



Department  
for Work &  
Pensions

## Secretary of State's Response

### Section 1: Personal details

Name: <Title> <Forenames> <Surname>

Address:

NI No: <NINo>

Benefit: <Benefit Type>

Date of decision: <Decision Date>

Date decision notified: <SODN>

Date of reconsideration:

Date appeal received: <Date Lodged>

### Section 2: Schedule of evidence

**Comment [M1]:** List all evidence included in the submission

Document No.	Date of document	Date of receipt/issue	Brief description of document
1 -			The Secretary of State's response <Title> <Surname>'s appeal

### Section 3: The decision

Please see the decision laid out at documents of this submission.

**Comment [32]:** Insert Doc Number LT54

### Section 4: The facts of the case

1.<Title> <Surname> is a single/married <manwoman> and was born on <DoB>.

Comment [M3]: Apply as appropriate.

The Decision Maker determined that <Title> <Surname> possessed actual capital of £. (See Document

Comment [34]: Summarise facts relating to the capital, and any events in Chronological order.

Comment [35]: Input Amount

Comment [36]: Input Document number.

<Title> <Surname> has appealed against the decision on the grounds that . (See Document

Comment [37]: Input Summary of grounds of appeal.

A Decision Maker has reconsidered the decision in the light of the appeal but has refused to revise the decision. (See Document

## Section 5: The response

<Title> <Surname>'s appeal is against the amount of capital he possesses or is deemed to possess. No other aspect of his award of Jobseeker's Allowance is in dispute. This submission deals solely with the point (s)\* of dispute.

Comment [38]: Delete as appropriate.

1. A person shall not be entitled to income based Income Related Employment and Support Allowance if their capital, or a prescribed part of it exceeds the prescribed limit. **Paragraph 6 of Schedule 1 to the Welfare Reform Act 2007**

2. For the purpose of this appeal the prescribed capital limit is £16,000.00. **Regulation 110 of the Employment and Support Allowance Regulations 2008**

3. The capital of a claimant to be taken into account shall be the whole of his capital subject to any sum which may be disregarded in Schedule 9 to the Regulations. **Regulation 111 of the Employment and Support Allowance Regulations 2008.**

4. Capital which a claimant possesses in the United Kingdom shall be calculated at its current market value less, 10% where there would be expenses attributable to the sale, and the amount of any incumbrance secured on it. **Regulation 113 of the Employment and Support Allowance Regulations 1996.**

## Beneficial Ownership

A person whose name the capital is in is called the legal owner. Only capital where people are the beneficial owners is included when working out what capital they have. A person is a beneficial owner of capital if they have a beneficial interest in it. A person is the joint beneficial owner of capital if more than one person has a beneficial interest in the same capital. Beneficial owners of capital hold that capital for themselves and can use it as they wish

Legal owners who are not the beneficial owners of capital are holding that capital on trust for the beneficial owners. They cannot use the capital for themselves.

**CUSTOMER FAILED TO PROVE DISPOSAL OF CAPITAL AND TREATED AS IF HE STILL POSSESSES IT.**

## Burden of proof and evidence

In Commissioners Decision R(SB) 33/85 the commissioner referring to an earlier decision R(I) 2/51 held that the standard of proof in deciding questions relating to benefits is that of "Balance of probability" as opposed to the higher standard of "Beyond reasonable doubt" as used in criminal Courts. Furthermore it is established that whilst corroboration of a claimant's own evidence is not

necessary, he held that the evidence from the claimant or anyone else for that matter should not be accepted uncritically, and it needs to be weighed carefully in the light of the circumstances of the case. The Commissioner held that if an adjudication officer rejected a claimant's evidence he should identify his grounds for such rejection. Examples used for justifiable rejection were if the evidence was self contradictory or inherently improbable.

The balance of probability involves the decision making authority deciding whether it is more likely than not that an event occurred, or that an assertion is true (R(I) 4/65). It does not mean that the client can be given the benefit of the doubt (R(I) 32/61). If the evidence is contradictory the DM should decide whether there is enough evidence in favour of one conclusion or the other to show which is the more likely. The DM may decide on the basis of findings made on the balance of probability or may find that there is not enough evidence to satisfy them about findings one way or the other.

In Commissioners Decision R(SB) 38/85 the Commissioner held (Paragraph 18) 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 a satisfactory explanation it was open to the tribunal to find that the claimant still had that resource.

**Capital not realisable**

In Commissioners Decision R(SB) 18/83 it was stressed that there are more ways of realising assets other than their sale. I submit that it is not prescribed in the regulations that the capital must be immediately realisable, although its market value may be affected by such a factor. In R(SB) 57/83 and R(SB) 6/84 it was held that the test to be taken is the price that would be commanded between a willing buyer and a willing seller at a particular date. If an asset will be realisable after a time it may have a current value. In R(SB) 8/92 it was held that if a claimant was able to sell an option to purchase an asset in the future, or was able to borrow, using the asset as security, it would have a value. I submit that any valuation must reflect the fact that the asset was not immediately realisable. Although the Commissioners Decisions relate to income support, I submit that they have the same bearing on the Employment and Support Allowance Regulations.

**Question whether the Capital, or part of, falls to be disregarded.**

Schedule 9 of The Employment and Support Allowance Regulations 2008 provides for certain capital to be disregarded. In particular the Decision Maker considered whether paragraph (s)\*  
Paragraph provides that capital can be disregarded in the following circumstances .

I submit this does not apply in <Title> <Surname>' s case because

**Notional Capital**

Regulation 115 of the The Employment and Support Allowance Regulations 2008, in so far as is relevant to this appeal, provides-

A claimant shall be treated as possessing capital of which he has deprived himself for the purpose of securing entitlement to or increasing the amount of Employment and Support Allowance, Jobseeker's Allowance or Income Support with certain exceptions not applicable to this case.

Comment [39]: Input relevant paragraph numbers

Comment [310]: Input relevant paragraph number

Comment [311]: Copy in wording interpretation of the relevant paragraph

Comment [312]: Insert anew paragraph providing relevant case law

Comment [313]: Insert reasons for not disregarding.

Where a claimant is treated as possessing notional capital the foregoing provisions of this submission shall apply for the purposes of calculating its amount as if it were actual capital which he does possess. For the avoidance of doubt a claimant is to be treated as possessing capital under paragraph (1) only if the capital of which he has deprived himself is actual capital.

I submit that Commissioners' Decisions R(SB)40/85 and R(SB)12/91 are relevant to this appeal.

In paragraph 10 of R (SB) 40/85 the Commissioner held-

"It is not necessary that the purpose of securing, or increasing the amount of, supplementary benefit shall be the sole purpose, though it must be a significant operative purpose...a claimant with mixed purposes is unlikely to concede that the securing of supplementary benefit was an important purpose. Nevertheless if the evidence showed that the transaction had the effect of securing this (...) and that this was the foreseeable consequence of it and there was nothing more, a tribunal could legitimately conclude that the person's purpose was to secure supplementary benefit..."

In decision R (SB) 12/91 the Commissioner held in paragraphs 13 to 15-

"13...A person has to pay his debts. He has no choice in the matter, and if he has no choice, then any divesting of capital resources in pursuance of the reduction or discharge of his indebtedness cannot be for the purpose of securing supplementary benefit or any increase thereof. Such a motive can not direct or influence his course of action. There can be one purpose governing his conduct, namely the need to meet his indebtedness.

14. Of course, the above principle only applies where the relevant debt is immediately payable. If the obligation to repay does not mature for several years, or, as in the case of the usual mortgage of house property, there is no need to repay the sum borrowed, provided the agreed interest and capital repayments are kept up; then any premature repayment of indebtedness will be a voluntary act constituting a deliberate choice. And if there is a choice, then the question will arise as to whether a significant operative purpose, albeit not necessarily the predominant purpose, was to secure supplementary benefit or any increase thereof (...).

15. In the present case, if the tribunal find as a fact that the claimant was generally indebted to his daughters and they must be satisfied that there was a legal debt capable of enforcement in the courts-then as regards any sum employed in reduction or discharge of that indebtedness, regulation 4 (1) will have no application. But if the new tribunal are not so satisfied, and consider that there was no such indebtedness enforceable at law, or, if there was, that it was not immediately repayable, they must go on to consider whether a substantive reason for payment to the daughters was to secure supplementary benefit..."

Whilst, in the foregoing decisions, the Commissioners referred to regulation 4 (1) of the Supplementary Benefit (Resources) Regulations, I submit that the decisions are of equal relevance to regulation 113 of the Jobseeker's Allowance Regulations.

I submit that unreported Commissioner's Decision CIS 124/90 (See Appendix 1) may also have relevance to this appeal. Paragraph 9 of that decision holds-

"[Mr Rowlands] contended that the crucial words in regulation 51 were "for the purpose of securing supplementary [sic] benefit", and a person would not deprive himself of a resource for the purposes of securing supplementary benefit without first knowing the capital limit provision. Without such knowledge the relevant intention could never have

been formulated. Therefore, if a person made no enquiry, although he ought to have done, he was not caught by Regulation 51 (1), the reason being that in the circumstances he simply could not have formed the requisite intention...."

In paragraph 10 the Commissioner upheld that contention. Although the decisions relate to Income Support they have equal relevance for Employment and Support Allowance.

### Capital Jointly Held

Where a claimant and one or more persons are beneficially entitled in possession to the whole beneficial interest of that capital; they are to be treated as possessing it in equal shares. Regulation 117 of the Employment and Support Allowance Regulations 2008

I submit the questions for determination by the tribunal are:-

a) What is the value of the capital possessed by <Title> <Surname>?

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Comment [314]: Input Submission

b) Is there any incumbrance secured on any part of the capital?

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Comment [315]: Input Submission

c) Would there be any costs incurred to realise the capital?

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Comment [316]: Input Submission

d) Does any of the capital fall to be disregarded?

d) Is <Title> <Surname> to be treated as possessing notional capital.

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Comment [317]: Delete if not appropriate. Input Submission as to what capital should be treated as notional and why. Quote any other law applicable.

I respectfully invite the tribunal to uphold the Decision under appeal.

#### Access to statute and case law for appellants

Copies of the law referred to in this response are available at some libraries. It can be accessed on-line via the DWP's website at <BlueVols>

Reported decisions of the Social Security Commissioners from 1991 can be accessed on-line via the DWP's website at <CommDecs>