

Treatment of TC claims primary copy of previous award.
To it's advantage if treated as fresh claim
rather than renewal, even if it is doing
there is a slight overpayment to be offset
(?)

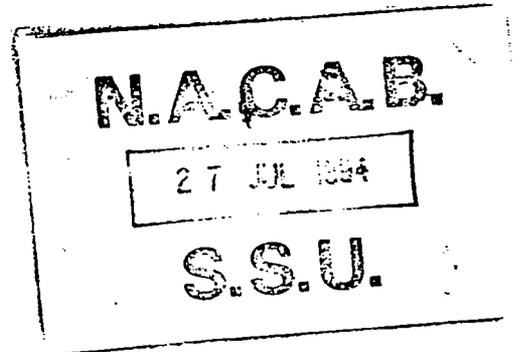
NACAB

It has option of
renewal or fresh claim?

JMH/TEMP/2

Commissioner's File: CFC/025/1993

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



1. My decision is that the decision of the social security appeal tribunal was erroneous in point of law. In accordance with section 23(7)(a)(i) Administration Act 1992, I substitute my own decision which is that family credit is payable at the rate of £34.91 from 8.12.92 but the overpayment in respect of the period 24.11.92 to 7.12.92 (two weeks) is recoverable under section 74 of the Administration Act 1992 (formerly Section 27 SSA 1986).

2. This is an appeal with the leave of the chairman from the decision of the appeal tribunal dated 13.4.93. The tribunal held that for the period of 26 weeks from 24.11.92 the claimant was entitled to family credit at the rate of £28.06pw.

3. The appeal is supported by the adjudication officer to the extent set out in paragraph 1 above.

4. There are two main points on the appeal:

- (i) Was the claimant's income correctly calculated?
- (ii) Was the claimant's application dated 1.12.92 (T1/12) to be treated as a new claim to take into consideration the attainment of her son of the age of 11 on 6.12.92, which is in fact to her financial advantage, or a renewal of the old claim which would have the effect of ignoring the attainment of her son of the age of 11. I will demonstrate

that it is to her financial advantage to argue in terms of the former, even if this means the recovery of the payment of £34.91 for the two weeks between 24.11.92 and 6.12.92 - £69.82.

5. Was the claimant's income correctly calculated? As from 7.4.92 the Family Credit (General) Amendment Regulations 1992 (SI 1992/573) regulation 4 amended regulation 14 of the Family Credit (General) Regulations 1987 and substituted the new regulation. The old regulation is for the purpose of this claim quite irrelevant. Broadly speaking, where a claimant is now paid every four weeks or a month his assessment period is the three consecutive months immediately preceding the week of claim. In this case those periods were the pay periods respectively ending 11.9.92 (period (a)), 9.10.92 (period (b)) and 6.11.92 (period (c)). Under Regulation 20(5) the net earnings in each pay period are to be aggregated and the total divided by the number of pay periods - in this case three. The resulting amount shall be the average net earnings for the pay period. The aggregate earnings during that period come to £1,066.97 and the average net earnings are therefore £355.66 per month. However under regulation 20(5) there is a provision which excludes erratic earnings in any particular pay period. Under that regulation it is provided that if a claimant's net earnings in any pay period are either 20% above or 20% below per month the average net earnings, then that pay period shall be omitted. Since pay period (a) is 20% below the average net earnings it is to be omitted but both periods (b) (c) are relevant. Those earnings came to respectively £425.56 and £374.01 amounting in aggregate to £799.57 which amounted to an average net weekly earnings of £99.94. Accordingly I think that the claimant's income was in fact correctly assessed and the remaining calculations in T39 follow.

6. How is the claimant's claim made on 1.12.92 (T1/12) to be treated? If it is treated as a renewal, the claimant would be entitled to family credit of £28.06pw, for 26 weeks from 24.11.92. This is in fact what the tribunal found (but in my view mistakenly). However, she would not be entitled to the increase payable by reason of her son attaining 11 on 6.12.92, being after the renewal date. If, on the other hand, it is treated as a new claim, it would take into consideration the fact that her son attained 11 on 6.12.92 and therefore she would be entitled to the increase. On the other hand, there being no award in existence, she would not be entitled to the payments which were made between 24.11.92 and 8.12.92. The award was increased and arrears of £34.91 paid on 28.1.93. For the period 24.11.92 to 8.12.92 the sum of £69.82 was paid which would not have been paid if the claim was to be treated as a new claim, as I have said, there being no award in existence for that period of time. However it is easily demonstrated that it is to the financial advantage of the claimant to treat her claim as a new claim and not as a renewal. If it is treated as a new claim she will be entitled to 26 weeks at £34.91 per week. That equals £907.66 less £69.82 i.e. making £837.84 net. As against that if the claim was treated as a renewal she should be entitled to 26

weeks at £28.06pw i.e. £729.56. Adopting the new claim interpretation therefore shows £108.28 better off.

7. My decision is therefore as set out in paragraph 1 above.

(Signed) J.M. Henty
Commissioner

(Date) 17 June 1994