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MJG/SH/7

Commissioner's File: CFC/020/1990

FAMILY CREDIT (GENERAL) REGULATIONS 1987

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. I allow the claimant's appeal against the decision of the social security appeal tribunal dated 8 August 1990 as that decision is erroneous in law and I set it aside. I give the decision which the tribunal should have given, namely that the claimant is entitled to Family Credit at the weekly rate of £20.22 for 26 weeks from 15 May 1990: Social Security Act 1975, section 101 (as amended); Social Security Act 1986, sections 20(5) and 20(6); and the Family Credit (General) Regulations 1987 regulation 46 and Schedule 4.

2. This is an appeal to the Commissioner by the claimant a married woman living with her husband and two young children. She was born on 15 September 1967. The appeal is from the unanimous decision of a social security appeal tribunal dated 8 August 1990, which dismissed the claimant's appeal from a decision of the local adjudication officer issued on 11 May 1990 to the effect that the claimant was entitled to Family Credit at the weekly rate of only £11.97 (i.e. lower than the rate now awarded by this decision) for 26 weeks from 1 May 1990 (i.e. from an earlier date than the date of 15 May 1990 from which I have now made the award in this decision).

3. The point at issue is that the adjudication officer's original award did not award a credit for the claimant's son born on 4 May 1990 because a claim for family credit made by the claimant on 10 May 1990 was treated as a renewal claim, the previous award of family credit having ended on 30 April 1990. The claim of 10 May 1990 was thus treated as a backdated claim for a period commencing on 1 May 1990. But on 1 May 1990 the claimant's son had not been born and could not therefore be taken into account.

4. The fallacy in the tribunal's reasoning, as is demonstrated by a written submission dated 6 February 1991 from the adjudication officer now concerned, is in the treating of the claim dated 10 May 1990 as a back-dated claim just because it happened to be within the time limit allowed by the Social Security (Claims and Payments) Regulations 1987 for back-dating. Paragraph 7(a) of Schedule 4 to those Regulations allows a period of six weeks during which a claim for renewal of entitlement to family credit can be properly made (i.e. 28 days before the last day of the previous award and 14 days thereafter).

5. However it is clear that in this case the claimant was aware of this problem and deliberately delayed the making of a claim for family credit until after her son was born. It is clear from the surrounding circumstances, including the correspondence and the oral evidence given by the claimant to the tribunal, that the claim made on 10 May 1990 was not intended to be a backdated or renewal claim but a fresh claim. That being so no family credit at all was payable for the period 1-14-May 1990 because the claimant's claim of 10 May 1990 was intended to be a new claim and under it (because of pay-day provisions) the award of family credit would not start until 15 May 1990 but would include an £8.25 weekly credit for the newly born son.

6. All this is made clear in the written submission dated 6 February 1991 of the adjudication officer now concerned, citing an unreported decision of another Commissioner to the same effect on file CFC/027/1989, and I accept that submission. I also accept that it is appropriate for me myself to give a decision and I have therefore done so in paragraph 1 above.

(Signed) M.J. Goodman
Commissioner

(Date) 4 February 1992