

THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CIS/745/1999

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER R J C ANGUS

Claimant :

Tribunal :

Tribunal Case No :

1. The decision of the Social Security Appeal Tribunal dated 26 October 1998 is erroneous in law. I set that decision aside and, as empowered by section 14(8)(a)(i) of the Social Security Act 1998, I substitute my own decision which is:-

The claimant's gross income for the purposes of regulation 40(1) of the Income Support (General) Regulations 1987 does not from 28 February 1997 include sums deducted from the claimant's occupational pension in terms of an attachment of earnings order issued on that date from Ilford County Court.

2. The claimant appeals, with the leave of the chairman, against the tribunal's confirmation of an adjudication officer's decision that the claimant is not entitled to Income Support because his occupational pension falls to be taken into account in the calculation of his Income Support entitlement. The functions of the adjudication officer have now been transferred to the Secretary of State by section 1 of the Social Security Act 1998.

3. I heard the appeal on 18 January 2000. The claimant was present and represented by Mr Poynter, Solicitor. The Secretary of State was represented by Miss Powick of the Office of the Solicitor to the Secretary of State for Social Security. I am grateful to Miss Powick and to Mr Poynter for their submissions.

4. The background to this case is that the claimant, having worked as a lecturer for several years, accepted a redundancy package on the amalgamation of his teaching establishment with another one. The package included a pension paid by the Universities Superannuation Scheme Ltd. The claimant set up a business which did well. His wife was an employee in the business. Subsequently he and his wife divorced. In implementation of but not in terms of the divorce settlement approved by the court the claimant instructed the Universities Superannuation Scheme Ltd. to pay his benefits under the scheme to his former wife. She continued to be an employee in the business. The business then began to get into difficulties because, I am told, the claimant's partners withdrew and set up a rival business taking customers with them but leaving the claimant with the business debts.

5. Eventually the claimant's business had to be wound up. The claimant rescinded the instruction that his pension be paid to his former wife. The former wife obtained judgment against the claimant for a total of £46,442.50. Of that sum

£11,937.50 was in respect of an Industrial Tribunal award. The balance of £34,505 was in respect of other non-alimentary debts owing to the former wife. The judgment is being enforced by way of an attachment of earnings order issued on 28 February 1997 in terms of which £1,158.06 per month is deducted from the pension payable to the claimant by the Universities Superannuation Scheme Ltd. The claimant has remarried. I understand that he has no source of income other than the occupational pension and that at the moment he and his wife survive financially with help from his mother-in-law and from his professional benevolent association which has funded his legal representation before the Commissioner.

6. The claimant was in receipt of Jobseeker's Allowance from 12 June 1997 until 27 January 1998. On 22 January 1998 he was advised at the Jobcentre that he was not required to sign on as available for employment because he was over 60 years of age. He, therefore, completed a form SP1 claim for Income Support. An adjudication officer issued the decision referred to in paragraph 2 above. The claimant appealed to the Social Security Appeal Tribunal.

7. The statement of the tribunal's findings in fact and reasons for its decision is in the following terms:-

"1. The first point considered was whether the Pension in question belonged to the Appellant or belonged to his ex-wife by way of assignment.

The Tribunal found that in fact and in law the Pension in question belonged to the Appellant.

#### Reasons

1.1 The extract set out at page 20 of the bundle is mechanism of quantification only and is not an actual assignment of the Pension itself.

1.2 The letter at page 42 is a purported instruction to the Pension company as to how the Pension funds were to be applied after the Appellant's death. Had the Pension been assigned to the Appellant's ex-wife this instruction would not have been necessary.

1.3 The letter of the 10 June 1998 from USS set out at page 41 of the bundle illustrates that in November of 1996 the Appellant gave instructions to USS diverting the pension payments to his own account at Wells Fargo Bank

in San Diego. He would not have been able to do this had the Pension in fact and in law not have been his.

1.4 Reverting again to that letter of the 10 June 1998 there is evidence that the Pension payments had been attached by Ilford County Court (apparently for the benefit of his ex-wife to cover arrears of maintenance which had built up). If the Pension clearly belonged to the Appellant's ex-wife then this would have been unnecessary and inappropriate.

2. There are no statutory or regulatory definitions of income. A commonsense approach is necessary. Schedule 9 of the IS (General) Regulations 1987 contained disregards. Those disregards the Tribunal find, do not apply.

3. The Appellant argues that as there are funds which do not reach him then those funds cannot be treated as part of his income. The Tribunal do not accept that argument. If that argument was accepted it would enable individuals to reduce their income (for any manner of purposes e.g. tax liabilities) by instructing those due to pay it to discharge recurring debts direct.

4. The fact that part income is paid by a payer to a third party to assist the payee who would otherwise be entitled to call for the money is simply convenience and does not mean that money is not income despite the fact that it does not touch the account of the payee.

5. What is the position of the attachment of earnings. The obligations to pay a debt does not affect the amount of one's income. It merely reduces one's available spending power. An attachment of earnings order is designed to ensure the payment of a debt. It does not mean that one's income is reduced it merely means that one's disposable income is reduced. An attachment of earnings is a means of ensuring that payment of a debt is properly made where the debtor otherwise cannot be trusted to make payments.

6. From the above the Tribunal find as a fact:-

- i. Although the Appellant may well have obligated himself to make payments to his ex-wife in a sum similar to that due to him under his Pension entitlement and for his own convenience

instructed USS to pay the periodical Pension payments into the account of [the claimant's former wife] the Pension entitlement is still that of [the claimant] and payments of it form part of his income.

ii. The amount he owes and is obliged to pay either voluntarily or by way of attachment of earnings to his ex-wife does not go to diminish his income.

iii. The Occupational Pension in this case is income for the purposes of calculating the Appellant's entitlement to Income Support."

8. The claimant, who at that stage was unrepresented, applied for leave to appeal the tribunal's decision to a Social Security Commissioner on the grounds that:-

"1. In absence of any statutory definition of the word 'income' in the Income Support legislation it is an ambiguous term and open to different interpretations by different Government departments. For example it had been accepted for the purposes of legal aid that his income was only 12 pence per annum. An Under Secretary of State for Social Security had said in a letter to him that Income Support was designed to be 'broad brush' in its approach and attempts to legislate for every circumstance which might arise would have the effect of introducing difficult and often subjective decisions into what is intended to be a simple scheme.

2. The effects of the tribunal's ruling was that the Pension being paid directly to his former wife under the attachment order was both his and the former wife's income. If she assigned it to a third party it would be the income of all three.

3. It was contrary to natural justice that he and his wife should be left without any means and dependent on the generosity of his mother-in-law.

4. He accepted that the pension entitlement was still his but, because of the attachment order, he did not receive the money and the tribunal's decision that it was part of his income was wrong in fact and in law."

9. In a written submission of 11 May 1999 an adjudication officer, citing R. v. West London SBAT, ex parte Taylor [1975] 2 All E.R. 790 and Lillystone v. SBC [1982] 3 FLR. 52(C.A.) as his authority, argued that in the absence of a statutory definition a decision as to what is income can, in borderline cases, go either way and it is only if a decision is completely unreasonable that there is an error in law. Ultimately the question is one of law. In general principle a payment of income is one that recurs and can be linked to a period. Therefore, in the circumstances of the present case and in view of the authority cited, the claimant's occupational pension is a payment of income.

10. The adjudication officer submitted further that the claimant's contention that the pension does not form part of his income because he does not receive the money is contrary to what was decided in Commissioner's decision CIS/212/1989. In that case the claimant, an undischarged bankrupt, argued that her share of the income derived from her business partnership with her husband was not part of her income for the purposes of an Income Support calculation because it belonged to her trustee in bankruptcy. The Commissioner, in rejecting that argument, said:-

"-----  
For although profits of the business passing straight to the trustee did not directly form part of the claimant's income, they must be treated as such because they serve to reduced the bankrupt's indebtedness. It would be wholly unrealistic to say that by virtue of the bankrupt's share of the profits going direct to the trustee, the former will derive no benefit from the earnings. Her liabilities were correspondingly diminished. Accordingly, it is immaterial what part, if any, the trustee in bankruptcy received of the business profits, the profits in their entirety had to be treated as those of the claimant and his wife."

In this case, submitted the adjudication officer, the claimant had fallen into arrears in the maintenance payments being made to his former wife under a Court Order to the amount of £46,442.50. If the income of his occupational pension were to be ignored in the calculation of his entitlement to Income Support the Income Support Scheme would in effect be settling a debt on his behalf.

11. In a ruling of 9 July 1999 granting the claimant's request for an oral hearing a Legal Officer in the Office of

the Social Security Commissioners directed that a copy of Commissioner's decision CIS/683/93 (starred as 77/94) be added to the case papers. In that decision a Commissioner decided that payments of maintenance for his former wife made by a claimant out of his income in compliance with a Court Order were not deductible from his income for the purposes of calculating Income Support.

12. I need not narrate the claimant's observations on the adjudication officer's submission or on the relevance of CIS/683/93. Although those observations are to the point they are adequately covered by the submissions made by Mr Poynter at the oral hearing.

13. The statutory framework for the Income Support Scheme is that sections 124(1) and (4), 135(1) and 137 of the Social Security Contributions and Benefits Act 1992 provide that a person is entitled to that benefit if his income is less than his applicable amount. The amount of benefit to which he is entitled is the applicable amount or, where he has some income, the amount by which the applicable amount exceeds that income. The applicable amount and the method of calculation of entitlement are as prescribed by Regulations. The Regulations are the Income Support (General) Regulation 1987. The provisions of the General Regulations relating to the prescription of the applicable amount are not relevant to this appeal. Regulations 28 to 44 prescribe the calculation of income. For this purpose the Regulations distinguish between income which is earnings derived from employment or self-employment and income other than earnings. I have set out in an appendix to this decision the provisions of regulations 28 to 44 and the provisions of the attachment of Earnings Act 1971 which are relevant to this appeal.

14. Mr Poynter said that the claim for Income Support had been made on 27 January 1998 and the appeal against the adjudication officer's decision was made on 25 March 1998. Therefore, the period within the jurisdiction of the tribunal was from the date of claim to the date of its decision and the period within my jurisdiction is that period extended to the date of my decision. It was accepted that none of the disregards from income specified in Schedule 9 to the Income Support (General) Regulations applied and the decisions of the adjudication officer and the tribunal were accepted as correct except that it was not accepted that the part of his occupational pension affected by the attachment order was the claimant's income for the purposes of the calculation of entitlement to Income Support. In finding that in fact and

law the whole pension belonged to the claimant and was aggregable as income within the meaning of the General Regulations the tribunal had misdirected itself in law by failing to have proper regard to the effect of the attachment order and by failing to have regard to the provisions in the General Regulations as to the treatment of payments of claimant's income made direct to third parties. He argued that the effect of the attachment of earnings order in this case was that income which had previously been the claimant's ceased to be his from 27 February 1998, the date on which the order took effect. Mr Poynter explained that the judgment debt was not in respect of arrears of maintenance. Those arrears had been waived. The debt was constituted by an Industrial Tribunal award in favour of the claimant's former wife and a liability to her which the claimant had incurred through a loan from her and the sale of the matrimonial home. Judgment had been obtained against the claimant by default when he was in the United States of America.

15. Mr Poynter said that although in the absence of a statutory definition of "income" the tribunal had to come to its own decision as to whether the attached pension fell to be treated as the claimant's income it should not have done violence to the notional income rules. The tribunal was incorrect to say that to exclude from claimants' aggregable income payments which did not reach them would enable individuals to avoid a variety of liabilities such as Income Tax by instructing creditors to pay income direct to creditors for the discharge of current debts. As far as Income Support is concerned that stratagem is avoided by the rules against deprivation of income. Also the rules as to notional income control the diversion of income to third parties. It is not the case that every payment to a third party for the benefit of the claimant is to be treated as the claimant's income.

16. Paragraph 5 of the statement of the tribunal's findings in fact and reasons for decision betrays, argued Mr Poynter, a fundamental misunderstanding of the nature of the attachment order. Section 1(2) of the 1971 Act, in providing that an order "secures" payment, imposes a charge on the claimant's pension as does a mortgage or other charge on a person's property. The claimant's position was different from that where money is paid to a claimant and then paid by him to a creditor. In this case the debtor never sees the money. Section 6(1) of the 1971 Act is an instruction to the employer to make deductions from what is due to the debtor and pay it to the collecting officer. By operation of law the debtors

money is paid elsewhere. Mr Poynter disagreed with Commissioner's decision CIS/212/89. To say that the bankrupt's income is not directly his but is to be treated as such is incorrect as it conflicts with the notional income rules. Regulation 42(4)(a)(ii) is the best known example of payments to a third party being treated as the income of the claimant. If CIS/212/89 were correct regulation 42 would not be needed and payments to third parties would never be excluded from claimants' income. That cannot be correct. CIS/683/93 was not in point. There the maintenance payments were being made by the claimant out of income paid to him. Had there been in that case an attachment of earnings order under which the payments bypassed the claimant that decision would have been wrong.

17. Since 15 November 1999 regulation 42(4)(a) of the General Regulations has included head (ia) which was inserted by regulation 2(1)(a) of the Social Security Amendment (Notional Income and Capital) Regulations 1999. That is an additional case which has been added to those already specified in regulation 42 in which a payment of income made to a third party in respect of an Income Support claimant is to be treated as being income possessed by the claimant. The new case is that of the occupational pension. The implication of this amendment is that prior to the date of its taking effect any payment of his occupational pension made in respect of the claimant to a third party did not fall to be treated as income possessed by him because the Regulations did not make any such provision. That would mean that the earliest date from which the attached pension could be treated as the claimant's is 15 November 1999. However, even from that date the attached pension does not fall to be treated as possessed by the claimant because the payments being made to the collecting officer are not made in respect of the claimant but in respect of the attachment order. Moreover, the Commissioner, in interpreting the General Regulations, is entitled to take into account the policy underlying the Income Support Scheme. The purpose of the scheme is to sustain life and health and to avoid the reduction of people to a state of destitution. In this case the claimant receives 12 pence per year from his pension after the deductions have been made but according to the adjudication officer's and the tribunal's decisions he is not entitled to the Income Support necessary to maintain him and his wife in the absence of any other income.

18. Miss Powick submitted that the claimant's occupational pension is part of his income despite the attachment order and

that the tribunal's approach was correct. She noted distinctions between this case and the cited cases. In CIS/683/93 although there was no attachment order money was being taken from the claimant's pension and paid to a third party. Mr Poynter's argument centred on the attachment order. The effect of his argument is that a claimant whose income had been attached would have an advantage over a claimant who discharged his liability to the third party without an attachment order being made. That is CIS/212/1989 is correct. In response to a question from me, Miss Powick said that she preferred to rely on CIS/683/93 because she agreed that bankruptcy was a special situation. Miss Powick said that Mr Poynter did not disagree with the tribunal in principle as far as the divorce agreement went. He hung his argument on the attachment order. She submitted that the tribunal was correct not just on the divorce order but also on the attachment order. Otherwise the claimant who paid his debts would be penalised, although she agreed that in this case the debt is not for maintenance.

19. As regards regulation 42(4) of the General Regulations Miss Powick submitted that the occupational pension is income and not just notional income. The amendment made on 15 November 1999 changes the position now but a subsequent amendment does not mean that the previous interpretation of regulation 42(4) was incorrect. The amendments were made in the light of recent legislation on occupational pensions and divorce. A payment "in respect of" a claimant is a payment made to a third party because it is owed to the third party by the claimant.

20. Mr Poynter said that the Attachment of Earnings Act provides against the attachment of social security benefits and the Guaranteed Minimum Pension. He was exploring with his client the possibility of having the attachment order corrected to take account of that. He agreed that his argument could benefit a claimant who was the subject of an attachment order as against a claimant who voluntarily met his liabilities or abided by a Court Order but the Income Support Scheme is a technical system which does not always produce moral results and there are other aspects of the scheme which produce different results depending on whether there is or is not a charge against property. For example a shareholder with a substantial unsecured debt can be excluded from benefit by reason of the capital represented by his shareholding. However, if his creditors obtain a charge on the shareholding his capital is then valued as net of the charge which could mean that the claimant qualifies for benefit. The scheme can

have untoward results and any untoward result for this claimant would not be without precedent.

21. On the amendment of regulation 42(4) Mr Poynter said that Miss Powick had not met the point which he was making. He accepted that the law relating to pensions and maintenance had changed but payments of pension are actual income and there is no need, whatever the policy, to make an amendment to the Regulations to provide that they are actual income. The scheme in relation to third party payments is that payments to third parties are only to be treated as the claimant's income if there is express provision to that effect in the Regulations. Until 15 November 1999 there was no express provision that occupational pensions paid to third parties were to be treated as the income of the claimant.

22. On 25 January 2000, having considered the written and oral submissions, I directed that there be placed in the appeal papers a copy of the judgment issued by the Court of Appeal on 6 November 1998 in the case of Leeves v. The Chief Adjudication Officer and that the Secretary of State's representative should make within one month of receipt of my direction a submission on the relevance of that judgment to this appeal and that the claimant's representative should make any observations which he wished to make on the submission for the Secretary of State within one month of his receipt of a copy of that submission. A submission for the Secretary of State was received in the Commissioner's office on 10 March 2000 and the observations thereon by Mr Poynter were received on 12 April.

23. The submission for the Secretary of State made in response to my direction was to the effect that the instant case can be distinguished from that dealt with in the Leeves judgment because the facts are entirely different. In Leeves the claimant was a student who received a student's grant, spent it, gave up his course and was then required by the grant making authority to repay the proportion of the grant which related to the period of the academic year following his abandonment of his course. The court decided that the part of the grant which would have been attributable as income under regulations 28 and 29 of the General Regulations in respect of the period following the claimant's abandonment of the course could not be "income" for the purposes of the General Regulations because he was under an obligation to repay it. However, in the instant case, submits the Secretary of State's representative, the claimant's pension is his. If it were not legally his money it could not be the subject of

an attachment order whereas in the Leeves case the obligation to repay arose because there was no longer any entitlement to grant and the grant had to be repaid. In the instant case it could not be argued that the claimant is not entitled to his pension. If he were to discharge the judgment against him in full the attachment order would be discharged and he would receive his pension in full again.

24. Mr Poynter in his observations on that submission accepts that the instant case and the Leeves case are based on entirely different facts but in paragraphs 6 and 7 of his submission he says:-

"6. However, despite any factual differences, the main legal issue in Leeves was whether or not the payment fell to be treated as income. That is the same issue as in the present appeal and the observations of the Court of Appeal as to how that issue is to be approached must therefore have considerable persuasive force.

7. In that context, it is to be noted that the Court accepted the principle that:

'..... 'income', not being defined in the Regulations should be given its natural and ordinary meaning."

It is submitted that a payment which - by operation of law - is not received by the claimant cannot be said to be his income in the 'natural and ordinary meaning' of that word."

He then goes on to support that argument by reiterating his argument as to the implications of the notional income provisions in regulation 42 of the General Regulations.

25. The first point which I should get out of the way in arriving at my decision in this case is Mr Poynter's invitation to me to disagree with the decision on file CIS/212/89. I agree that the usual effect of bankruptcy is that the bankrupt's resources are taken over by the trustee in bankruptcy and except insofar as the trustee releases money to the bankrupt the bankrupt will have no income. However, although CIS/212/89 may have been overtaken by the Leeves judgment I could not express any view on its correctness without knowing what estate had vested in the trustee in terms of sections 283 and 306 of the Insolvency Act 1986 and without knowing whether or not the trustee had obtained an income

payments order under section 310: but I can make my own decision on the appeal before me without either agreeing or disagreeing with CIS/212/89.

26. I accept Mr Poynter's argument that in the interpretation of the statutory provisions the purpose of the Income Support Scheme has to be borne in mind. Put simply, that purpose is to make up the shortfall, if any, between the claimant's means and the amount which is required to support a very modest standard of living. As will be seen from the regulations which I have quoted in the paragraphs above, the General Regulations provide that in the calculation of the claimant's income account is taken of not only the income which he receives but also income due to him which he could receive if he applied for it, income of which he has deliberately deprived himself with a view to qualifying for benefit and, in certain cases, income which is paid to third parties. It should be noted that regulations 32, 40(4) and 42(4) all refer to payments of income, not entitlement to or payability of income. The implication of that is, to my mind, that except in the cases where the regulations specifically provide otherwise, a claimant's income for the purposes of the regulations is only such money as is actually paid to him.

27. That view is, I think, supported by the judgment in the Leeves case. Although that judgement dealt with a factual situation which was different from the facts of this case and which gave rise to a different legal relationship between the claimant and the provider of the payment, it applies one of the cardinal rules of statutory interpretation which is that ordinary words are given their ordinary meaning. Consequently in the General Regulations if there is no statutory provision to the contrary "income" as used in the General Regulations can include only what can be said to be the claimant's income in the ordinary sense of that word. In my view in its ordinary sense "income" means money paid regularly to the recipient or to his order but not money which is paid and which he cannot prevent from being paid directly to a third party instead of to him.

28. Until 15 November 1999 there was nothing in the Regulations to provide specifically that an occupational pension paid in its entirety not to the pensioner who was claiming Income Support but to a third party was to be included in the pensioner claimant's income for the purposes of the Regulations. I have no doubt that Miss Powick is correct in saying that the insertion of the new head (ia) in regulation 42(4)(a) was prompted by new legislation on

pensions and divorce but the fact remains that until that amendment occupational pensions were not included in sub-paragraph (a) except to the extent that head (ii) could be said to apply in any particular case. Until head (ia) was enacted the effect of regulation 42(4)(a)(ii) was that payments of occupational pensions to third parties would be treated as the claimant's income only to the extent that the payment had been used for the alimentation of the claimant. In this case there is no suggestion that the payments being made to the court collecting officer are being used for that purpose. My conclusion is that until 15 November 1999 that part of his occupational pension which was subject to the attachment order was not part of the claimant's income. It was not being paid to him, he could not demand payment to him and there was no statutory provision that it be treated as paid to him.

29. Since regulation 42(4)(a), from 15 November 1999, includes, as head (ia), occupational pensions as a new category of payments to third parties which are to be treated as the income of the claimant, head (ii) no longer applies to occupational pensions. Does the new head (ia) apply to the payments of the claimant's occupational pension made to the collecting officer? That depends on whether or not those payments can be said to be made "in respect of" the claimant. What does "in respect of" mean? It is a phrase used in several statutory contexts and has been the subject of fairly frequent judicial comment but never, as far as I can see, in a judgment which would give any guidance as to the interpretation of the Income Support legislation. At first sight it is a wide term which could be used to describe any payment which has been made out of money in which the claimant has an interest. However, my view is that in the context of regulation 42(4)(a) it has a much narrower meaning.

30. Sub-paragraph (a) of regulation 42(4) is a list of three categories of payment to third parties. The first category is payments derived from public funds to which a claimant is entitled under the Contributions and Benefits Act 1992, the Jobseeker's Act 1995 and under the legislation authorising the payment of pensions to war widows and disabled former members of the Armed Forces. The second, and new, category is, as already noted, payments derived from occupational pensions. The third category, the old second category, is a "gather up" category of payments derived from any other source to the extent that the payments are used for the alimentation of claimants. The characteristic common to all three categories of payment is that the payment is either derived from an

alimentary source or, where it is not derived from such a source, is used for the purpose of alimending the claimant. Bearing in mind that the whole purpose of Income Support is the alimentation of claimants who have no or inadequate sources of aliment it seems to me that payments made "in respect of" a claimant are limited to those payments which are made for the alimentation of the claimant and which reduce or obviate the need for him to be alimended by the Income Support Scheme. The payments being made out of the claimant's occupational pension to the collecting officer in this case do nothing for the claimant's alimentation, are not made in respect of him and, consequently, are not part of his income by virtue of regulation 42(4).

31. I realise that to exclude the payments made under the attachment order from the claimant's income has the effect that he is being alimended by Income Support while nearly the whole of his occupational pension is being used to discharge his debt to his former wife. However, as Mr Poynter argued, such seeming anomalies are not unknown in the operation of the Income Support scheme. Indeed one is pointed up by the difference in result between this case and CIS/683/93. I agree with Mr Poynter that that case is not in point in this appeal because the claimant's income was still being paid to him and not diverted at source: but had that claimant's income been attached to enforce compliance with the court order under which he was making maintenance payments the part of his income so attached would have been excluded from aggregation in the Income Support calculation. However, any abuse of that anomaly can be prevented by the application of regulation 42(1) and (2) where there is evidence that a claimant has deliberately provoked an attachment order to bring himself into benefit.

32. For the foregoing reasons the claimant's appeal succeeds and my decision is in paragraph 1 above.

**(Signed)** R J C Angus  
**Commissioner**

**(Date)** 1 June 2000

APENDIX

I. Those provisions of the General Regulations which are relevant to this appeal are in the following terms:-

"29. (1) .....  
income which does not consist of earnings shall be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 32 (calculation of weekly amount of income).

(2) Subject to the following provisions of this regulation the period over which a payment is to be taken into account shall be -

(a) in a case where it is payable in respect of a period, a period equal to the length of that period;

(b) .....

and that period shall begin on the date on which the payment is treated as paid under regulation 31 (date on which income is treated as paid).

.....",

"31. (1) Except where paragraph (2) applies, a payment of income to which regulation 29 (calculation of earnings derived from employed earner's employment and income other than earnings) applies shall be treated as paid -

(a) in the case of a payment which is due to be paid before the first benefit week pursuant to the claim, on the date in which it is due to be paid;

(b) in any other case, on the first day of the benefit week in which it is due to be paid or the first succeeding benefit week in which it is practicable to take it into account.

(2) Income Support, jobseeker's allowance, maternity allowance, short-term or long-term incapacity benefit, or severe disablement allowance shall be treated as paid on the day of the benefit week in respect of which it is payable.",

"35. (1) .....

(2) "Earnings" shall not include -

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(d) any occupational pension

(3) -----.",

"40. (1) For the purposes of regulation 29 (calculation of income other than earnings) the income of a claimant which does not consist of earnings to be taken into account shall, subject to paragraphs (2) to (3B), be his gross income and any capital treated as income under regulations 41 and 44 (capital treated as income and modifications in respect of children and young persons).

(2) There shall be disregarded from the calculation of the claimant's gross income under paragraph (1), any sum, where applicable, specified in Schedule 9.

.....

(4) For the avoidance of doubt there shall be included as income to be taken into account under paragraph (1) any payment to which regulation 35(2) ..... applies." and

"42. (1) The claimant shall be treated as possessing income of which he has deprived himself for the purpose of securing entitlement to income support or increasing the amount of that benefit.

(2) Except in the case of

.....

income which would become available to the claimant upon application being made but which has not been acquired by him shall be treated as possessed by him but only from the date on which it could be expected to be acquired were an application made.

.....

(4) any payment of income, other than a payment of income specified in paragraph (4ZA), made -

(a) to a third party in respect of a single claimant or in respect of a member of the family (but not a member of the third party's family) shall be treated -

(i) in a case where the payment is derived from a payment of any benefit under the benefit Acts, a war disablement pension, war widow's pension or a pension payable to a person as a widow under the Naval, Military Air Forces Etc. (Disablement and Death) Service Pensions Order 1983 insofar as that Order is made under the Naval and Marine Pay and Pensions Act 1865 or Pensions and Yeomanry Pay Act 1884, or is made only under section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977 and any power of Her Majesty otherwise than under an enactment to make provisions about pensions for or in respect of persons who have been disabled or have died in consequence of service as members of the armed forces of the Crown as possessed by that single claimant, if it is paid to him, or by that member, if it is paid to any member of that family;

(ia) in case where that payment is a payment of an occupational pension or as a pension or other periodical payment made under a personal pension scheme, as possessed by that single claimant or, as the case may be, by that member;

(ii) in any other case, as possessed by that single claimant or by that member to the extent that it used for food, ordinary clothing or footwear, household fuel, rent or rates for which housing benefit is payable, or any housing costs to the extent that they are met under regulations 17(1)(e) or 18(1)(f) (housing costs) of that single claimant or, as the case may be, of any member of that family, or is used for any council tax or water charges for which that claimant or member is liable.....;

(b).....;

but, except where sub-paragraph (a)(i) applies and in the case of a person to whom section 23 of the Act (Trade Disputes) applies, this paragraph shall not apply to any payment in kind.

.....”.

II. Section 1 of the Attachment of Earnings Act 1971 provides, insofar as relevant to this appeal, as follows:-

“(1) .....

(2) A County Court may make an attachment of earnings order to secure -

(a) payments under a High Court or a County Court maintenance order;

(b) that payment of a judgment debt, other than a debt of less than £5 or such other sum as may be prescribed by County Court rules; or

(c) payments under an administration order.

.....”.

Section 6 of the 1971 Act provides that an attachment of earnings order shall operate as an instruction to the debtor's employer to make periodical deductions from the debtor's earnings to pay the amounts deducted to the collecting officer

of the court. Section 7(1) provides that the employer shall comply with the order but allows seven days from the date of service of the order for compliance. Section 23(2) provides that a person commits an offence if, being required by section 7(1) of the Act to comply with an attachment of earnings order, he fails to do so. Section 24(1)(b) includes pensions in the definition of earnings for the purposes of the Act.