

DGR/EFM

SOCIAL SECURITY ACTS 1975 TO 1980

CLAIM FOR INVALIDITY BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Decision C.S. 16/81

1. My decision is that an increase of invalidity benefit is payable to the claimant in respect of his daughter Elizabeth Anne for the inclusive period from 28 November 1980 to 6 November 1981 because the claimant is by virtue of the combined effect of section 41 of the Social Security Act 1975 and Regulation 4A(2) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343) entitled to an increase of invalidity benefit, as reduced by Regulation 8 of the Social Security (Overlapping Benefits) Regulations 1979 (S.I. 1979 No. 597) (the claimant's ex-wife having received an increase of child benefit in respect of Elizabeth Anne), and the claimant has undertaken to contribute and has in fact contributed to the maintenance of Elizabeth Anne at the rate required by section 43(1) of the above Act.

2. The facts of this case are not in dispute; the question is one of law. The claimant was in receipt of an increase of invalidity benefit in respect of his daughter Elizabeth Anne from 11 August 1975 until its disallowance at the commencement of the period now under appeal. Initially, the claimant was contributing to the maintenance of his daughter under a Court Order at the rate of £26.50 per month, later £6.50 a week - the daughter was living with the claimant's ex-wife - but when the claimant's ex-wife obtained an increase of child benefit amounting to £3.00 a week, which had the effect of reducing by a corresponding sum the claimant's increase of invalidity benefit (then at the standard rate of £7.50 per week), the Court Order was reduced to £4.50 a week. The claimant gave an undertaking to contribute towards the cost of providing for Elizabeth at least the amount of the increase paid to him, and he faithfully honoured that undertaking. However, in November 1980 he was informed that, if he was to continue to receive the increase of invalidity benefit, he would have to undertake to hand over to his ex-wife the sum of £7.50 weekly. This he refused to do on the basis that he was only in receipt of £4.50 weekly in respect of Elizabeth, and he could not afford to make up the remaining £3.00 out of his own invalidity benefit.

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3. Accordingly the insurance officer disallowed the increase of benefit for the period set out in paragraph 1, whereupon the claimant appealed to the local tribunal. The local tribunal, in a very careful decision, in which their findings are set out meticulously, allowed the appeal and painstakingly explained the grounds of their decision. The insurance officer now appeals against that decision to the Commissioner.

4. Sections 41(1) and 43 of the Social Security Act 1975 provide as follows

"41(1) Subject to section 30(1) of this Act and to the following provisions of this Part, the weekly rate of any benefit to which this subsection applies shall, for any period for which the beneficiary is entitled to child benefit in respect of a child or children, be increased in respect of that child, or each respectively of those children, by the amount specified in relation to the benefit in question in Schedule 4, Part IV, Column 2."

"43(1) Where, apart from this subsection, a person is entitled to receive, in respect of a particular child, ... any increase under section 41 of any benefit, that amount shall not be payable unless one of the following conditions is satisfied -

(a) that the beneficiary would be treated for the purposes of the Child Benefit Act as having the child living with him; or

(b) that the requisite contributions are being made to the cost of providing for the child.

(2) The condition specified in subsection 1(b) above is to be treated as satisfied if, but only if -

(a) such contributions are being made at a weekly rate not less than the amount referred to in subsection (1) -

(i) by the beneficiary, or

(ii) where the beneficiary is one of two spouses residing together, by them together; and

(b) except in prescribed cases, the contributions are over and above those required for the purpose of satisfying subsection (1)(b) of section 3 of the Child Benefit Act

(3)

(4)".

5. Regulation 4A(2) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343) provides as follows -

"For the purposes of section 41, ... where a beneficiary is a man, he shall be treated as if he were entitled to child benefit in respect of any child ordinarily not living with him of whom he is a parent if -

(a) the person who is entitled to child benefit in respect of that child is that man's wife or former wife and is also a parent of that child; and

(b) he is contributing to the cost of providing for that child at a rate which is at least equal to the lowest amount at which any benefit specified in the second column of Part IV of Schedule 4 to the Act is payable".

6. The claimant is the parent of the child, and ordinarily the latter does not live with him, but with his ex-wife, and it is she who receives child benefit in respect of her. The claimant has contributed to the child's maintenance at a rate exceeding £1.25 per week, the minimum amount specified in Part IV of Schedule 4 to the Act, and it follows necessarily from this that under the provisions of Regulation 4A(2) the claimant can be treated as entitled to child benefit. He will therefore receive an increase of invalidity benefit pursuant to section 41(1) of the Act, provided, of course, that he can satisfy the conditions laid down in section 43(1) and (2). Section 43(1)(b) provides that the requisite contributions must be made to the cost of maintaining the child, and Section 43(2)(a) stipulates that the contributions must be made at a weekly rate not less than the amount referred to in subsection (1). The insurance officer contends that the amount which the claimant is required to pay is the amount to which he is entitled under section 41(1), i.e. £7.50 per week.

7. Now, this approach proceeds on the basis that section 41(1) is to be looked at in isolation, without regard to any modifying effect of any other statutory provision. The insurance officer's interpretation disregards the effect of Regulation 8 of the Social Security (Overlapping Benefits) Regulations 1979 (S.I. 1979 No. 597) which provides as follows:

"Benefit under the Act shall not be required to be adjusted by reference to child benefit other than where an increase of child benefit is payable to a person who -

(a) either has no spouse or is not residing with his spouse; and

(b) is not living with any other person as his spouse,

and for the same period, in respect of the same child, any benefit or allowance or increase of a benefit or allowance under the Act is or, but for this regulation, would be payable to a beneficiary, [whereupon] the weekly rate of that benefit or allowance or increase thereof shall be reduced by the amount of the said increase of child benefit".

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Although the regulation is not felicitously expressed - the word "whereupon" inserted between "payable to a beneficiary" and "the weekly rate of that benefit" would have made for easier reading - nevertheless the meaning is clear, and the regulation operates to reduce an entitlement to an increase of invalidity benefit in respect of a child where an increase of child benefit is also payable in respect of that child.

8. In my judgment, each section of the Act has to be construed in the light of every other relevant statutory provision. Accordingly, when section 43(2)(a) refers to the requisite contributions as having to be "made at a weekly rate not less than the amount referred to in subsection (1)" the figure referred to is the amount prescribed by section 41 as reduced by the effect of Regulation 8, which in the present case comes to £4.50. Any other view would result in a claimant in receipt of an increase in invalidity benefit for a child, in respect of whom an increase of child benefit is payable, being required to pay by way of maintenance for that child an amount appreciably in excess of the increase of invalidity benefit received, and failure so to do would result in his not getting any increase of invalidity benefit in respect of that child. Such a result would be manifestly unjust, and I ought to be slow to find that Parliament so intended.

9. However, the insurance officer argues that, whereas in the case of an adult dependant Regulation 11(1)(b) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343) allows a claimant to be deemed to satisfy the conditions for an increase, where such increase is at less than the standard rate, if he contributes to the maintenance of the dependant at a weekly rate not less than that of such increase, there is no similar provision in respect of a child dependant. The insurance officer argues that the inference to be drawn from this is that in the case of children the concession conferred by Regulation 11(1)(b) is not to apply. I see the force of this argument, but I do not think that I can attach enough weight to it to displace the interpretation I have given to the effect of section 41(1) in paragraph 8 of this decision.

10. In any event, I think I am driven to reach the same conclusion by regulation 16 of the Social Security (Overlapping Benefits) Regulations 1979, which reads as follows:

"Any person who would be entitled to any benefit under the Act but for these regulations shall be treated as if he were entitled thereto for the purpose of any rights or obligations under the Act and the regulations made under it (whether of himself or some other person) which depend on his being so entitled, other than for the purposes of the right to payment of that benefit".

In my judgment the effect of this provision is that, although by virtue of regulation 8 the claimant is not entitled to payment of the full £7.50 per week increase of invalidity benefit in respect of

his daughter he is still to be treated as having received £7.50, and as it is accepted (see paragraph 11) that he handed over to his wife all that he received by way of increase of invalidity benefit in respect of their daughter, he must be deemed to have handed over the full £7.50 per week.

11. The claimant has given an undertaking to pay to his ex-wife £4.50 per week and he has faithfully honoured this undertaking. Accordingly, he can rely on Regulation 5(1) of the Social Security Benefit (Dependency) Regulations 1977 (S.I. 1977 No. 343). It follows that, in my judgment, he has satisfied all the relevant conditions for an award, and he is therefore entitled to an increase of invalidity benefit for the period set out in paragraph 1.

12. Accordingly, I dismiss this appeal.

(Signed) D G Rice
Commissioner

Date: 12 August 1981

Commissioner's File: C.S. 418/1981
C I O File: I.O. 8151/V/81
Region: East Midlands and East Anglia