

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

TAX CREDIT

Appeal to a Social Security Commissioner
on a question of law from a Tribunal's decision
dated 8 April 2003

DECISION OF A TRIBUNAL OF COMMISSIONERS

1. This is an appeal, with the leave of Mrs Commissioner Brown, by the claimant against a decision dated 8 April 2003. The Tribunal disallowed the appeal of the claimant and held that the claimant was entitled to working families' tax credit (WFTC) at the weekly rate of £182.94 for 26 weeks from 21 May 2002 thereby dismissing the claimant's contention that the payment on the renewal claim ought to have commenced from 6 May 2000.
2. As it appeared to the Chief Commissioner that the appeal involved a question of special difficulty, he directed on 14 April 2004, in accordance with Article 16(7) of the Social Security (Northern Ireland) Order 1998, that the appeal be dealt with by a Tribunal of Commissioners. A hearing of the appeal took place on 10 June 2004.
3. The claimant had been in receipt of WFTC and this award continued until 6 May 2002. The prescribed time for her to make a renewal application which would continue on from that previous award was the period beginning 28 days before and ending 14 days after the last day of the award. In order for her award to continue on from 7 May 2002 the claimant would have had to make her application during the period 8 April 2002 to 20 May 2002. The claimant posted her application using a pre-paid second-class envelope provided by the Tax Credit Office on 15 May 2002. However the Tax Credit Office has maintained that the application was not physically received by it until 21 May 2002, as reflected by the date stamp on the WFTC form. As the claimant's application was received after 20 May 2002 – the last date of the renewal period – her application was treated as a subsequent application. Accordingly on 21 May 2002 the Board of Inland Revenue made the decision to award WFTC from Tuesday, 21 May 2002. On 24 May 2002 the claimant appealed against the decision relying on the ground that the letter should have been received in the Tax Credit Office by Monday, 20 May 2002 and that the delay in receipt was due either to a Tax Credit Office error or a postal delay.

4. On appeal the Tribunal decided that the award of WFTC starting from 21 May 2002 was correct. The Tribunal, which consisted of the legally qualified chairman sitting alone, gave the following reasons for its decision: -

“The claimant’s application was found by the tribunal to have been received in the relevant office on 21 May 2002. This finding was made after careful inquiry into the procedures for opening and processing mail in that office; on a balance of probabilities, the tribunal was satisfied that the recorded date of receipt was correct.

Having made that finding, the tribunal had no discretion in the matter, and the appeal was disallowed under the Social Security (Claims and Payments) Regulations (NI) 1987, regulations 4(1) and 6(1)(a). The last date for receipt of the application, in order for the previous claim to have been continued, was 20 May 2002, under regulations 16(1A), (3) 19(1), 27(1) and Schedule 4 paragraph 7(a) of the same Regulations. The tribunal accepts that the application was posted on 15 May 2002, but unfortunately for the claimant, only the date of receipt is relevant.”

5. The claimant then sought leave to appeal to a Commissioner but such leave was refused by the legally qualified member on 13 September 2003. However, as stated in paragraph one herein, leave to appeal was granted by a Commissioner.

6. The legislation governing claims and time limits for WFTC at the relevant time was as follows: -

Regulation 4 of the Social Security (Claims and Payments) Regulations (NI) 1987, as far as it is relevant states:

“Making a claim for benefit

4.-(1) Every claim for benefit, other than a claim for income support or jobseeker’s allowance, shall be made in writing on a form approved by the Department or the Board for the purpose of the benefit for which the claim is made, or in such other manner, being in writing, as the Department or the Board may accept as sufficient in the circumstances of any particular case.

...

(6) A person wishing to make a claim for benefit shall –

...

(b) if it is a claim for any other benefit, deliver or send the claim to an appropriate office.”

Regulation 6 of the Social Security (Claims and Payments) Regulations (NI) 1987, as far as it is relevant states:

“Date of claim

6.-(1) Subject to the following provisions in this regulation the date on which a claim is made shall be –

- (a) in the case of a claim which meets the requirements of regulation 4(1), the date on which it is received in an appropriate office;

...

- (3) In the case of a claim for income support, working families tax credit, disabled persons tax credit or jobseeker's allowance, where the time for claiming is extended under regulation 19 the claim shall be treated as made on the first day of the period in respect of which the claim is, by reason of the operation of that regulation, timeously made.
- (4) Paragraph (3) shall not apply where the time for claiming income support, working families tax credit, disabled persons tax credit or jobseeker's allowance has been extended under regulation 19 and the failure to claim within the prescribed time for the purposes of that regulation is for the reason only that the claim has been sent by post."

Regulation 16 of the Social Security (Claims and Payments) Regulations (NI) 1987, as far as it is relevant states:

"Date of entitlement under an award for the purpose of determining the day from which benefit is to be payable and effective date of change of rate.

16.-(1) For the purpose only of determining the day from which benefit is to become payable, where a benefit other than one of those specified in paragraph (4) is awarded for a period of a week, or weeks, and the earliest date on which entitlement would otherwise commence is not for the first day of a benefit week, entitlement shall begin on the first day of the benefit week next following.

(1A) Where a claim for Working Families' Tax Credit is made in accordance with paragraph 7(a) or (aa) of Schedule 4 for a period following the expiration of an existing award of Working Families' Tax Credit or Disabled Person's Tax Credit, entitlement shall begin on the day after the expiration of that award."

Regulation 19 of the Social Security (Claims and Payments) Regulations (NI) 1987, as far as it is relevant states:

"Time for claiming benefit

19.-(1) Subject to the following provisions of this regulation, the prescribed time for claiming any benefit specified in column (1) of Schedule 4 is the appropriate time specified opposite that benefit in column (2) of that Schedule.

...

(6) In the case of a claim for working families' tax credit or disabled person's tax credit, where -

- (a) the claim is not made within the time specified for that benefit in Schedule 4;
- (b) any one or more of the circumstances specified in paragraph (7) applies or has applied to the claimant; and
- (c) as a result of that circumstance or those circumstances the claimant could not reasonably have been expected to make the claim earlier,

the prescribed time for claiming the benefit shall be extended, subject to a maximum extension of one month, to the date on which the claim is made.

(7) The circumstances referred to in paragraph (6) are -

- (a) the appropriate office where the claimant would be expected to make a claim was closed and alternative arrangements were not available;
- (b) the claimant was unable to attend the appropriate office due to difficulties with his normal mode of transport and there was no reasonable alternative available;
- (c) there were adverse postal conditions;

...”

Schedule 4 of the Social Security (Claims and Payments) Regulations (NI) 1987 as far as it is relevant states;

“SCHEDULE 4

Regulation 19(1)

Prescribed times for claiming benefit

Description of Benefit (1)	Prescribed time for Claiming Benefit (2)
7. Working Families' Tax Credit	(a) Where Working Families' Tax Credit has previously been claimed (<i>sic</i>) and awarded the period beginning 28 days before and ending 14 days after the last day of that award;”

7. The Interpretation Act (Northern Ireland) 1954, in so far as it is relevant, states: -

“Service of documents

24.-(1) Where an enactment authorises or requires a document to be served by post, whether the word “serve” or any of the words “give”, “deliver” or “send” or any other word is used, the service of the document may be effected by prepaying, registering and posting an envelope [or by recorded delivery post] addressed to the person on whom the document is to be served at his usual or last known place of abode or business and containing such document; and, unless the contrary is proved, the document shall be deemed to have been served at the time at which such envelope would have been delivered in the ordinary course of post.”

8. At the hearing of this appeal the claimant, who attended, was represented by Mr Allamby, solicitor, of the Law Centre (NI) while the Inland Revenue (the Board) was represented by Mr Raghavan, solicitor, of the Solicitor’s Office of the Inland Revenue.

9. At the hearing both advocates relied in their submissions on section 7 of the Interpretation Act 1978 but, after due consideration, they agreed that the legislation relating to interpretation relevant to the present case was contained in section 24(1) of the Interpretation Act (Northern Ireland) 1954 which, although worded somewhat differently, was identical in effect to section 7 as far as the present case is concerned.

10. Mr Allamby conceded that the ordinary time limit for claiming WFTC on renewal ends 14 days after the last day of the award – i.e. 20 May 2002 in this case – as per Schedule 4 paragraph 7(a) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987. However, he submitted that this time limit is subject to section 24(1) of the Interpretation Act (Northern Ireland) 1954, which provides, unless the contrary intention is proved, that a document shall be deemed to have been delivered at the time at which the envelope containing the renewal application would have been delivered in the ordinary course of the post. He submitted that, in the ordinary course of second-class post, a letter posted on Wednesday, 15 May 2002 would be received on or before Monday, 20 May 2002 and therefore the claim should have been treated as having been renewed at the very latest by 20 May 2002.

11. However, Mr Raghavan relied on the provision in section 24(1) of the Interpretation Act (Northern Ireland) 1954 that service can only be deemed service “unless the contrary is proved”. In the present case the Tribunal made a finding of fact that the claim was received on 21 May 2002 and such a finding was entirely sustainable. Accordingly any presumption that the claim was received in accordance with ordinary course of post had been clearly rebutted.

12. We find that the Tribunal was entitled to make a finding of fact that the claim was received on 21 May 2002. On that basis any presumption or deeming that the claim was made before 21 May 2002 has been rebutted, as there was an actual finding by the Tribunal that the claim was received on 21 May 2002. Accordingly the provisions of the Interpretation Act do not assist the claimant in this case.

13. Mr Allamby also submitted that the prescribed time limit for claiming in this case could be extended under the provisions of regulation 19(7)(c) which permits an extension where “there were adverse postal conditions”. Mr Commissioner Angus in the Great Britain case CIS/4901/2002, at paragraph 11, when commenting on the equivalent Great Britain legislation, stated as follows: -

“No doubt that head (*referring to adverse postal conditions*) is intended to include such things as postal strikes, weather conditions which prevent the delivery of mail and accidents but the wording seems to me to be wide enough to include such things as misdelivery of post and other mistakes on the part of Post Office employees such as the omission to comply with special arrangements for delivery made with an addressee.”

14. With regard to the above extract, we accept that the words “adverse postal conditions” should be interpreted widely, rather than narrowly but even so doing we cannot avoid the conclusion that there must be some element of generality to constitute “adverse postal conditions”.

15. In this case, other than the length of time taken to deliver the relevant letter, it was never suggested to the Tribunal that the delay was due to adverse postal conditions either as affecting a single letter or affecting the post in general. Essentially we are being asked to draw a conclusion that there were adverse postal conditions because of delay (and a short delay at that) in the delivery of a single letter. We are not prepared to so conclude and we do not consider that the Tribunal should have so concluded on the evidence presented to it. We consider that there must be some element of generality to constitute “adverse postal conditions”, and are doubtful if the delay in delivery of one letter can ever, without further evidence as to some more widely applicable underlying reasons for the delay, amount to “adverse postal conditions”. There would have to be evidence to at least establish some more broadly applicable state of affairs before it could reasonably be concluded that there were “adverse postal conditions”. There was no evidence presented that such was or might be the case.

16. We do not consider that there was any error on the Tribunal’s part in not investigating the matter further. The evidence was not such as to raise an issue that needed to be further explored. Before us the issue of “adverse postal conditions” has been explicitly raised but the evidence to support it is simply not there.

17. At first sight it seemed that the decision of the England Court of Appeal in the case of *Consignia plc v Sealy* [2002] EWCA Civ 878 could have assisted Mr Allamby in his argument on behalf of the claimant in the present case. In *Consignia* the Court examined the meaning of section 111(2) of the Employment Rights Act 1996 and, in particular, the circumstances under section 111(2)(b) in which the Employment Tribunal could be satisfied “that it was not reasonably practicable for the complaint to be presented before the end” of a required period of time – in that case a three month period. Brooke LJ set out at paragraph 30 to 33 a liberal view of the relevant circumstances that could be taken into account when deciding what “not reasonably practicable” means.

18. However, as Mr Raghaven pointed out, the present appeal concerns a specific detailed statutory scheme – under regulation 19(6) and (7) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987 - where the ability to extend the time limit for the claim can only arise where one or more of the exhaustively prescribed circumstances set out in regulation 19(7) are fulfilled. (Regulation 19(6)(c) refers to a test that the claimant could not, as a result of the circumstance or circumstances, have been reasonably expected to make the relevant claim earlier. However, this test is only relevant if one or more of the circumstances in regulation 19(7) are already applicable).

19. Brooke LJ has stated the following at paragraph 31(3) of *Consignia* namely: -

“If a complainant chooses to present a complaint by sending it by post, presentation will be assumed to have been effected, **unless the contrary is proved**, (*our emphasis*) at the time when the letter would be delivered in the ordinary course of post (see, by analogy, s.7 of the Interpretation Act 1978).”

However, these words do not assist the claimant, as the presumption of presentation at the time when the letter would be delivered in the ordinary course of post has, in the present case, been clearly rebutted.

20. Accordingly we are satisfied that the decision of the Tribunal is not erroneous in point of law. Therefore this appeal is dismissed.

(signed):

John A H Martin QC
Chief Commissioner

(signed):

Moya F Brown
Commissioner

(signed):

J P Powell
Deputy Commissioner

27 October 2004