

**R(IS) 23/98**

**Mr. M. J. Goodman**  
**11.12.97**

**CIS/16772/1996**

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**Applicable amount - claimant living in a motor car - whether “without accommodation”**

The claimant was living in his motor car and had no other place of abode. The adjudication officer decided that the claimant was “without accommodation” and, applying paragraph 6 of Schedule 7 to the Income Support (General) Regulations 1987, awarded benefit on the basis that his applicable amount consisted only of the personal allowance under regulation 17(1)(a) of the regulations. A social security appeal tribunal allowed the claimant’s appeal and found that he was entitled to include a disability premium in his applicable amount, taking the view that the car constituted accommodation, although of a temporary nature. The adjudication officer appealed.

*Held*, allowing the appeal, that:

a motor car cannot be regarded as “accommodation” for the purposes of paragraph 6.

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**DECISION OF THE SOCIAL SECURITY COMMISSIONER**

1. I allow the adjudication officer’s appeal against the decision of the social security appeal tribunal dated 22 May 1996 as that decision is erroneous in law and I set it aside. My decision is that from 18 August 1995 (and for so long as the circumstances described below remained unchanged) the claimant’s entitlement to income support was limited to the amount prescribed for a single person of the claimant’s age without accommodation; Income Support (General) Regulations 1987, SI 1987 No. 1967, regulations 17 and 21 and Schedules 2 and 7 (para. 6).

2. This is an appeal to the Commissioner by the adjudication officer against the unanimous decision of a social security appeal tribunal dated (22 May 1996) which allowed the claimant’s appeal from a decision of an adjudication officer (issued on 24 August 1995) to the same effect as my decision in paragraph 1 above. The original adjudication officer’s decision had been issued because it was apparent from the completion by the claimant of form A1 that he was living in his motor car and had had no other place of abode. The adjudication officer therefore applied paragraph 6 of Schedule 7 to the Income Support (General) Regulations 1987, SI 1987 No. 1967 which provides that “a claimant who is without accommodation” is entitled only to the personal allowance under regulation 17(1)(a) of the regulations and is not entitled to any additional amount e.g. in the present case the disability premium.

3. The matter originally came before a social security appeal tribunal on 15 March 1996 but no presenting officer was present and the tribunal adjourned requiring the adjudication officer to “... explain why a motor vehicle used as a temporary home does not satisfy the definition of ‘accommodation’”. It is unfortunate that the tribunal had to adjourn its hearing in the circumstances. As in previous decisions, I stress the need for a presenting officer to attend hearings before social security appeal tribunals, particularly those involving a case of this kind which was of a novel nature on which there was no authority.

4. Be that as it may, the matter came again before a social security appeal tribunal on 22 May 1996, when a presenting officer attended, the tribunal made the following findings of fact:

“From 21 August 1995 [the claimant] was living, for a period of approximately two weeks, in his Vauxhall Cavalier car. He slept on a mattress put over the back seat folded down. He had heat and light. He did not try cooking because he had no cooking equipment.”

5. The tribunal allowed the claimant’s appeal and stated that he was entitled to “disability premium added to his income support from 18 August 1995, assuming that the other conditions of entitlement are established.” The tribunal gave as their reasons for decision:

“We have been assisted by the dictionary definition of the word “accommodation”, and by the guidance issued to adjudication officers. The presenting officer accepts that the only matter in issue is whether [the claimant’s] car would be classed as accommodation. As the guidance notes [i.e. the “Adjudication Officer’s Guide”, see below] state, the term “accommodation” is not defined in the Act or regulations. Therefore the tribunal has to consider the ordinary meaning of the word. For [the claimant], this car was “a place to live” (Oxford Modern English Dictionary). In the course of the hearing the presenting officer conceded that a caravan or a tent would be regarded as “accommodation”, but made a distinction because the car had no cooking facilities or adaptations for cooking and made the point that it was not suitable for continuous occupation. We think this distinction is rather artificial. The guidelines, while helpful, are not binding on the tribunal. We also accept [the claimant’s] evidence that if he had had cooking equipment in his possession he would have tried cooking with it, although we think he might have cooked outside the car rather than inside it. We accept [the claimant’s] evidence that he had light, heat and a mattress to lie on in this car. We conclude that he was using it as accommodation (albeit a temporary one) rather as one might use a caravan, he just had less comfort and space in it. We see nothing inconsistent in his applying more conventional housing, no reason why “accommodation” should not include temporary premises.”

6. The adjudication officer appeals against the tribunal’s decision on the following grounds:

“[The tribunal] found that a car constituted accommodation of a temporary nature in the same category as a tent or a caravan. It is my submission that anyone acting [judicially] would not have reached the same conclusion, based on the facts. I submit that the analogy between a car and a caravan is unreasonable. It is reasonable that accommodation should include some facilities for cooking and be capable of continuous occupation. I submit that a car does not have the same facilities as a caravan and is not suitable for continuous occupation. A tent is designed and intended to provide shelter. A car is designed as a means of transport. It is not intended for use as a dwelling house or living premises. Thus a person who is living in a car cannot be said to have accommodation.” (written submission 30 October 1996 para. 6)

7. I accept that submission as being correct in law. Consequently, I set the tribunal's decision aside and in paragraph 1 of this decision I have in effect restored the original adjudication officer's decision. The word "accommodation" is not defined for this purpose in any of the social security legislation though section 135(3) of the Social Security Contributions and Benefits Act 1992 dealing with "the applicable amount" does, but for a different purpose, define "accommodation" as including "any board or care. The tribunal cited a dictionary definition. I note that the relevant part of the definition "accommodation" in the current (1993) edition of Chambers Dictionary defines "accommodation" as "lodgings, living quarters". However, dictionary definitions do not really assist greatly in this case but they do in my view tend to support the view put by the presenting officer to the tribunal but which the tribunal rejected.

8. The references by the tribunal to "guidance" is a reference to the "Adjudication Officers' Guide," paragraph 29503 of which describes "accommodation" as:

"an effective shelter from the elements which is capable of being heated; and in which occupants can sit, lie, cook and eat; and which is reasonably suited for continuous occupation."

9. The Adjudication Officers' Guide is not of course law and nor are any parts of it binding upon the adjudication authorities including the tribunal or indeed the Commissioner. However, in the present case, I consider that that particular definition in paragraph 29503 of the guide accurately states what is the effect of the use of the words "without accommodation" in Schedule 7 to the 1987 regulations. In my view those words exclude the possibility of a motor car being regarded as "accommodation". I note that the presenting officer conceded before the tribunal that a caravan or a tent could constitute "accommodation" but I would not necessarily wish to endorse that view in the case of an ordinary tent or touring caravan, I consider that there could be problems in regarding those as "accommodation". Certainly a motor car, as in this case, could not be so considered.

10. Although I have received no submissions on the subject, presumably the purpose of this provision in paragraph 6 of Schedule 7 to the 1987 regulations is that if a claimant is to receive additions to the normal basic rate of income support, such as a disability premium, the Benefit Agency needs to be sure that he or she fulfils the conditions for that addition and continues to fulfil them. It would not be possible for the Agency so to do if the claimant were without accommodation, was not readily contactable and could move on without any notice. That would again strengthen my view that an ordinary car, which could be driven off at any moment, could not constitute "accommodation".

Date: 11 December 1997

(signed) Mr. M. J. Goodman  
Commissioner

