

WIDOW'S BENEFIT**Earnings—cost of domestic assistance a reasonable deduction**

A widow took up employment at a weekly wage of £7. As her household included an aged mother and three children, she found it necessary to employ a home help for 12 hours a week. She claimed that in calculating her earnings, the weekly cost of 37s. 2d. was deductible.

Held that as the hiring of domestic assistance was necessary and not paid for at an excessive rate, its cost could be deducted from earnings. An expense necessarily incurred to allow a widow to go to work should, apart from the exceptional case, be taken to be a reasonable one.

Decisions C.G. 114/49 (K.L.) and R(G) 1/56 distinguished.

1. My decision is that from the 3rd January 1961 to the 27th February 1961 (both dates included) the weekly rate of widowed mother's allowance payable to the claimant does not fall to be reduced in respect of the claimant's earnings.

2. The claimant became a widow on the 30th September 1960 and was awarded widow's allowance from the 4th October 1960 to the 2nd January 1961. On the death of her husband, she found herself the occupant of a four roomed house on two floors, with a garden : with a household consisting of her aged mother of 82, a grown up daughter who was working but who was of uncertain health, and three children at school, aged 15, 13 and 11 years. The claimant was (and still is) a town councillor. Looking to her financial position the claimant felt that she must try to obtain work. She thought first of part-time work, but no suitable part-time work was offered. Then the employer for whom she had previously worked (that is, until about two years before) offered to re-employ her full time (that is from 10 a.m. to 5 p.m. daily) for a wage of £7 a week. The claimant accepted this offer and started work on the 14th November 1960. She realised that if she went out to work she would require to employ some domestic assistance. As from the date when she started work she employed a home help who came in each forenoon, Monday to Friday, for a total of 12 hours. The claimant paid her a wage of 30s. 0d., and also paid the employee's industrial injuries insurance contribution of 5d. and the employer's insurance contribution of 6s. 9d.—a total of 7s. 2d.

3. As from the 3rd January 1961 the claimant became entitled to widowed mother's allowance. She was invited to declare her weekly earnings and expenses. She declared her weekly earnings at £7 0s. 0d. She claimed as deductible expenses the following:—

1. Bus fares 7s. 7d.
2. Industrial injuries insurance contribution 5d.
3. Wages of home help 30s. 0d.
4. Insurance contribution in respect of home help 7s. 2d.

—Total £2 5s. 2d.

4. In terms of regulation 4(1)(a) of the National Insurance (General Benefit) Regulations, 1948 [S.I. 1948 No. 1278] as amended, it is legitimate, in order to arrive at net earnings, to deduct "... the reasonable expenses . . . incurred . . . in connection with the employment" from which the earnings are derived.

5. The local insurance officer accepted items 1 and 2 enumerated above as deductible expenses, but he refused to allow deduction of items 3 and 4. The result was that the claimant's net earnings were assessed as £7 0s. 0d. less 8s. 0d., that is to say £6 12s. 0d. a week, and in accordance with the "earnings rule" the claimant's allowance was reduced from £4 14s. 0d. a week to £3 12s. 0d. a week.

6. The claimant appealed to the local tribunal. The tribunal was an all-male tribunal : it may be thought that in this sort of case the presence of a woman member would have been appropriate. Be that as it may, it appears that the tribunal gave careful consideration to the appeal. In the end of the day, they came to the conclusion that the employment of home help for 12 hours a week, at 2s. 6d. an hour, plus 7s. 2d. insurance contribution, was in excess of what was reasonable. They considered that "6 hours a week at 2/6 per hour would be a reasonable expense for a home help in the circumstances." They therefore allowed deductible expenses of 15s. 0d. a week in addition to the 8s. 0d. accepted by the insurance officer, thus bringing out net earnings of £7 0s. 0d. less 23s. 0d., that is to say £5 17s. 0d. This meant that by reason of the "earnings rule" the claimant's widowed mother's allowance was reduced to £4 5s. 6d.

7. The claimant appealed to the Commissioner, and requested, and was granted, an oral hearing. She gave her evidence, as I thought, very candidly : and the insurance officer's representative expressly accepted her evidence as being accurate. But he was unable to support the appeal. His position was that in allowing a deduction of 15s. 0d. a week for home help the local tribunal had gone as far as could reasonably be justified : subject possibly to some further allowance in respect of national insurance.

8. The wording of regulation 4(1)(a) quoted above makes it obvious that a widow who goes out to work, and who incurs expense in doing so, may not be entitled to deduct every such expense, even though she is in fact out of pocket to that extent. This may seem hard : but the regulation expressly provides that what she is entitled to deduct is restricted to "reasonable" expenses. In a number of Decisions the Commissioner has taken the view that it is not "reasonable" to allow an expense which has been incurred merely for convenience or comfort. Thus in early Decision C.G. 114/49 (reported), relating to a widow with a young child who had to have her child minded when she was at work, the Commissioner allowed as a reasonable expense the cost of having the child minded, but disallowed as unreasonable the expense incurred by the claimant for having her dinner cooked for her. He said—"The expense in question is not one normally incurred by those earning small wages, and I can find no such exceptional circumstances in this case as would justify me in saying that it is any more than an expense incurred by her for her convenience or comfort. I am not prepared, therefore, to accept that it is a reasonable expense. . . ." In the more recent Decision R(G) 1/56 the Commissioner again applied this limitation. The claimant in that case worked and earned £7 15s. 0d. a week. She had one child, apparently of school age, and she employed a woman to look after the child, cook and do general housework, for a total cost of £3 18s. 11d. a week. The Commissioner considered this an unreasonable expense. He said—"A reasonable person earning no more than £7 15s. 0d. a week would not incur an expense of £3 18s. 11d. a week for the purpose of having her child looked after during her absence at work." The Commissioner restricted the deductible expense to the figure of 30s. 0d. a week *plus* 3s. 11d. insurance. The reasoning of the Commissioner shows

that in that case he regarded the ratio of expenses to gross earnings as of materiality in determining what was "reasonable", and in that case the expenses amounted to almost exactly half of the gross earnings. But I feel sure that the Commissioner did not intend thereby to impose a general formula based on a specific arithmetical ratio. I am clearly of opinion that, while consistency of standards is to be aimed at, what is reasonable in any given case falls to be determined according to the circumstances of that case.

9. I accept in the present case that in the circumstances in which the claimant was placed, the hiring of domestic assistance to the extent of about 12 hours a week was *necessary*: in the sense that she could not (except possibly for short periods) have carried on her job with less assistance than that. This was her evidence, and, as already stated, the insurance officer's representative did not dispute her evidence. There is no evidence that the wage rate paid was excessive. The expense of 30s. 0d. *plus* 7s. 2d. insurance was thus, on the evidence, *necessarily* incurred. There may no doubt be cases in which an expense which was *necessarily* incurred may nevertheless be properly characterised as *unreasonable*. Such cases are probably, in my opinion, exceptional. In my view an expense proved to have been incurred in order to enable a widow to go to work, and proved to have been necessarily incurred, should not readily be characterised as unreasonable: for so to characterise such an expense may come near to implying that the widow should not have taken up employment but should have stayed at home. That is not, in my view, a proper concern of the determining authorities. It is not established, in the present case, that by adopting the course which she did the claimant was improving her standard of living beyond that which had been customary for her. During her husband's lifetime, although admittedly conditions were then different and a precise comparison is not possible, she had domestic assistance from time to time. What happened was that, having to reorganise her affairs because of her husband's death, the claimant fully considered the alternatives open to her, and went back to her former employment, fully realising that she would have to incur the expense of paid domestic help, in order to be able to do so. Although in this case the ratio of expenses to gross earnings is fairly high (very nearly one-third) it does not strike me as unreasonable in the circumstances. I therefore hold that all four items of claim, amounting in all to £2 5s. 2d., constitute reasonable expenses incurred by the claimant in connection with her employment. They may legitimately be deducted from her gross wage of £7 0s. 0d. in order to arrive at her net earnings, which are thus £4 14s. 10d. Since this net figure does not exceed the limit of £5 0s. 0d. a week, benefit does not fall to be reduced in respect of these earnings.

10. The foregoing decision relates to the period from the 3rd January 1961 to the 27th February 1961. In dealing with subsequent periods, allowance will doubtless have to be made for certain changes which (I understand) have taken place in the relevant figures.

11. The appeal of the claimant is allowed.
