Commissioner held that successful claims for single payments under regulation 26(1)(a) of the Single Payments Regulations had to satisfy three conditions: (1) the fuel costs of the assessment unit must have been greater than the amount put aside; (2) there must have been a period of exceptionally severe weather; and (3) that period must have resulted in consumption greater than normal. With regard to condition (1), the reference to the amount put aside indicated that the regulation as a whole had to be interpreted by reference to the circumstances of the assessment unit and not the average circumstances of the overall population. The question whether there had been exceptionally severe weather had to be decided by reference to the claimant's locality. The words used in relation to condition (2) were ordinary English words; when applied to the British climate 'exceptionally' meant no more than 'unusually' or 'abnormally'. What was exceptional or abnormal at one place, or at one season, might or might not be exceptional at another place or season. What was required was that the period (whether of a week or more) to which the fuel costs related should include some period (long or short) of exceptionally severe weather. If the weather had resulted in exceptionally high consumption of fuel, that could be treated as

evidence that there had been a period of exceptionally severe weather. Whether, as required by condition (3), there had been consumption greater than normal had to be determined on the evidence, such as evidence of the claimant's consumption over previous years, personal knowledge of the weather prevailing in the area, and evidence from gas and electricity boards as to domestic consumption generally. Meteorological statistics were a part only of the evidence to be considered. The adjudicating authorities had been entrusted with making value judgements and it would be wrong to apply arbitrary rules of thumb. See 18.5.1 ii for a synopsis consequent upon this decision.

R(SB) 17/86

xvi The limitation of the amount payment to meet fuel costs under regulation 26(1)(a) of the Single Payments Regulations to the excess over normal consumption was held to impose a limited meaning on the term 'fuel costs' throughout regulation 26. Consequently a standing charge for gas or electricity could not be included in the calculation of a single payment under regulation 26(1)(b) where the assessment unit were unfamiliar with the running costs of the heating system in the home into which they had recently moved. S(SB) distinguished in the sense that the words 'outstanding

liability' in paragraph 18(1) of that decision were held not to be intended to embrace a standing charge (see 30.3.7 *x above*).

8 Discretionary payments

R(SB) 2/81

i A claimant, after discharge from prison, claimed a single payment to purchase shaving equipment and two towels. An appeal tribunal made an award under regulation 30 of the Single Payments Regulations 1981, concluding that a payment was essential to prevent risk to the claimant's health. The Commissioner held on appeal that such an award could only be made where it was the only means to prevent serious damage or serious risk to the health or safety of the claimant. There was no evidence to suggest that failure to make such an award would have had such serious consequences. (*Followed in R(SB) 8/82.*)

R(SB) 5/81

ii The question whether a single payment under regulation 30 of the Single Payments Regulations 1980 was the only means of preventing serious damage or risk to the health or safety of a member of an assessment unit was essentially one of fact and degree. *Followed in R(SB) 4/85.*

R(SB) 8/81

iii A claimant applied for an award of a single payment of supplementary benefit to help meet the cost of replacing a pump in the central heating of his home. Before the date of claim he had already replaced the pump and paid for it with money borrowed from a friend. The appeal tribunal made an award of part of the cost under regulation 17(1) of the Single Payments Regulations 1980. The Commissioner held that the Regulations were designed to meet actual needs not covered by weekly payments of supplementary benefit (see eg regulation 3(2)(b)). Since the claimant's household already possessed a new pump at the date of claim there was no need for it (regulation 3(2)(a)). Regulation 17(1) did not apply because the claimant had financed the repair in another way within the meaning of regulation 17(1)(d) by borrowing the money from a friend and there was no provision for repaying such a loan to the lender. Accordingly he held that the appeal tribunal had erred at law and set its decision aside and referred the case for determination by a differently constituted tribunal. He also held that regulation 30 was subject of regulation 3(2). [*See now regulation 3(2), 17(1) and 30 of the Single Payments Regulations 1981.*] See also 30.3.1 i, 30.3.4 i and 30.3.7 viii *above*, and R(SB) 12/85 (T).

R(SB) 13/81

iv A claimant, whose previous home had been destroyed by fire, claimed an extra allowance to cover the cost of eating out for the week when his new home did not have a cooker. The appeal tribunal awarded a single payment, under the provision which subsequently, consolidation, was replaced by regulation 30(1)(b) of the Single Payments Regulations 1981, to cover the extra cost which had been incurred by eating out. The grounds of the decision were that 'exceptional hardship had been caused by the extra expense of hot food', which was 'a possible risk of health'. The Commissioner held that regulation 30 was a 'long stop' discretionary provision enabling a single payment to be made in cases of exceptional need which could not otherwise be met and when the consequences of deprivation were likely to be serious. The provision therefore should be broadly rather than over-strictly construed and an award under it should not be disturbed unless upon no reasonable view could the circumstances have enabled the discretion to have been legitimately so exercised. However, a pre-requisite for the operation of regulation 30 was that there was an existing exceptional need and the payment was the only means by which serious damage or serious risk to the health or safety of, in this case, the claimant could have been prevented. The provision looked forward, not back. Any such serious risk or damage must already have occurred before the date of his claim and so no payment under the regulation could have averted it. Further the grounds of the tribunal's decision fell far short of the statutory criterion.

R(SB) 15/81

R(SB) 3/82

R(SB) 8/82

R(SB) 9/82

probabilities and not just simply suggested as possible. In the case of clothing or footwear, it might be shown that a claimant was a member of a clothing club. Evidence as to borrowing or credit facilities would have to be compelling before it could be determined that such means were available to a person entitled to a supplementary pension or allowance. But regulation 30 is so widely drawn that 'the only means' among other resources, any money which is available for the purpose, except when otherwise provided. The claimant's savings were so available. See also R(SB) 26/83, 17.3.9 xviii, 30.3.1 *x above*.

R(SB) 14/83

ix A man claimed a single payment of supplementary benefit in order to visit his seriously ill mother who was resident in India. He was held not to be entitled to it because his mother was not a member of his assessment until and so the condition of regulation 30 of the Single Payments Regulations 1980 and regulation 24 of the Urgent Cases Regulations 1980 that such payments was the only means of preventing serious damage or risk to the health or safety of a member of the claimant's assessment until was not satisfied (paragraph 7 and 9). See also 30.3.1 viii, 303.6 *iv above* and 305.1 i, 30.5.4 *i below*.

R(SB) 5/84

x A claimant for a single payment of supplementary benefit had 2 dependant had 2 dependent children who had between them savings totalling in a building society, which was not available to her in the ordinary meaning of that word. Her claim was disallowed under regulation 5 of the Single Payments Regulations 1981 on the ground (in substance) that she had disregarded capital of £800, notwithstanding that in the ordinary meaning of the words she had no capital at all and it was her children who had the £800 between them. The Commissioner held that the aggregation provisions in paragraph 3(2) of Schedule 1 to the Act does not, without further specific provision extend to single payments under section 3 R(SB) 52/83 (para 5); but 'disregarded capital' includes capital of the claimant, her partner and dependants (para 8); for the purposes of regulation 30 of the Single Payments Regulations 1981, the determination of means includes 'disregarded capital' but for those purposes the capital must be available in the ordinary sense of the word (para 13). See also 30.3.1 xvii, R(SB) 52/83, 17.10.1 iii and 30.3.1 *xiv above*.

R(SB) 33/84

xi A claim for a single payment to replace a pair of shoes which were worn out was refused by the benefit officer. The claimant had a serviceable pair of boots and a pair of wellingtons. The appeal tribunal upheld the refusal on the grounds that the need had arisen in the normal course of events within the meaning of regulation 27 of the Single Parent Regulations 1981 and that the claimant had other means - i.e. alternative footwear - by which he could avoid serious risk and damage to health and safety within the meaning of regulation 30 *bid*. The Commissioner held that in regulation 27 the expression 'normal course of events' was wider than the expression 'normal wear and tear' and accordingly the former included the latter (para 7); in the context of regulation 3(2) 'a suitable alternative item' meant something which was a satisfactory substitute for the item for which a single payment was being sought, i.e. satisfactory in the sense that it fulfilled the essential purposes of that item, and in this case he accepted that industrial boots or wellington boots were not equivalent of shoes and did not perform the functions of shoes (para 11). He also held that the words 'means' in regulation 30(1) was not limited to financial means; it extended to expedients other than the application of financial resources (para 12). See R(SB) 4/86, 30.3.8 *xiii below*, in relation to the term 'only means' in regulation 30(1).

R(SB) 37/84

xii A woman claimed either an additional requirement or series of single payments to meet the costs of fares to accompany her child to school. (The child was very young). The appeal tribunal had awarded her a series of single payments. The Commissioner held that this was an error of law; 'exceptional need' in section 3(1) of the 1976 Act was not apt to include a requirement which continued week by week,

such as a requirement being met, if at all, by inclusion in the normal, additional or housing requirements of claimants; a single payment or a series of single payments to the claimant for the cost of accompanying her child regularly to school was not payable (paragraph 9). See R(SB) 21/84 *ix above*, and R(SB) 52/83, 17.10.1 iii, 30.3.1 xiv *above*.

R(SB) 4/86

xiii The term 'only means' in regulation 30(1) of the Single Payments Regulations was not limited to financial means but extended to other available expedients. It was to be construed as referring to any other means which might reasonably be taken into account as being available in the circumstances of the case. In the present case the tribunal had refused under regulation 30 (regulation 23 not being satisfied) a single payment for working clothes on the ground that it was open to the claimant to leave the job. The Commissioner held that this conclusion was so unreasonable as to amount to an error of law. R(SB) 30.3.8 *xi above*, followed.

R(SB) 10/88

xiv A claim for miscellaneous furniture and household equipment needs cannot be met under r.30 of the Single Payment Regs 1981. 'Miscellaneous' has its usual dictionary meaning of 'mixed composition or character', 'of various kinds' (Shorter Oxford Dictionary); 'mixed or mingled', 'consisting of various kinds' (Chambers Twentieth Century Dictionary). A claim for an individual item is not precluded under r.30. But where there are a series of claims for individual items it will be for the adjudicating authorities, exercising commonsense and in the light of the particular facts, to decide whether they should be treated as a claim for a range of furniture and household equipment needs which is precluded under r.30. For other synopses of this decision see 17.2.1 v, 17.3.2 xxii, and 30.3.4 *xvi above*.

Part 4: Conditions of Entitlement

Sections 1(1A), 5.6 and 10 of the 1976 Act and the Conditions of Entitlement Regulations 1981 (For persons abroad whose entitlement to benefit is to continue see Chapter 16.5-).

1 Registration and availability for employment (See also Chapter 1.2)

i. Any question about availability for employment under regulation 7(1) of the Conditions of Entitlement Regulations 1981 is, subject to regulations 7(2) and *Sibid.*, to be determined by the insurance officer under section 17(1)(a)(i) of the Social Security Act 1975, unless the benefit officer or, on appeal, the appeal tribunal decides under regulation 7(2) that the claimant is available for employment (paragraphs 5 and 7). Followed in R(SB) 4/85. R(SB) 22/83

ii A claimant is a student within the meaning of Regulation 8(1)(a) of the Conditions of Entitlement Regulations 1981, if he is attending a course which is itself a course of full-time education, notwithstanding that he is himself only a part-time student. Accordingly, by virtue of that regulation he is not to be treated as available for employment under regulation 7 of those Regulations, as amended by S.I. 1982/907, even though he is prepared to terminate the course immediately a suitable vacancy becomes available to him. The meaning of full-time education is a question of fact for the benefit officer or, as the case may be, the appeal tribunal to decide upon the evidence. R(SB) 26/82 distinguished. See also 30.4.3 ii *below*, and R(SB) 41/83. R(SB) 40/83

iii The issue before the Commissioners was the application of regulation 6 of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981, and in particular of the analogy provision in regulation 6(u). The Commissioners held that the term analogous as used in regulation 6(u) meant 'similar in attributes' where the attributes were relevant to the question whether it was reasonable to expect a claimant to be available for employment: that the circumstances falling outside the scope of regulations 6(a) to (t) fell into two classes, namely those which were expressly or impliedly excluded by one or other of those paragraphs and to which the analogy provision could not apply, and those which were not excluded (see R(SB) 16/87, 30.4.1 *vbelow*): that it was a question of fact whether any particular circumstances, other than those expressly or impliedly excluded, were analogous: that a claimant must satisfy either by direct conformity or by analogy all the qualifying conditions of one or more of the regulations 6(a) to (t): that it could not be asserted as a matter of principle that age could never under any circumstances be analogous to 'physical or mental disablement' for the purposes of regulation 6(e): that the terms 'no further prospect of employment' and 'no prospect of future employment' in regulation 6(e) and (f) respectively meant that the claimant had no realistic prospects of securing employment again, not merely poor prospects: and that consideration of whether it was reasonable to impose the condition of availability for employment, as required by regulation 6(u), was not the same thing as exercising a general discretion to allow or refuse a claim. See also R(SB) 6/87 (30.1.4 iv *below*). R(SB) 5/87 (T)

iv The claimant, aged 59 and unemployed since 1980, applied to have the requirement to be available for employment waived in his case and to be awarded the long term rate of supplementary allowance retrospectively. With regard to regulation 6(u) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 the Commissioner affirmed the guidance given in R(SB) 5/87 (30.4.1 iii *above*). With regard to regulation 6(e) they held that it does not follow that because physically capable of light work a person has further prospects of employment. For a synopsis of this decision with regard to backdating see 17.6.5 iii *above*. R(SB) 6/87 (T)

v An unemployed claimant was separated from his wife but had custody of their daughter for 2 days of each week. The question was whether he could be expected R(SB) 11/87

from the condition of availability for employment by means of Regulation 6(a)(i) of the Supplementary Benefit (Conditions of Entitlement) Regulations. held that the claimant was no longer a partner when he left his wife; that Regulation 6(a)(i) could be satisfied during a given week if the claimant had a dependant child living with him for only part of the week; but that, for the claimant to be entitled to the long term rate of benefit, the dependant would need to have lived with him as a member of his household for part of every week during the 52 week qualifying period. R(SB) 28/84 and R(SB) 14/87 followed.

- R(SB) 16/87 vi The condition that she should be available for employment was imposed on a divorcee when her only child reached age 16, her benefit then being revised from the long term to the ordinary rate. The Commissioner held that Regulation 6(a)(i) of the Supplementary Benefit (Conditions of Entitlement) Regulations 1981 could no longer apply because when her son attained age 16 he was no longer a 'child'. He further held that, following R(SB) 5/87, iii above, Regulation 6(a)(i) fell into the class of provisions which were expressly or impliedly excluded from consideration under the analogy provision of Regulation 6(u).
- R(SB) 25/87 vii A claimant was undergoing a six months' pupillage as a barrister, receiving no remuneration. The Commissioner held that the claimant could not bring himself within Regulation 7(1) of the Supplementary Benefit (Conditions of Entitlement) Regulations and was therefore not entitled to benefit throughout his pupillage.
- R(SB) 10/91 viii The Commissioner decided that;
- a. the fact that a claimant is put onto quarterly signing does not, of itself, initiate a review involving Regulation 6(e) and (u) of the Conditions of Entitlement Regulations;
 - b. Regulations 72(1)(a) of the Adjudication Regulations refers only to clear mistakes of fact or law arising because an officer has failed to act as he was obliged to do as part of his duties.

See also 30.4.1 iii, 30.4.1 iv, 17.6.5 ii and 17.6.5 iii.

2 Engaged in remunerative full-time work

i For the purposes of determining whether a claimant was in remunerative full-time work within the meaning of regulation 2 of the Single Payments Regulations 1980, regulation 2 and 10 of the Conditions of Entitlement Regulations 1980 (and in particular regulation 10(d) thereof) required to be considered. [See now regulation 2 of the Single Payments Regulations 1981 and regulations 2 and 9(2)(d) of the Conditions of Entitlement Regulations 1981]. See also 17.3.9 vii. R(SB) 19/81

ii In relation to a claim for supplementary benefit for a period during which the company which the claimant had recently joined was closed down for a holiday, the appeal tribunal held that it was not a recognised or customary holiday within the meaning of regulation 9(1)(a) of the Conditions of Entitlement Regulations 1981, because it was an enforced holiday. The Commissioner held that this was the wrong test. 'Recognised or customary holiday' in regulation 9(1)(a) had the same meaning as it has under the Social Security Act 1975. See R(U) 2/51, 1.14.3 ii, R(U) 11/53, 1.14.1 ii, 1.14.3 v, 1.14.5 ii, R(U) 8/64 1.14.5 v *above*. R(SB) 7/84

iii A man had been in employment for a salary paid monthly in arrear. The last such payment for a complete month was made to him on 30.10.82. On 12 November 1982 his contract of employment was terminated and he was paid a fortnight's salary for the period from the 20th October, plus one day's holiday pay which was t h e n due to him, plus 7 weeks salary in lieu of notice. On 15 November 1982 he claimed supplementary benefit. The question in issue was as to the length of the period during which, by reason of the above payments, under regulation 9 of the Conditions of Entitlement Regulations 1981 he fell to be treated as engaged after 12 November 1982 in remunerative full-time work for the purposes of section 6(1) of the Act and so excluded from supplementary benefit. This, in turn, depended upon the extent to which the above sums fell by virtue of regulation 9(2) of the Resources Regulations 1981, as modified by regulation 9(3) of the Conditions of Entitlement Regulations 1981, to be taken into account for any period subsequent to 12 November 1982. The Court of Appeal, in setting aside the majority decision of a Tribunal of Commissioners, held that in the circumstances of this case the R(SB) 23/84 (T)

October payment was not relevant and that the length of the period to which the three November payments related, or were treated as relating, had to be calculated on a consecutive, not a concurrent, basis and that the claimant in this case was debarred from supplementary benefit for a total of 9 weeks and one day after 12 November 1982, namely until 14 January 1983, inclusive of that day.

[Editorial Note: regulation 9 of the Conditions of Entitlement Regulations 1981 was subsequently amended with effect from 10.4.84 by the Conditions of Entitlement Amendment Regulations 1984 (SI 1984/518) and the reader is referred to regulation 9 of the 1981 Regulations, as so amended, for the effect of the amendment].

- R(SB) 34/84 iv Regulation 9(1) of the Supp. Ben. (Conditions of Entitlement) Regulations 1981; regulation 7(1)(a) of the Supp. Ben. (Determination of Questions) Regulations 1980 - A claimant for supp. ben. had ceased his normal occupation as a (self-employed) share fisherman on 13 January 1983. He then fell sick and did not work from 14 January to 9 February. During the next two days he worked for a total of 24 hours. He was then sick again until 18 February. On 19 February he registered for employment and on 21 February he claimed benefit. His claim was disallowed on the basis that he had ceased to work on 12 February and by virtue of sub-paragraph (c) of the above-mentioned regulation 9(1), he had to be treated as in remunerative full-time work for 14 days thereafter, i.e. until 26 February. The appeal tribunal held that the claimant had ceased to work for more than 14 days thereafter, i.e. until 26 February. The appeal tribunal held that the claimant had ceased to work for more than 14 days before he made his claim; that accordingly regulation 9(1)(c) had no application and that under regulation 7(1)(a) of the Determination of Questions Regulations, he became entitled to the benefit on the first day after his claim, namely on 28 February 1984. The claimant contended that he in fact ceased to be engaged in remunerative full-time work on 14 January 1983; that the 24 hours of work he did during the week ended 11 February 1983 did not constitute remunerative full-time work within the meaning of regulation 9(1)(a) and that accordingly the 14 day period prescribed under regulation 9(1)(c) ended on 27 January and that he then became entitled to the benefit. The Commissioner said that he had no doubt this would have been the case, had the claimant claimed within that 14 day period; but he did not claim until 21 February, which was more than 14 days after his ceasing to be in remunerative full-time employment, namely 13 January 1983, so that he did not lose title by virtue of regulation 9(1)(c) (paragraph 8). He further held that where more than 14 days have elapsed between the date the claimant ceases to be engaged in full-time work and the date of his claim for supp. ben., regulation 9(1)(c) has no application and the date from which entitlement commences is determined by the opening words of regulation 7(1)(a) of the Determination of Questions Regulations (para 8); the exception contained in regulation 7(1)(a) only operates where regulation 9(1)(b) or (c) of the Conditions of Entitlement Regulations has, in any specific case, actually applied (para 9).
- R(SB) 11/85 v The Commissioner held that for the purposes of reg 9(1) of the Conditions of Entitlement Regs 1981 only earnings of a positive amount after the application of regs 10, 11 and 12 of the Resources Regs 1981 were relevant, although the actual amount was immaterial (para 11(1)). (For full summary of this case see 30.2.3 xvi *above*).

3 Relevant education

i A 16 year old boy left school at the end of the Spring term 1981. On 17 May 1981 he returned there to sit a 2 hour GCE examination. His name remained on the school register until then and was then removed. On 27 April 1981 the boy had registered for employment and claimed supplementary benefit. This was refused. On appeal to the appeal tribunal the question arose under section 6(2) and (3) of the Supplementary Benefits Act 1976 whether he was, or should be treated as, receiving 'relevant education' (which would have barred him from entitlement to the benefit claimed). This in turn raised the question whether, under regulation 11 of the Conditions of Entitlement Regulations 1980 the boy was a person in respect of whom Child Benefit would have been payable if it had been claimed and, for the purposes of that regulation, regulation 5 of the Determination of Questions Regulations 1980 made provision for such a child benefit question to be referred by the benefit officer or, as the case might be, the appeal tribunal to an insurance officer for determination. However, the appeal tribunal purported to decide that question for themselves and allowed the appeal. The Commissioner held that:-

R(SB) 22/82

1. where such a question arises in the course of a determination of a claim for supplementary benefit, the question must be referred to an insurance officer for determination (paragraph 6 and 10);
2. where the question arises during the benefit officer's determination, it is he who should refer the question, where it arises after the claimant has appealed to the appeal tribunal or the existence of the question is not appreciated until then, either the appeal tribunal should refer the question or the benefit officer may review his decision and himself refer the question; the guiding consideration as to which method is adopted should be which is the speedier process (paragraphs 6 and 10);
3. the requirement in regulation 5(4) of the Determination of Questions Regulations 1980 to 'determine the supplementary benefit entitlement of the claimant on the assumption that the decision of the question referred will be adverse to him' means adverse to his claim for supplementary benefit (paragraph 13). See also R(SB) 26/82.

[Note: regulation 11 of the Conditions of Entitlement Regulations 1980 was subsequently consolidated and amended - see regulation 10 of S.I. 1981/1526 and regulation 6(8) of S.I. 1981/907. Regulation 5 of the Determination of Questions Regulations 1980 was similarly amended by regulation 4(4)(a)(ii) of S.I.U. 1982/907.]

ii A claimant for supplementary benefit left school in July 1981, aged 16. He registered for employment. He failed to find any and returned to school in September 1981 to study for 2 further 'O' level examinations. He remained willing to accept immediately any suitable vacancy which might become available for him. Child benefit was paid in respect of him at all material times. In September 1981 he claimed the supplementary benefit concerned. His claim was rejected. On appeal the appeal tribunal awarded him benefit on the grounds that the claimant had complied with regulation 7(2) of the Conditions of Entitlement Regulations 1980. A Tribunal of Commissioners held that:

R(SB) 26/82
(T)

1. the exclusion from supplementary benefit (in section 6(2) of the Supplementary Benefits Act 1976) of a person under 19 applies only if he is in receipt of full-time education by attendance at an establishment recognised by the Secretary of State as being or as comparable to, a college or school; unless his attendance is full-time the claimant has no need to invoke the 21 hour exception in regulation 7(2) (paragraph 16);
2. whether the education is full-time must be determined by reference to the hours of compulsory attendance; a person may be compulsory attending the establishment during hours when he is not attending such a course of education at that establishment, but a person cannot be attending such a course during hours when he is not physically present there or participating in some compulsory activity directly controlled by it (paragraph 18);

3. in calculating the hours involved in attending a course of education, account should be taken only of time spent:-
- a. in the class room under the instruction or supervision of a teacher;
 - b. on certain activities off the school premises which are an integral part of the course and are conducted or supervised by a teacher;
 - c. on compulsory and predetermined periods of private study on the premises of the establishment (paragraph 24).

See also 30.4.1 *ii above*.

- R(F) 2/85
(T) iii A youth left school at the end of the Easter term 1983. He was then over 16. Thereafter he was not included in the school register, but, by pre-arrangement with the headmaster, on 25, 26, 27 and 28 April 1983 he returned to the school for the sole purpose of sitting the GCE examination. On 15 April 1983 he had claimed supplementary benefit and the question in issue was whether on that date or at any medical time thereafter he was in receipt of full-time education for the purposes of s.2(1)(b) of the Child Benefit Act 1975. A Tribunal of Commissioners held that he was not (para 2(3)); the question whether a person is receiving full-time education within the meaning of the Act is a question of fact to be ascertained by looking at the substance of the overall situation (paras 13 and 17(2)); the presence or absence of the claimant's name on or from the school register was not conclusive, but was a powerful factor (para 17(1); in the absence of special features indicating the contrary, attendance at a school, where he had previously been undergoing full-time education, by a former pupil to sit examination was not a return to full-time education (para 19); the claimant ceased to be in receipt of full-time education for the purposes of the above Act on 11 April 1983 (para 12).
- R(SB) 22/85
(T) iv In September 1983 a claimant aged 16 claimed a supplementary allowance. She was studying at a College of Further Education for 14 hours a week for two A levels and one O level. The substantive question in issue was whether for the purposes of s.6 of the Supp. Ben. Act 1976 this was relevant education or for that purpose full-time education. A Tribunal of Commissioner, under the law existing at the relevant time, held that it was not and in reaching that conclusion they held that the expression 'full-time' as used in s.6(3) should be construed in its ordinary everyday sense and that the question whether for the purposes of s.6 a person is receiving relevant education constituted a question of fact (R(F) 4/62 followed). (Paras 6 to 13). (For decision on jurisdictional question see 17.3.2 *xviii above*).
- R(SB) 34/85 v A girl left school at the age of 16 in June 1983. She started full-time employment on 15.8.83. Her first wages were not payable until 27.9.83 and she was not entitled to any advance of pay. She claimed a supplementary allowance. It was held that, although by virtue of r.9(2) of the Conditions of Entitlement Regs. 1981 she was not to be treated under r.9(1) *ibid* as engaged in remunerative full-time work for the purposes of s.6(1) of the Supp. Ben. Act 1976 until the expiration of the period of 15 days from the beginning of her engagement in that work and although by virtue of r.7(3) of the CB (General) Regs. 1976 child benefit was not payable in respect of her for any week in which she was engaged in full-time employment, nevertheless by virtue of s.6(2) of the Supp. Ben. Act 1976 she was not entitled to supplementary benefit until at any rate 5.9.83 because until that date by virtue of r.10 of the Conditions of Entitlement Regs. 1981 she fell to be treated as (continuing to be) receiving relevant education (paras 6 to 9). It was also held that she was not entitled to a payment under the Single Payment Regs. 1981 or under the Urgent Cases Regs 1981 (see 30.3.1 *xxiii above* and 30.5.1 *ii below*). (Paras 14 to 16).
- R(SB) 8/86 vi A beneficiary aged 29 and having two dependant children was awarded a grant from her local education authority to attend a full-time course of business studies. It was held that for supp. ben. purposes the claimant must be regarded as a student rather than as in receipt of relevant education. Only a person who had not attained the age of 19 could actually be in receipt of relevant education. For the effect on the treatment of the claimant's education grant see 30.2.3 *xxi above*.

vii On the question whether a claimant who is treated as in relevant education can escape disentitlement from Supp. Ben. by way of reg. 11 of the Conditions of Entitlement Regs. 1981, the Commissioner held that the word “person” in reg. 11(c) and 11(d) was to be construed as meaning an individual or natural person, and as excluding a body corporate or unincorporate such as a LA. R(SB) 2/87

4 Temporary absence from GB

See Chapter 19 - International subjects.

Part 5: Urgent cases

Sections 4 and 14(1) and 2(c) of the 1976 Act and the Urgent Cases Regulations

1 General considerations for entitlement

i Where a man claimed a single payment of supplementary benefit in order to visit his seriously ill mother who was resident in India, it was held that the need (as distinguished from the circumstances) arose outside Great Britain (see regulation 6(1)(d) of the Single Payments Regulations 1980 and regulations 6(1)(f) of the Urgent Cases Regulations 1980) (paragraphs 15(7) and 20(3)). See also 30.3.1 viii, 30.3.6 iv, 30.3.8 *ixabove* and 30.5.3 ii, 30.5.4 *ibelow*. R(SB) 14/83

ii It was held that a girl who left school at the age of 16 in June 1983, but by virtue of r.10 of the Conditions of Entitlement Regs 1981 still fell to be treated as receiving relevant education for the purposes of s.6(2) of the Supp. Ben. 1976 was by virtue of that section not entitled to a payment under the Urgent Cases Regs 1981 (paras 15 and 16). (For fuller summary of this case see 30.4.3 *vabove*). R(SB) 34/85

2 Emergency relief

i The claimant lived in a caravan. During the first week in January 1981 he had a mental breakdown and destroyed many of his belongings, including the interior fittings and equipment of his caravan and his spare clothes. He was immediately admitted to hospital where he remained until 19 February 1981. While he was in hospital the Social Services Department acquired a replacement caravan for him and on 10 February 1981 (i.e. more than 14 days after the occurrence) they requested on his behalf an urgent needs payment for the purchase of clothing and items for the replacement caravan. The benefit officer rejected the claim on the grounds that the claimant had not been affected by a 'disaster' within the meaning of regulation 8(1) of the Urgent Cases Regulations 1980. According to him 'a disaster in the normal terms in a flood, fire, earthquake, storm or similar sudden mishap on a large scale'. The appeal tribunal decided that the claimant had been affected by a disaster within the meaning of the regulation but dismissed the appeal on the other grounds (see 17.3.9 *xivabove*). The Commissioner held that:- R(SB) 1/83

1. 'the meaning of an ordinary word of the English language is not a question of law. The proper construction of a statute is a question of law. If the context shows that a word is used in an unusual sense the court will determine in other words what that unusual sense is [Where the word has its ordinary meaning] it is for the tribunal which decides the case to consider, not as law but as fact, whether in the whole circumstances the words of the statute do or do not as a matter of ordinary usage of the English language cover or apply to the facts which have been proved. If it is alleged that the tribunal has reached a wrong decision then there can be a question of law but only of a limited character. The question would normally be whether their decision was unreasonable in the sense that no tribunal acquainted with the ordinary use of language could reasonably reach that decision.' -*Brutus v. Cozens*[1972] 2 All ER 1297 at 1299 - cited to and followed by the Commissioner (paragraph 12). See R(SB) 24/85 (T).

2. In regulation 8(1) of the above-mentioned Regulations 'disaster' should be interpreted in its every day meaning, namely, 'anything which befalls of a ruinous or distressing nature; a sudden or great misfortune, mishap or misadventure; a calamity' (OED); but it does not embrace a calamity which is purely self-induced (e.g. by drunkenness), although the position would be totally different for his (the drunken man's) family who were in no way instrumental in bringing about the damage, but were necessarily involved in its consequences (paragraph 13).

3. In the present case, whether or not a disaster had occurred was essentially a question of fact to be determined in the circumstances of the case. On the evidence before them the tribunal was entitled to come to the conclusion that in affecting the damage the claimant was so under the influence of his mental breakdown that he was not consciously instrumental in bringing upon himself the misfortune in question. Accordingly, they were entitled to reach the view that he satisfied regulation 8(1) (paragraph 14).

- R(SB) 24/85
(T) ii A coal miner without employment owing to a trade dispute claimed a single payment to replace outgrown clothes and shoes for his children. As to the shoes, it was held by an appeal tribunal that this was an obvious danger to the health of the children; that this was not a situation induced by them and was a disaster in the terms of r.8 of the Urgent Cases Regs 1981 (R(SB) 1/83). A Tribunal of Commissioners held that 4 questions had to be answered affirmatively before r.8(1) could apply:-Had there been a disaster? Had a member of the assessment unit been affected by it? Was it because of that particular disaster that the need for the item arose? Did the Single Payment Regs 1981 not apply to the item in question in the circumstances? They further held that 'disaster' had its everyday meaning (R(SB) 1/83) and at least contained two elements, namely, that it could be said to have occurred and that by its nature it resulted in significant harmful or distressing consequences; the fact that an event caused serious harm did not of itself necessarily turn it into a disaster; the need for the item had directly to flow from the disaster and in the present case the serious effect of the trade dispute on the finances of the household did not cause the need for larger shoes for the children. (Paras 7, 8 and 11 to 14). See also R(SB) 17/85.

3 Other urgent cases

- R(SB) 15/82 i A claimant registered for employment on 15.12.80 after a lengthy period of incapacity for which benefit was paid. The last weekly payment was made on Wednesday 10.12.80. On 11.12.80 he was certified fit for work after 13.12.80. Final payment of benefit was made on 11.12.80 in respect of 11 to 13.12.80. There was no entitlement for unemployment benefit. He registered for work on 15.12.80 and claimed supplementary benefit on 16.12.80. On consideration of regulation 9 of the Resources Regulations 1980 the benefit officer made an award from 21.12.80 only. The appeal tribunal upheld this on the grounds that the claimant's requirements were met up to and including 20.12.80 by the invalidity benefit payment. The Commissioner held that:-

1. by virtue of regulation 7 of the Determination of Questions Regulations 1980 the claimant was not entitled to supplementary benefit from and including 20.12.80 (not 21.12.80);

2. under regulation 9 of the Resources Regulations 1980 the final payment of invalidity benefit was ‘payable’ on 11.12.80 (in respect of 11 to 13.12.80) and not, as contended, on 17.12.80; even if it had been payable on 17.12.80, it would only have been in respect of 17 to 19.12.80:

3. accordingly, the decision was erroneous in law.

The Commissioner also directed that on rehearing the case, consideration would be given to the possible application of regulation 12(1) of the Urgent Cases Regulations 1980 (subsequently consolidated as regulation 12(1) of the Urgent Cases Regulations 1981) in respect of the period from 16 to 19.12.80 inclusive.

ii ‘Critically ill’ for the purposes of paragraph 1(a) of Schedule 1 to the Urgent Cases Regulations 1980 means ‘in danger of imminent death from illness’ (paragraph 21). See also 30.3.1 viii, 30.3.6 iv, 30.3.8 ix, 30.5.1 *above*, and 30.5.4 *below*. R(SB) 14/83

iii A claimant had been in receipt of a supplementary allowance for herself and her young child. This was stopped on the grounds that she was living with a man as his wife. She alleged that the man had never handed her any money and that she had no access to the relevant information about him which might have been correct. She was alleged by her social work to be destitute. The appeal tribunal held that the claimant was living with the man as his wife during the relevant time and on the question of the application of regulation 23 of the Urgent Cases Regulations 1981, they held that the regulation did not apply cause the man’s earnings could not be established. The Commissioner held that it is not enough for a claimant to assert that she does not have access to relevant information, whereby it could be open to frustrate the legislation; the question must be whether a claimant might reasonably, and with due diligence, be able to obtain the information, especially when that information relates to another person. The Commissioner also held that, in respect of sub-paragraphs (a) and (c) of regulation 23(1) the onus of proof is on the claimant; conversely, under sub-paragraph (b), the onus of proof is on the benefit officer to show that the man would not be entitled to supplementary benefit if he made a claim for it (paragraph 9). R(SB) 29/83 approved and applied: see 17.3.2 xiv *above*. See also R(G) 3/71, 4.2.4 ii *above*. R(SB) 32/84

4 Discretionary amounts

i A man claimed a single payment of supplementary benefit in order to visit his seriously ill mother who was resident in India. He was held not to be entitled to it because his mother was not a member of his assessment unit and so the condition of regulation 30 of the Single Payments Regulations 1980 and regulation 24 of the Urgent Cases Regulations 1980 that such payment was the only means of preventing serious damage or risk the health or safety of a member of the claimant’s assessment unit was not satisfied (paragraph 7 and 9). See also 30.3.1 viii, 30.3.8 ix, 30.5.3 ii, *above*. R(SB) 14/83

5 Recovery

- R(SB) 27/86 i After starting full-time work a claimant received payments under the Supplementary Benefit (Urgent Cases) Regulations 1981 for a period pending receipt of his first wage. A decision that the whole amount paid was recoverable was confirmed by the appeal tribunal on the ground that the claimant did not satisfy regulation 25(6)(b) because his income resources exceeded his requirements; the tribunal took as his income resources for this purpose the weekly average of his earnings over 10 weeks. By so doing the Commissioner held that the tribunal had erred in law. The question of recoverability should be decided solely on the facts ascertainable at the date of each payment under the Urgent Cases Regulations. If regulation 25(6)(b)(i) was satisfied, consideration must then be given to regulation 25(6)(b)(ii), these conditions being cumulative.

Part 6: Trade Disputes

Sections 1(3), 4, 8 and 9 of the 1976 Act and the Trade Disputes and Recovery from Earnings Regulations 1980 and section 6 of the SS (No. 2) Act 1980

1 Urgent trade disputes cases

- R(SB) 24/85
(T) i The inability of a claimant to pay for the replacement of his children's outgrown shoes owing to his being without employment due to a trade dispute was held by a Tribunal of Commissioners not to have been a disaster within the meaning of Part II of the Urgent Cases Regs. 1981 - see r.4 of the Trade Disputes and Recovery from Earnings Regs 1981. For fuller synopsis of this case see 30.5.2 *ii above*.

2 Recovery by deduction from earnings

(At the time of going to print there was no recorded decision on this matter)

3 Exception from disregard and deduction from benefit under s.6(1) of the SS (No.2) Act 1980

- R(SB) 17/85
(T) i A married coalminer with one child claimed supp. ben. whilst not working owing to an industrial dispute. The question in issue was whether deduction should be made under s.6(1)(b) of the SS (No.2) Act 1980 (cases affected by trade disputes) from the benefit otherwise due to him. He contended that it should not be, because that section only applied where s.8 of the Supp. Ben. Act 1976 applied and that section, it was argued, did not apply, because para. 3(1) of Sched. 1 to that Act did and para. 12 of Sched. 3 to the Requirements Regs 1983 was intended to fill the gap created by that exception (para. 6). Alternatively it was argued that in the circumstances of the case there was no need to have recourse to section 8 at all, because para. 12 of Sched. 3 to the Regulations applied (paras. 7 to 9). A Tribunal of Commissioners held that s.8(1) of the 1976 Act applied to persons identified under both subparas. (1) and (2) of para. 3 of Sched.1 to the 1976 Act (para. 10); that it was a precondition of para. 12 of Sched.3 to the Regs that s.8 of the 1976 Act applied (para.7); that para. 12 of Sched. 3 to the Regs applied so as to modify the operation of section 8 and both had to be read together (para.12); that s.8 of the 1976 Act did apply to the claimant and accordingly s.6(1) of the 1980 Act also applied (para. 13). They further held that it was not relevant to the

deduction whether strike pay to the same amount as the deduction was in payment (para 4). (This decision followed an unsuccessful application by the claimant direct to the Divisional Court for a judicial review of, amongst other things, a decision of the adjudication officer making the above deduction - see 18.3.1 ii *above*.)

ii The claimant, a miner living with his wife and two children was without employment owing to a trade dispute. Some 5 weeks after going on strike, he applied for and received from his local Social Work Department a 'one-off' payment of £15 to meet overdue hire purchase instalments on a child's push chair and a washing machine. He had never before fallen into arrears with his payments. The appeal tribunal found that this payment of £15 was a payment received by reason of the claimant's lack of employment and so a 'relevant payment' within the meaning of s.6(1)(a)(i) of the SS (No. 2) Act 1980. On appeal to the Commissioner the focus of the appeal was upon the correctness or otherwise of taking into account as a resource of the claimant that sum of £15. The Commissioner held that, in the circumstances of this case, the tribunal were entitled to hold that this £15 was a 'relevant payment' within the meaning of s.6(1)(a)(i) and so did not fall to be disregarded for the purposes of the Supp. Ben. Act 1976. However, he also held that this sum of £15 was a capital, not an income, resource of the claimant and that, in the absence of any other capital resources of his, this payment did not affect his entitlement to benefit. (Paras. 1, 6(4), 7, 8 and 11.)

R(SB) 29/85

Part 7: Aggregation

Sections 32A and 34(1) and (3) of, and paragraph 3 of Schedule 1 to, the 1976 Act and the Aggregation Regulations 1981.

1 Married Couples (See also Chapters 4.1.2, 4.1.4, 4.1.5, 4.1.7, 4.1.8, 5.3.4 and 5.3.5)

R(SB) 12/82 i A claimant on widowhood returned to Pakistan where she married a student who was unable to maintain her there. Two months later she returned to England, pregnant. She was unable to obtain work. Her husband made no contribution to her maintenance. She obtained accommodation through family connections and maintained herself through the assistance of others. She alleged that her husband could not join her in this country owing to immigration restrictions, but stressed that that did not mean they separated and indicated that she thought that the restriction on his entry into the United Kingdom would not be permanent. The claimant sought a supplementary allowance in her own right. The benefit officer took the view that her separation from her husband was only temporary and that she was not entitled to the allowance in her own right. The main question in issue was the meaning of the phrase 'is absent from Great Britain while his partner remains in Great Britain' in regulation 2(3)(c) of the Aggregation Regulations 1980. The Commissioner held:-

1. the phrase contemplated a situation where a couple have been living together in Great Britain, but one has left the country whilst the other stays. The word 'remains' contemplated that the person concerned was in Great Britain at the time when the other's absence from it began (paragraph 7);

2. on the above facts, the conclusion that the claimant was only temporarily separated from her husband (paragraphs 10 and 12);

3. the failure to give reasons why the claimant was not entitled to a payment under the Urgent Cases Regulations 1980 was an error of law (paragraph 13).

R(U) 16/62 distinguished (paragraph 7).

R(SB) 17/84 ii Claimant for supplementary benefit had lived in the United Kingdom since the age of 2. In 1981 she returned to Pakistan to enter into an arranged marriage, despite her own opposition. She returned to the UK some 3 months later, pregnant, and later she claimed supplementary benefit. The main concern has never entered the UK. The question in issue was whether this marriage was valid at English law. The Commissioner held that the claimant's ability to claim supplementary benefit in her own right depended upon whether her marriage was void under English law; that question had to be determined by reference to the relevant law as expounded in *Hussain v. Hussain* [1982] 3 WLR 679; [1982] 3 All ER 369.

2 Unmarried couples (see also Chapter 4.2)

- i In a claim for supplementary benefit the question arose whether the claimant was living with a woman as his wife for the purposes of paragraph 3(1)(b) of Schedule 1 to the Act (aggregation of requirements and resources). The Commissioner held that the enactment in the proviso to section 26(3) of the Social Security Act 1975 had exactly the same effect as the corresponding expression in paragraph 3(1)(b) above (cf R(G) 3/71 with *Crake v. Supplementary Benefits Commission* [1982] 1 All ER 498; SB 38 and the criteria set out in the Supplementary Benefits Handbook which were approved in the *Crake* case): that exactly the same criteria applied whether or not consideration was being given to a claim to supplementary benefit or to widow's benefit and he observed that the same approach was applied in R(G) 3/81. *Robson v. Supplementary Benefits Commission* (unreported) heard on 14 July 1981 was not followed because it is not possible to ascertain whether the persons concerned intend to live together as man and wife - and often they have different intentions - otherwise than by having regard to their conduct at the relevant time. The Commissioner took the view that account could be taken of the stability of the relationship, but that, as in this case, the absence of an intention to marry did not mean that the couple had no intention of living together as though they were married. Cited in R(SB) 19/85. R(SB) 17/81
- ii The claimant lived with his fiancée in rented accommodation during university vacations. The fiancée lived separately from his during term time. Then she lived in a bed-sitting room near the university. She received a local authority student grant. The Commissioner considered in some detail the meaning of 'living together as man and wife' in the above context (paragraph 5) and he held that the claimant and his fiancée were an 'unmarried couple' for the purposes of the Resources Regulations 1980 even during term time; that the fiancée's grant should be taken into account as part of the claimant's resources, but the outgoings in respect of the fiancée's bed-sitting room were not part of the claimant's requirements. Distinguished in R(SB) 19/85. R(SB) 30/83
- iii A married man went to live with a woman who was in receipt of a supplementary allowance. He was in full-time employment. However he did not give her any money, but he did continue to maintain his wife and child and he returned to his wife some weekends. The fundamental question in issue was whether, for the purposes of supp. ben., a person could at one and the same time be a member of more than one married or unmarried couple. The Commissioner held that, in the context of the supp. ben. legislation a person could not at any given time be a member of more than one household and so could not be a member of more than one married or unmarried couple (para. 12); if a person was maintaining and, from time to time, living in a home which included that person's spouse, there was an initial presumption that that person and his or her spouse were a married couple, although that presumption could be readily displaced by the evidence (para. 13); reg. 7 of the Aggregation Regs 1981 conferred a substantial measure of discretion upon the adjudication officer and accordingly upon the appeal tribunal and where a tribunal found that a husband and wife relationship existed between an unmarried couple in circumstances such as those in the present case, careful consideration should be given to that regulation (para. 17). R(SB) 8/85
- iv A woman lived in Manchester with a man as his wife. He was then moved to London for the purposes of his work. The woman was in receipt of renal dialysis treatment in Manchester and intended to join the man in London as soon as the treatment could be arranged for her there. However this was not available for her in London and the wait for it to become available for her there was likely to be a long one. In the meantime she continued to live in Manchester and she claimed supp. ben. The question in issue was whether by virtue of r.2 of the Aggregation Regs 1981 she should still be treated as living with the man as his wife. Ultimately the woman became seriously ill. The man returned to Manchester and they got married. The Commissioner held that in the circumstances of this case, while the man and the woman were living apart, they could not be treated as living together as man and wife. R(G) 3/71 considered; R(SB) 30/83 distinguished; R(SB) 17/81 cited. R(SB) 19/85

R(SB) 35/85 v A man had been living with the claimant and her brother since 1974. At that time the man was very depressed and needed help and care which the claimant and her brother were willing to give. The man on his part contributed to the expenses of the household in cash and kind. The brother died in 1976 and the man continued living there. The question in issue was whether the man and the woman (who in 1984 was a widow in her early 70's) were living together as man and wife. The Commissioner held that the fact that a man and a woman lived in the same household might raise the question as to whether they were living as man and wife, but in each case it was necessary to find out why they were living in the same household; if there were an explanation which indicated that they were not there because they were living together as man and wife, they could not be so described for supp. ben. purposes (*dicta in Crake and Butterworth v. SBC* [1982] 1 All ER 498; SB 38 followed); on the facts of this particular case companionship and mutual convenience explained why they were living together and in the context of the circumstances of the case they were not living together as husband and wife. (Paras. 7 and 8.)

3 Dependants

- i The claimant's son was severely mentally handicapped and lived from Monday to Friday in a special school, funded and staffed by the local authority. He was not subject to any type of order made by the Courts. The question in issue was whether he was in the care of the local authority within the meaning of Regulation 4(2)(d)(i) of the Aggregation Regulations 1981 when he was residing at the special school. The Commissioner held that in that regulation, the words 'in the care of a local authority' should be given their literal and wide meaning; the provisions of that regulation were not to be read as subject to, or in the technical sense given to them by the Child Care Act 1980, the subject matter of which was different from that of the social security legislation (paragraph 7); dictionary aid could be sought in construing statutory provisions (paragraph 7); explanatory notes issued by Government departments regarding the working of an Act were inadmissible for the purpose of construing the Act (paragraph 7); under Regulation 4(3) of the above Regulations, the child was to be treated as a member of the claimant's household during the period he lived with him, ie Friday to Monday - days to travel being treated as days home (paragraph 8). R(A) 3/73, 15.3.2 ii, *above*, distinguished. See also R(SB) 11/87, 30.7.3 ii, and R(SB) 14/87, 30.7.3 iii *below*. R(SB) 28/84
- ii An unemployed claimant who was separated from his wife had custody of a daughter for 2 days each week. The Commissioner held that to be a dependant of a person a child had under para 3(2) of Schedule 1 to the Supplementary Benefits Act 1976 to be a member of the same household as that person. A person could be a member of another's household for supplementary benefit purposes for a period of part of a week even though supplementary benefit was a weekly benefit. See also R(SB) 28/84 and R(SB) 14/87. Another synopsis of this decision is at 30.4.1 vi. R(SB) 11/87
- iii Benefit was refused for two children of the claimant's former marriage who stayed at his home for alternative weekends and half the school holidays. The fundamental question, which had to be decided on a common sense, factual basis, was whether the children were members of the claimant's household. If they were, a proportion of their weekly requirements would be allowable. Application of the relevant legislation discussed and R(SB) 28/84 (30.7.3 *above*) considered. See R(SB) 11/87, 30.7.3 ii *above*. R(SB) 14/87

4 Nomination of claimant

- R(SB) 6/86 i A married woman living with her husband claimed supplementary allowance and a single payment for the funeral expenses of her grandmother, whom she had cared for prior to the grandmother's death. The Commissioner held in the light of *Stock v. Frank Jones (Tipton) Ltd* [1978] 1 WLR 231 that in Regulation 1A(1)(b)(viii) of the Supplementary Benefit (Aggregation) Regulations 1981 'entitled to Supplementary Benefit' should be applied as if it read 'excepted from disqualification to supplementary benefit'. Also held that Regulation 1A(2)(a) did not impose a time limit for an effective nomination of one of a couple as the claimant, though restrictions were imposed by Regulation 1A(6) if they subsequently wished to change claimant; that in the light of *Insurance Officer v. McCaffrey* [1984] 1 WLR 1353 (see 18.6.2 *i above*) failure to claim was not a bar to entitlement to supp. ben.; and that reports of the Social Security Advisory Committee could be used as aids to construction (R(M) 1/83 followed, 15.4.3 *iii above*) but not Departmental leaflets. Decision affirmed by a Tribunal of Commissioners in R(SB) 19/87, 30.7.4 *ii below*.
- R(SB) 19/87 (T) ii Supplementary allowance was claimed by a married woman living with her husband, who was in full-time work, and 3 dependant children of whom 2 were severely disabled. The issue was whether she qualified as claimant under Regulation 1A(1)(b)(viii) of the Supplementary Benefit (Aggregation) Regulations 1981. The Tribunal of Commissioners rejected the submission that 'entitlement' in condition (viii) meant entitlement following a claim and award. The case of *Insurance Officer v. McCaffrey* pointed to the possibility of a valid distinction in the context of supplementary benefit between entitlement to benefit and payability of benefit. The Commissioners adopted the construction advanced in R(SB) 6/86 (30.7.4 *i above*) which resulted in condition (viii) being read as meaning, 'excepted from disqualification to supplementary benefit on the ground of not being available for work by virtue of one or more of the following provisions - Regulation 6(a), (b), (h), or (hh) of the Conditions of Entitlement Regulations'.
- R(SB) 1/93 iii A change of claimant from one member of a couple to another is not a claim for benefit in supplementary benefit cases. Any question about entitlement arising at the time of the change is to be considered on **review** and is subject to Section 104 of the 1975 Act and the limitations of Regulations 69 and 72 of the Adjudication Regulations.

Part 8: Claims and Payments

Sections 11.14(1) and 2(a) to (c), (e), (g) and (h) to (k) of, and paragraph of Schedule 1 to the 1976 Act and the Claims and Payments Regulations.

1 Claims

i In a claim for a single payment of supplementary benefit to meet the cost of certain garments for the claimant and his wife, the claim was made otherwise than on a form approved by the Secretary of State within the meaning of the provision which, on consolidation, became regulation 3(1)(a) of the Claims and Payments Regulations 1981. The claim appeared subsequently to have been amended (presumably with the exercise of the Secretary of State's discretion under regulation 3(1)(b) *ibid* to accept the claim actually made as sufficient in the circumstances of the case) but there was no notation of any such exercise of discretion in the case papers. The Commissioner observed that in practice regulation 3 was operating with a (wholly desirable) flexibility which belied the rigidity of its opening provision in paragraph (1)(a) and that the exception was the rule. However he said that it would considerably assist the appellate determining authorities if the case papers were to contain a recital of any exercise of the discretion under regulation 3(1)(b). (*For fuller details of this case see 17.4.4 iv above.* See also 12/82 and R(SB) 14/82). R(SB) 6/81

ii A claimant for a supplementary allowance appealed against a decision by the benefit office awarding the allowance only from the week beginning on 20.7.81, the date on which he had completed the claim for the allowance, instead of from 29.6.81 when he had registered for employment at an employment benefit office. The appeal tribunal revised the decision on the grounds that the claimant had been under the impression that by registering as unemployed he was employed, he was also making a claim for supplementary benefit and that, under regulation 5(2)(a) of the Claims and Payments Regulations 1980, that was sufficient good cause to backdate the claim to the date on which he had registered for work. On appeal to the Commissioner the Commissioner held that:- R(SB) 6/83

1. the expression 'good cause' in regulation 5(2)(a) of the Claims and Payments Regulations 1980 and 1981 has the same meaning as it had in the regulations relating to claims and payments for benefits under the Social Security Act 1975 (and its predecessors) and the case law developed in connection with late claims under those Acts sets out principles which are also applicable to the backdating of supplementary benefit claims (paragraph 11). (See also Parts 3-6 of Chapter 13 above).

2. there can be good cause for delay if the delay was due to a mistaken belief *reasonably held*. Once the tribunal had found that the claimant was under the impression that he had made a claim for supplementary benefit on 29.6.81, the first question which they should have asked was whether the erroneous belief was reasonably held and in order to arrive at an answer to that question they should have found the facts upon which such belief or impression was based (paragraphs 12(3) and 13).

3. the expression 'reasonably practicable' in the context of regulation (2)(b) of both the 1980 and 1981 Regulations has a similar meaning to that attributed to the expression by the Court of Appeal in *Wall's Meat Co Ltd v. Khan* [1979] ICR 52 (paragraph 17). See also R(SB) 17/83, 30.8.1 iii and 30.8.4 i below.

iii Mental disablement can of itself be good cause for a late claim. In determining whether the delay of a person claiming on behalf of a claimant is to be imputed to the claimant, the following rules should be applied:- R(SB) 17/83

1. a person who has the personal good cause for delay will not (subject to 2 below) be prejudiced by the delay of someone who chooses to present his claim on his behalf;

2. where a person has once made a claim on behalf of another and subsequently delays some matter; that delay will prejudice the person on whose behalf he presented the claim if the person concerned has to rely on the claim so presented.

The above rules have no application where the person making the claim has been appointed as the representative of the claimant under provisions analogous to regulation 14 of the Claims and Payments Regulations 1980 (regulation 26 of the Claims and Payments Regulations 1981). In relation to such persons the delay of the representative at any time (but not before) the appointment will be attributed to, and thus prejudice, the claimant. (Paragraph 3.) See 13.3.2 x and 30.8. 1 iii, also R(P) 2/85 *above*. See also R(SB) 56/83, 30.8.1 vi *below* and R(SB) 9/84, paras 3 and 5, 30.8.4 ii *below*.

- R(SB) 42/83 (T) iv Where a claim for a single parent is made otherwise than in writing, it is for the Secretary of State alone to determine whether such claim is acceptable. An appeal tribunal has no power to accept a claim made orally before them for the first time.
- R(SB) 48/83 v A person in receipt of a supplementary allowance requested and was made an award in respect of additional requirements. The only question in issue related to backdating of the additional requirements and the claimant relied for one of his contentions on regulation 5 on the Claims and Payments Regulations 1980. The Commissioner held that, where there is an existing award of supplementary benefit made in pursuance of a previous claim, it is not possible to entertain a further claim for such purposes (other than for a single parent) and regulation 5 had no application; additional requirements form part of the overall assessment of supplementary benefit and, if applied for during the currency of an existing award, should be treated as raising a question of review (R(I) 11/62 followed) (paragraphs 6 and 7). See also 17.6.2 iii *above*.
- R(SB) 56/83 vi A severely mentally handicapped claimant for a supplementary allowance had been and was in receipt of a non-contributory invalidity pension and attendance allowance, and had been eligible for a supplementary allowance from and including his 18th birthday on 28.3.79. In July 1981, his mother, on discovering his entitlement to the allowance, wrote claiming it and saying that she understood that her son had been entitled to supp. ben. 'for some time'. The mother's letter was accepted as a claim and the Secretary of State then appointed the mother as her son's representative for the purpose of his claim. In these circumstances, the Commissioner held that only the son's conduct and condition were relevant to the question whether there was good cause for the delay in making the claim (para 9); regulation 5 of the Claims and Payments Regulations was not directed to the scope of the claim, but should only be applied after such scope had been ascertained, in order to ascertain what part of the claim was out of time (para 11); having regard to the wording of the supp. ben. claim forms then at any rate in use, the expression 'I claim all that supplementary pension or allowance to which I am by law entitled' (para 13). The Commissioner accordingly allowed the claimant's appeal and held that he was entitled to supplementary allowance from his 18th birthday (para 21). R(SB) 17/83 para 3 approved and followed. (Para 13 of R(SB) 56/83 considered and modified in R(SB) 9/84). See R(SB) 17/83 30.8.1 iii *above* and 30.8.4 i *below*, and R(SB) 9/84, paras 3 and 5, 30.8.4 ii *below*.

vii Four appeals were heard together by a Tribunal of Commissioners concerning 4 mentally disabled persons. Questions arose which included questions as to the need for benefit officers to investigate in all cases the possibility of retrospective awards and the back dating of awards generally and in particular in respect of a period before the Supplementary Benefit (Claims and Payments) Regulations 1980 came into force on 24 November 1980 and revoked the Supp. Ben. (C and P) Regs 1977. The Commissioner held that:

R(SB) 9/84
(T)

1. It is not incumbent upon the supplementary benefit officer to investigate the possibility of a retrospective award in all cases, but only in cases where the claim specifically states that it is made in respect of an earlier period or the question of backdating is raised by or on behalf of the claimant before the supplementary benefit officer determines the claim (paragraph 11);
2. If the question of backdating is raised for the first time before an appeal tribunal, it should be remitted by the tribunal to the supplementary benefit officer for him to determine (paragraph 12);
3. The question of backdating a claim made after 24 November 1980 for a period before that date is to be determined in respect of that period in accordance with regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1977. The test of 'exceptional circumstances' in the Claims and Payments Regulations 1977 is not the same as the test of 'good cause' in the Claims and Payments Regulations 1981 (paragraphs 15 and 16);
4. A request made after 24 November 1980 for the review of a decision made before that date must by contrast be decided by reference to the regulations in force at the time the review is requested or made. R(SB) 48/84 followed (paragraph 15);
5. The limitation on review of past determinations imposed by regulation 4(2) of the Supplementary Benefit (Determination of Questions) Regulations does not apply where the determination under review was a determination refusing supplementary benefit (paragraph 19).

For full summary of the case see 30.8.4 ii below. See also R(SB) 17/83, 30.8.1 iii *above*, 30.8.4 i *below*, R(SB) 56/83, 30.8.1 vi *above*. Referred to in R(SB) 39/85, 30.8.1 ix *below*.

viii A person claimed a single payment of supplementary benefit in respect of three specific items. the claim was disallowed. The disallowance was upheld by the appeal tribunal and the claimant appealed to the Commissioner. At or about the same time he made another claim for a single payment in respect of the same three items, albeit on different grounds. On that claim the award was made. The claimant however did not withdraw his appeal against the rejection of his previous claim. The Commissioner held that the previous claim was automatically abated as from the date of the award on the second claim and that nothing remained which was appealable.

R(SB) 38/84

ix The question whether 'there was good cause for failure to make the claim before the date on which it was made' in reg. 5(2)(a) of the Supp. Ben. (Claims and Payments) Regulations 1981 was a question of law. R(S) 2/63, 13.3.1 xi *above*, affirmed, and *Shotts Iron Company Limited v. Fordyce* [1930] A. C. 503 quoted in order to stress how important it was for any tribunal considering 'good cause' to segregate findings of primary fact from the conclusions and reasons upon such segregate findings of primary fact from the conclusions and reasons upon such issues of law as arose for determination. R(SB) 9/84, 30.8.1 vii *above*, also referred to.

R(SB) 39/85

x Backdating of a supplementary benefit claim under regulation 5(2)(b) of the Supplementary Benefit (Claims and Payments) Regulations was refused because the supp. ben. claim had been made before a decision on an earlier sickness benefit claim had been received. The Commissioner held that the requirement in regulation 5(2)(b)(ii) merely imposed a time limit for making the supp. ben. claim. It did not prevent the supp. ben. claim being made before the decision on the other benefit had been received.

R(SB) 5/86

xi R(SB) 12/87 A claim for supplementary benefit was received on 3 May 1985 from a claimant whose capital resources had been reduced below £3000 by a payment on 27 April of fees to the nursing home in which she resided. The question was whether her claim could be backdated to 27 April in order to qualify for the transitional protection afforded to those 'in receipt' of benefit before 29 April when more stringent rules for the calculation of benefit had come into operation. Held by the Commissioner that to satisfy regulation 5(2) of the Supplementary Benefit (Claims and Payments) Regulations 1981 it was necessary for the claimant herself to have had continuous good cause for not having claimed earlier; that there was nothing in regulations 3 or 5 of those Regulations to prevent the claim from being treated as if it had been made on 27 April, even though that was a day on which the local office would have been closed; that the term 'special circumstances' in regulation 7(2) of the Supplementary benefit (Determination of Questions) Regulations 1980 would include circumstances in which fixing the benefit day as the day of receipt of another benefit produced a situation adverse to the claimant; and that the words '... in receipt...' in regulation 9(17)(a) of the Supplementary Benefit (Requirements) Regulations must be read as including cases where entitlement had been established whether before or after 29 April 1985 in relation to a period before that date, and whether or not a payment had been made.

2 PaymentsR(SB) 36/84
(T)

i A claimant had been registered for employment from May 1981 to May 1982 at an unemployment benefit office ('UBO') of the Department of Employment ('DE') and receiving supplementary allowance at the ordinary rate. This allowance was paid by girocheques issued by the UBO fortnightly with a Saturday pay day. With effect from 21 May 1982 he elected to discontinue registering but continued to claim the allowance. That allowance then became payable at the long term (higher) rate by order book issued direct from the Department of Health and Social Security ('DHSS'), with a Monday pay day. Owing to administrative error, the claimant continued to be paid by the UBO by girocheque at the ordinary rate until September 1982. He was then sent a sum of money intended to cover the difference between the ordinary and long term rates since 21.5.82 and an amount necessary to bridge the change of payment period. The claimant disputed the correctness of the payment and the matter eventually came before a Tribunal of Commissioners. The evidence disclosed that at all relevant times the periods recorded on the girocheques issued by the UBO as the periods of entitlement to the supplementary allowance covered [by virtue of the administrative arrangements between the DHSS and the DE]. (See para. 13(1) of Decision). The Tribunal therefore considered it material to explore what was the tenor of the 'arrangements' which produced such a result (see 17.4.1 *xx above*). These arrangements were, in short, for the issue by the DE of payments of unemployment benefit and supplementary allowance due to persons who were registered for employment at an UBO and for the conduct of certain other administrative functions connected therewith. The Tribunal, after considering those arrangements in some detail against their historical background, concluded that, in relation to unemployment benefit, the arrangements constituted an agency agreement between the two Departments (see Appendix II to the Decision, paras. 22(4) and 29). In regard to supplementary benefit the Tribunal found it less easy to define with accuracy the status of the existing arrangements between the DHSS and the DE and more difficult still to determine their precise boundaries. However, the Tribunal said that, whilst they did not seek to prejudge the future determination of these matters in cases where they would be in direct issue, they thought it right to record how those matters appeared to them upon the material available to them, as at least a starting point for concurrence - or contrary contention - in which appeared to the Tribunal likely to be a difficult field. The Tribunal then expressed the view that, notwithstanding vigorous submissions pressed upon them in support of a different conclusion, which, as then advised, they were not disposed to dismiss outright, the 'most likely starter' was that the role of the DE in supplementary benefit matters was that of agent to the DHSS as principal. (Paras. 31 to 34 of Appendix II to the Decision). They also expressed the view that it was an over simplification to proceed upon the basis that, because the UBO is an organ of the DE and the supplementary benefit scheme and that accordingly the general principle that notice to one Government Department does not constitute notice to another must axiomatically and universally apply; for whilst that approach might be fully justified as regards claimants subject neither to a condition of registration for employment nor to a condition of availability for employment, in cases where one or other or both of those conditions apply, an *ad hoc* appraisal, devoid of a *priori* presumption, would be essential in any such issue (para. 35 of Appendix II to the Decision). See also R(SB) 10/85 (T).

3 Deductions and payments to third parties

(At the time of going to print there was no recorded decision on this matter)

4 Persons unable to act through age, incapacity, death or for other reasons

i Mental disablement can of itself by good cause for a late claim. In determining whether the delay of a person claiming on behalf of a claimant is to be imputed to the claimant, the following rules should be applied. R(SB) 17/83

1. a person who had personal good cause for delay will not (subject to 2 below) be prejudiced by the delay of someone who chooses to present his claim on his behalf;

2. where a person has once made a claim on behalf of another and subsequently delays some matter, that delay will prejudice the person on whose behalf he presented the claim if the person concerned has to rely on the claim presented.

The above rules have no application where the person making the claim has been appointed as the representative of the claimant under provisions analogous to regulation 14 of the Claims and Payments Regulations 1980 (regulation 26 of the Claims and Payments Regulations 1981). In relation to such persons the delay of the representative at any time after (but not before) the appointment will be attributed to and thus prejudice, the claimant. (Paragraph 3.) See R(P) 1/79, 13.3.2x, R(SB) 6/83, 30.8.1ii, R(SB) 56/83, 30.8.1vi and R(P) 2/85 *above*, and R(SB) 9/84, paras. 3 and 5, 30.8.4ii *below*.

ii Four appeals were heard together by a Tribunal of Commissioners concerning 4 mentally disabled claimants for supplementary benefit. Questions arose as to the validity of determinations made upon claims made on behalf of the claimants by persons who had not been appointed by the Secretary of State etc so to act; as to the back dating of such claims and to the review of awards and to the back dating of awards generally and in particular in respect of a period before the Supplementary Benefit (Claims and Payments) Regulations 1980 came into force on 24 November 1980 and revoked the Supp. Ben. (C and P) Regs 1977. The Commissioners held that:- R(SB) 9/84 (T)

1. Where a claim is made on behalf of a claimant, even though by a person who has not been appointed by the Secretary of State so to act, any determination issued on such a claim can be treated as validly made under the Supplementary Benefits Act 1976 and regulations. Such a determination however does not preclude the application of regulation 5(2) of the Supp. Ben. (C and P) Regs 1981 (which consolidated in identical terms regulation 5 of the 1980 Regulations) so as to treat a subsequent claim as if made before, on, or after the date of the previous determination (paragraph 8);

2. A person who through mental disablement is 'unable to act' within the meaning of regulation 26(1) of the 1981 Regulations will be able to show 'good cause' in respect of his personal failure or delay in taking action which *ex hypothesi* he is unable to take (paragraph 9);

3. By contrast with the position after a person has been appointed to act for the claimant, the responsibility for any delay or failure to act by an unappointed person should not be imputed to the claimant (R(SB) 17/83 approved and followed); (paragraph 9);

4. A person appointed to act for a claimant under the Social Security Acts and Regulations, unless and until specifically appointed under the Supplementary Benefits Act, is no different from any other unappointed person for supplementary benefit purposes and any delay or failure to act by such a person is not to be imputed to the claimant (paragraph 10);

5. It is not incumbent upon the supplementary benefit officer to investigate the possibility of a retrospective award in all cases, but only in cases where the

claim specifically states that it is made in respect of an earlier period or the question of backdating is raised by or on behalf of the claimant before the supplementary benefit officer determines the claim. (R(SB) 56/83 above, insofar as it suggests the opposite, not agreed or followed) (paragraph 11);

6. If the question of backdating is raised for the first time before an appeal tribunal, it should be remitted by the tribunal to the supplementary benefit officer for him to determine (paragraph 12);

7. The question of backdating a claim made after 24 November 1990 for a period before that date is to be determined in respect of that period in accordance with regulation 5 of the Supplementary Benefit (Claims and Payments) Regulations 1977. The test of 'exceptional circumstances' in the Claims and Payments Regulations 1977 is not the same test as the test of 'good cause' in the Claims and Payments Regulations 1981 (paragraph 15 and 16);

8. A request made after 24 November 1980 for the review of a decision made before that date must by contrast be decided by reference to the regulations in force at the time the review is requested or made. R(SB) 48/83 followed (paragraph 15);

9. The limitation on review of past determinations imposed by regulation 4(2) of the Supplementary Benefit (Determination of Questions) Regulations does not apply where the determination under review was a determination refusing supplementary benefit (paragraph 19).

See also R(SB) 17/83, 30.8.1iii, 30.8.4i, and R(SB) 56/83, 30.8.1vi *above*.

R(SB) 25/84 iii A claimant for supplementary benefit appealed to the Commissioner, but died before the appeal was heard. His widow was unwilling to be appointed to act in respect of the appeal and it appeared that there was no other person who would be willing so to act. The Commissioner held that in those circumstances the procedure adopted in decision R(I) 2/83 (see 12.4.2v *above*) was equally valid in supplementary benefit cases; where an appellant dies before his appeal can be heard and he has no personal representatives or appointee, it was better to declare the appeal abated than to dismiss it; that procedure, however, as not appropriate where the appellant is the benefit officer; in such a case, if that officer is unwilling to withdraw his appeal, some other procedure must be devised. (Compare R(S) 7/56 and R(I) 7/62 at 17.4.2iii and iv *above*.) See also R(I) 2/83, 12.4.2v and R(S) 7/56, 17.3.5ii, 17.4.2iii, R(I) 7/62, 17.4.2iv, *above*.

Part 9: Determination of questions

(See Chapter 17.2)

Regs. 6 and 7 of the Determination of Questions Regs. 1980

1 Commencement and duration of awards

i A claimant asked for Supp. Ben. for the week ending 3 April 1981 (a Friday). On Saturday 21.3.81 he had received £65.94 UB, that sum being as to one half a payment in arrears for the week which had ended on 20.3.81 and as to one half a payment in advance for the final week of his entitlement to that benefit which ended on 27.3.81. The question in issue was whether and, if so, how much of that payment of benefit was part of the claimant's resources for the purposes of his claim for Supp. Ben. for the ensuing week. The Commissioner held that by virtue of regs. 9(1) and (2)(a) and (d) of the Resources Regs. 1980 and reg. 7(2)(b) of the Determination of Questions Regs. 1980 one half of the above sum, that is to say £32.97 should be taken into account as the claimant's resources for the week ending 3 April 1981 [notwithstanding that it was actually paid in respect of the previous week]. R(SB) 17/82

ii Reg. 9(1) of the Supp. Ben. (Conditions of Entitlement) Regs. 1981; reg. 7(1)(a) of the Supp. Ben. (Determination of Questions) Regs. 1980 - A claimant for Supp. Ben. had ceased his normal occupation as a (self-employed) share fisherman on 13 January 1983. He then fell sick and did not work from 14 January to 9 February. During the next two days he worked for a total of 24 hours. He was then sick again until 18 February. On 19 February he registered for employment and on 21 February he claimed benefit. His claim was disallowed on the basis that he had ceased to work on 12 February and by virtue of subpara. (c) of the above-mentioned reg. 9(1), he had to be treated as in remunerative full-time work for 14 days thereafter, i.e. until 26 February. The AT held that the claimant had ceased to work for more than 14 days before he made his claim; that accordingly reg. 9(1)(c) had no application and that under reg. 7(1)(a) of the Determination of Questions Regs., he became entitled to the benefit on the first pay day after his claim, namely on 28 February 1984. The claimant contended that he in fact ceased to be engaged in remunerative full-time work on 14 January 1983; that the 24 hours of work he did during the week ended 11 February 1983 did not constitute remunerative full-time work within the meaning of reg. 9(1)(a) and that accordingly the 14 day period prescribed under reg. 9(1)(c) ended on 27 January and that he then became entitled to the benefit. The Commissioner said that he had no doubt this would have been the case, had the claimant claimed within that 14 day period; but he did not claim until 21 February, which was more than 14 days after his ceasing to be in remunerative full-time employment, namely 13 January 1983, so that he did not lose the title by virtue of reg. 9(1)(c) (para. 8). He further held that where more than 14 days have elapsed between the date the claimant ceased to be engaged in full-time work and the date of his claim for Supp. Ben., reg. 9(1)(c) has no application and the date from which entitlement commences is determined by the opening words of reg. 7(1)(a) of the Determination of Questions Regs. (para. 8); the exception contained in reg. 7(1)(a) only operates where reg. 9(1)(b) or (c) of the Conditions of Entitlement Regs. has, in any specific case, actually applied (para. 9). R(SB) 34/84

The decisions listed below are not included in chapter 30

Decisions given under statutory instruments which are no longer in force

R(SB) 43/83

R(SB) 2/90

R(SB) 2/94

R(SB) 3/94