

Started decision
Earnings disregard - single parent - based on net earnings

CSB 562/1983

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DGR/BR

SUPPLEMENTARY BENEFITS ACT 1976

APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL
ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

1. For the reasons hereinafter appearing the decision of the supplementary benefit appeal tribunal given on 12 April 1983 is not erroneous in point of law, and accordingly this appeal fails.

2. This is an appeal by the claimant brought with my leave against the decision of the supplementary benefit appeal tribunal of 12 April 1983. The claimant asked for an oral hearing, a request to which I acceded. At that hearing the claimant was represented by Mr D Ryden and the benefit officer by Mr C d'Eca of the Solicitor's Office of the Department of Health and Social Security. I am indebted to them both for their submissions.

3. The claimant, a single parent with 3 dependent children, has been in receipt of supplementary benefit since she separated from her husband on 2 June 1980. She is employed 2 days a week earning £12.82. She has expenses connected with her employment of 50p per day in respect of travelling costs, 15p per day in respect of meals and 30p per week in respect of laundry. In addition, she has to bear the cost of having her children looked after amounting to £5.50 per week during the school holidays and 50p per week throughout the rest of the year. The benefit officer decided that all the above expenses should be deducted from her gross earnings under regulation 10(4)(c) and (d) of the Supplementary Benefit (Resources) Regulations 1981, and accordingly as far as this aspect of the case is concerned there is no dispute. Moreover, the claimant is entitled to a £4 per week disregard pursuant to regulation 10(5)(a). The real question at issue is the effect of regulation 10(5)(b), which reads as follows,

"(5) The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less -

(a) ...

(b) in respect of a single parent, an additional amount equal to one-half of the amount by which any earnings exceed £4 but do not exceed £20."

4. It is the benefit officer's contention, reinforced by Mr d'Eca in his oral submissions to me, that the claimant, who is a single parent, is only entitled under paragraph (b) to one-half of the difference between £4 and her net earnings i.e. her earnings after the expenses referred to above have been deducted. On the other hand, the claimant submits through Mr Ryden that the relevant sum is represented by one-half of the difference between £4 and the claimant's gross earnings, i.e. before the above expenses have been taken into account.

5. Mr Ryden argued that, unless regulation 10(5)(b) received the construction he contended for, a grave injustice would be done as between a claimant who incurred expenses and whose earnings were correspondingly reduced, and claimant who had no expenses and who suffered no such reduction in earnings. On the basis that Mr d'Eca's construction was right, then the claimant who suffered a reduction in his earnings by reason of his or her expenses would not receive as much disregard under paragraph (b) as someone whose earnings were not affected in this way. Mr Ryden illustrated the point as follows. Suppose there are two women doing a part-time job, each earning £20 a week. Woman A incurs child-minding fees and bus fares totalling £6 a week, whilst Woman B has no such expenses. Then their respective income resources would be calculated as follows:

<u>Woman A</u>		<u>Woman B</u>	
Gross Pay	£20	Gross Pay	£20
Deduct by way of expenses	£6	Deduct by way of expenses	0
	<hr/>		<hr/>
	£14		£20
Disregard	£4	Disregard	£4
Additional disregard	£5	Additional disregard	£8
	<hr/>		<hr/>
	£9		£12
Income resource	£5	Income Resource	£8

Although the income resources attributable to Woman A are for Supplementary Benefit purposes £3 per week less than those attributable to Woman B, the former has nevertheless incurred expenses of £6 per week. In other words, instead of Woman A being regarded as having resources £6 per week less than those of Woman B to reflect expenses of that amount, her income resources are treated as being only £3 per week less, and this arises simply because Woman B enjoys a high additional disregard, namely £8 as against £5. Mr Ryden contended that this was wholly inequitable and submitted that I should be slow to interpret the relevant statutory provision so as to bring out a result both unjust and at variance with what must have been Parliament's underlying intention.

6. Mr Ryden conceded, however, that whatever the practical result of the supplementary benefit legislation the issue in the final analysis depended upon the strict interpretation to be given to the relevant provision. In this connection, he argued that the words "any earnings" appearing in paragraph (b) were a throw-back to the "earnings" referred to in regulation 10(1). (For convenience the relevant provisions of regulation 10 are set out in the appendix hereto). In contrast, Mr d'Eca

contended that the word "earnings" underwent a change in meaning as the various paragraphs of the regulation followed one another. Initially, it comprised gross earnings as defined in paragraph (1) but did not take into account the benefits in kind referred to in paragraph (3). Later, such earnings were reduced by the deductions allowed in paragraph (4). Accordingly, when paragraph (5) was reached, the opening words "The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation ..." meant the net earnings after all disregards and all deductions had been taken into account. These earnings as so defined suffered a further reduction to take account of a £4 disregard under regulation 10(5)(a), and in the case of one-parent families a further disregard under regulation 10(5)(b). In Mr d'Eca's submission, the word "earnings" in regulation 10(5)(b) referred to the earnings "as calculated ... in accordance with this regulation". There could be no throw back simpliciter to the initial "earnings" appearing in paragraph (1), and the word "any" was there to show that not all earnings "as calculated ... in accordance with this regulation" were envisaged by regulation 10(5)(b), but only such of those earnings as "exceed £4 but do not exceed £20".

7. The construction point is a difficult one, and it would have been far more helpful if the draftsman had put the matter beyond doubt by either saying in regulation 10(5)(b) "any earnings derived from any employment" or if, the opposite construction was intended, "any earnings calculated as aforesaid" or even "any such earnings". However, I have to do the best I can without the employment of such unequivocal language.

8. I think that the words "any earnings" coming so closely after the opening words of paragraph (5) "earnings as calculated ... in accordance with this regulation ..." must refer to earnings of this kind, and not to earnings in any wider sense. I am satisfied that Mr d'Eca has given a satisfactory meaning to the word "any" in the context, and accordingly on balance I am satisfied that his construction is the correct one. If it is thought that an injustice is done by reason of this construction, then it is for Parliament, and Parliament alone, to make appropriate alterations to the relevant statutory provision. I have to interpret the regulation as Parliament has enacted it.

9. The interpretation contended for by Mr d'Eca was that adopted by the tribunal, and accordingly they did not err in point of law. They correctly construed the relevant provision and therefore this appeal fails.

(Signed) D G Rice
Commissioner

Date: 9 April 1984

Commissioner's File: CSB 562/1983
C SBO File: 627/83
Region: North Western

(4)

APPENDIX

Regulation 10 of the Supplementary Benefit (Resources) Regulations 1981

"10-(1) Subject to ... the following paragraph, for the purposes of these regulations a person's earnings shall consist of all remuneration or profit derived from any employment and shall include

[There follows a list of different types of payment]

(2)

(3) In calculating the amount of a person's earnings the following shall be disregarded -

[There follows a list of different items]

(4) In calculating the amount of a person's earnings, there shall be deducted from the earnings which he derives from any employment -

[There follows a list of different items]

(5) The amount of a person's earnings to be taken into account shall be the whole of his earnings as calculated on a weekly basis in accordance with this regulation and regulation 9(2) less -

(a) in respect of any member of the assessment unit whose earnings fall to be taken into account, the first £4; and

(b) in respect of a single parent, an additional amount equal to one half of the amount by which any earnings exceed £4 but do not exceed £20.

(6)"