



THE SOCIAL SECURITY COMMISSIONERS

Commissioner's Case No: CIS/7451/1999

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY ACT 1998

APPEAL FROM A DECISION OF AN APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

MR COMMISSIONER JACOBS

Appellant:

Respondent:

Tribunal:

Tribunal's Case No:

Decision:

1. My decision is that the decision of the Plymouth appeal tribunal, held on 13th September 1999, is not erroneous in point of law.

The appeal to the Commissioner

2. This is an appeal to a Commissioner against the decision of the social security appeal tribunal brought by the claimant with the leave of Mrs Commissioner Heggs. The Secretary of State supports the appeal, but not in a way that would be to the claimant's advantage.

The history of the case

3. The issue in this case is whether the claimant was exempt from registering from work. This turns on regulation 6(a) of the Income Support (General) Regulations 1987. That paragraph applies to a claimant if

‘he is mentally or physically disabled, and by reason of that disability-

- (i) his earnings are reduced to 75 per cent or less of what a person without that disability and working the same number of hours would reasonably be expected to earn in that employment or in comparable employment in that area; or
- (ii) his number of hours of work are 75 per cent or less of what a person without that disability would reasonably be expected to undertake in that employment or in comparable employment in that area.’

4. This provision is relevant in this way. One of the conditions of entitlement to income support is that the claimant

‘falls within a prescribed category of person’.

See section 124(1)(e) of the Social Security Contributions and Benefits Act 1992. Those categories are prescribed under regulation 4ZA of the Income Support (General) Regulations 1987 and are set out in Schedule 1B to those Regulations. One of the categories covers

‘A person to whom regulation 6(a) (persons not treated as engaged in remunerative work) applies.’

See paragraph 8 of Schedule 1B.

5. In this case, the claimant was physically disabled and, if he had been in work, his hours or his earnings would probably have been reduced. But he was not in employment at any relevant time. So, the issue was: is regulation 6(a) concerned (i) with reduced productive in employment or (ii) with reduced capacity for employment? In other words, does regulation 6(a) apply (i) only to claimants who are in employment or (ii) also to claimants who are not in employment?

6. The adjudication officer and the social security appeal tribunal decided that the claimant was not covered by regulation 6(a), because he was not in employment. The claimant argues that he was covered by that provision.

The claimant's arguments

7. The claimant has relied on a decision of Mr Commissioner Sanders: CSIS/89/1990. That decision is no longer relevant. It was reversed by amendments to the Regulations that were made by the Income Support (General) Amendment No 4 Regulations 1991. The relevant provision is now differently worded.

8. The claimant also relied on the commentary in Income Related Benefits: The Legislation in which the author argued that regulation 6(a) might apply to someone who is not in work. The author pointed out that paragraph 8 refers to a 'person' and not to a 'worker', arguing that the claimant need not be 'economically active'.

9. The short answer to this argument is that Mr Commissioner Rice has decided that regulation 6(a) does not apply unless a claimant is in employment: CIS/15/1997. That decision was not starred and has not been picked up by the author of the commentary. Nor was it drawn to the attention of the social security appeal tribunal by the adjudication officer. If it had been, the tribunal would have been spared a great deal of effort.

10. I follow that decision not only out of comity but also because (with respect) it is plainly correct. The wording of regulation 6(a) inescapably requires a comparison with two employments: the claimant's actual employment and the equivalent employment for someone without the claimant's disability.

11. The claimant has finally relied on the transitional protection brought in at the time of the 1991 amendments to the Regulations. I issued a direction to the Secretary of State on this issue. The Secretary of State has confirmed that there was a break in the claimant's entitlement to income support between October 1996 and July 1997. That break was for longer than 8 weeks and brought an end to the transitional protection under regulation 23(1) of the 1991 Regulations.

12. The claimant has also referred me to a report by the Ombudsman on his case. That report is not relevant to the issues that I have to determine. The Ombudsman was concerned with the administration of the claimant's case, not with the claimant's entitlement to benefit. That is made clear in paragraph 8 of the report.

The Secretary of State's support for the appeal

13. The Secretary of State argues that the tribunal reached the correct conclusion by the wrong route. There may be some merit in the detailed criticism of some parts of the tribunal's reasoning. However, setting the decision aside would not help the claimant as I would have to give the same decision as the tribunal. I prefer to leave the tribunal's decision to stand.

Summary

14. The tribunal was faced with a difficult question of interpretation. It was not told that the issue had been decided by Mr Commissioner Rice. So, it had to work out the answer for itself.

It considered in detail all the claimant's arguments and the explained clearly why it did not accept them. Its reasons show that it undertook a careful and detailed analysis of the structure of the legislation. It came to the correct decision. Although some parts of its reasoning may not be correct, its conclusion was the only one that was open to it in law.

15. Rather than go the through the empty exercise of setting the decision aside and giving my own decision in the same words, I dismiss the appeal.

Signed on original

**Edward Jacobs
Commissioner
25th May 2001**