

JMH/SH/2

Commissioner's File: CFC/013/1993

FAMILY CREDIT (GENERAL) REGULATIONS 1987

SOCIAL SECURITY ADMINISTRATION ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

1. My decision is that the decision of the SSAT given on 2 November 1992 was erroneous in point of law. I remit this case to the original adjudication officer to establish the appropriate amounts payable in respect of monthly mortgage interest payments as at the date of the claim and to calculate the amount of family credit payable accordingly. The adjudication officer is to have regard to the directions I give below.

2. This is an appeal from the decision of the appeal tribunal who dismissed the claimant's appeal and held that the claimant was entitled to family credit at the weekly rate of £12.98 for 26 weeks from 28 April 1992. The tribunal gave the following reasons for their decision (at box 4 - T39):-

"Tribunal found that the income derived from rent on Appellant's house which had been let out on short hold tenancy was correctly taken into account in calculation of entitlement to benefit and that calculation as shown in papers with AT2 were correctly carried out."

3. The grounds of appeal are broadly speaking that in calculating the claimant's other income-rent £55, any mortgage repayments should have been deducted.

4. The appeal is supported by the adjudication officer for whose submissions I am most grateful.

5. The claimant and her husband own a house. This was their matrimonial home but was temporarily let when they went abroad for six months. When they returned, at the date of the claim, they were unable immediately to obtain possession. In her application for family credit, the claimant stated she had to pay mortgage interest of £120 per month and premiums on an endowment policy of £19.47 per month (T21). In her letter of appeal to the tribunal dated 10 June 1992 (T25), she also stated that there was a mortgage to pay.

6. I accept the legal analysis made by the adjudication officer in the submissions to the Commissioner. I can briefly summarise them as follows:-

- (i) Section 131 of the Contributions and Benefits Act 1992 provides that no person shall be entitled to an income-related benefit if his capital is more than the prescribed amount. Regulation 28 of the Family Credit (General) Regulations 1987 provides that for the purpose of family credit the prescribed amount is £8,000.
- (ii) Regulation 29(2) provides that any capital specified in Schedule 3 shall be disregarded. In this case the house is to be disregarded under paragraph 28 of that Schedule.
- (iii) Regulation 24(1) provides that income which does not consist of earnings shall subject to para (2) be his gross income and para (2) provides that there shall be disregarded any sum specified in Schedule 2.
- (iv) Paragraph 16(2) of Schedule 2 (as in force at the date of the claim) provided as follows:-

"(2) Income derived from capital disregarded under paragraph [28] of Schedule 3 but only to the extent of any mortgage repayments and payment of rates made in respect of the dwelling or premises in the period during which that income accrued."

That has been slightly amended since the abolition of rates and while the reference to mortgage repayments remains unamended the reference to rates has been amended thus:-

"Any Council tax or water charges which the claimant is liable to pay in respect of the dwelling or premises and which are paid in the period during which that income accrued."

7. What is a mortgage repayment for the purpose of this paragraph? There appears to be no statutory definition to assist. Other statutory provisions - see e.g. paragraph 1 Schedule 3 of the Income Support (General) Regulations 1987 expressly refer to "mortgage interest payments". The actual mortgage is not in evidence. It is probably an instalment mortgage whereunder interest and capital are paid over a period of years, the capital being gradually repaid in toto. I see no reason why a mortgage repayment should not include both the interest and capital element in the repayments. Indeed, it is difficult to see how, if only interest qualifies, it can be said to be a mortgage repayment. That would be a payment. It does not, however, follow from that analysis that interest itself is disqualified, for that would defeat the whole purpose of the provision. The purpose is, after all, to enable the claimant to have family credit without regard to what he has to pay to occupy a house of his own whether it be payments due under a mortgage or other costs now conveniently set out in subparagraph 2(b) Council tax, water rates etc. "Mortgage repayment" means therefore I think any payment properly made under the mortgage, and that doubtless would also include insurance premiums if, as is invariably the case, the mortgage provides for the mortgagor to insure the premises. I am less sure about premiums payable under the endowment policy. If it is a term of the mortgage or the contract with a mortgagee that the mortgagor should take out and maintain an endowment policy on his life, then I think that would qualify as a mortgage repayment: if however the policy is collateral, and very often endowment policies are, in these circumstances, only taken out by way of prudence, then I would not think the payment of the premiums would qualify as "mortgage repayments".

8. It is however clear that mortgage repayments only qualify under this paragraph if and in so far as they are actually made. This was underlined so far as the new paragraph (b) is concerned of paragraph 16(2) but paragraph (a) applies only to any mortgage repayments made, and by "made" is meant "actually made".

9. The calculations of the adjudication officer (T30) are correct in so far as they go. However, in recalculating the amount due the adjudication officer, having first enquired into the terms of the mortgage, the precise payments made, including premiums for any insurance, all such payments being properly apportioned, and having enquired as to the terms of the policy of assurance within the broad guidelines I have indicated above and as to the premiums actually paid, the figure should be deducted from the income of the claimant shown as rent. If the parties cannot agree the appropriate figures the case should be sent back to me.

10. My decision is therefore as set out in paragraph 1 above with the directions I have set out.

(Signed) J.M. Henty
Commissioner

(Date) 15 March 1994