

7

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Starred Decision No: *76/99

(Northern Ireland Commissioner's File No.: C2/99(FC))

Commissioners' decisions are identified by case references only, to preserve the privacy of individual claimants and other parties.

Starring denotes only that the case is considered to be of general interest or importance. It does not confer any additional status over an unstarred decision.

Reported decisions in the official series published by HMSO and CAS are generally to be followed in preference to others, as selection for reporting implies that a decision carries the assent of at least a majority of Commissioners in Great Britain or in Northern Ireland as the case may be.

*The practice about official reporting of Commissioners' decisions in **Great Britain** (which is currently under review) is explained in reported case R(I) 12/75 and a Practice Memorandum issued by the Chief Commissioner on 31 March 1987, which can be found in the official report volumes and on the Internet. As noted in the memorandum there is a general standing invitation to comment on the report-worthiness of any decision, whether or not starred for general circulation. However, a decision will not be selected for reporting if it is known that there is an appeal pending against it.*

*The practice in **Northern Ireland** (also under review) is similar, decisions being selected for reporting by the Northern Ireland Chief Commissioner. Northern Ireland Commissioners' decisions are published as a separate series.*

Any **comments** by interested organisations or individuals on the suitability of this decision for reporting should be sent to:

*Mrs M Alayande
Office of the Social Security and Child Support Commissioners
5th Floor, Newspaper House, 8-16 Great New Street, London EC4A 3BN.*

so as to arrive by _____ 2000

Comments on Northern Ireland Commissioners' decisions will be forwarded to the Northern Ireland Chief Commissioner.

SOCIAL SECURITY ADMINISTRATION (NORTHERN IRELAND) ACT 1992

**SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS
(NORTHERN IRELAND) ACT 1992**

**SOCIAL SECURITY (CONSEQUENTIAL PROVISIONS)
(NORTHERN IRELAND) ACT 1992**

SOCIAL SECURITY (NORTHERN IRELAND) ORDER 1998

FAMILY CREDIT

Appeal to the Social Security Commissioner
on a question of law from a Tribunal's decision
dated 19 October 1998

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the Adjudication Officer, leave having been granted by the Tribunal Chairman, against a decision dated 19 October 1998 of a Social Security Appeal Tribunal (hereinafter called "the Tribunal") sitting at Ballymena. That Tribunal had allowed [claimant]'s appeal in relation to Family Credit and had directed the Adjudication Officer to recalculate Family Credit taking into account the difference in values between opening and closing stock of [claimant]'s business in assessing her earnings for Family Credit purposes. The Adjudication Officer's grounds for appeal were contained in a letter dated 15 December 1998 and a further letter dated 21 January 1999. [Claimant] made observations on same by letter of 18 March 1999.
2. An oral hearing was not requested in this case and, having considered all the papers, I consider that I can decide the matter without an oral hearing.
3. The issue before me is a short one. It is whether or not the value of closing stock should be deducted from the value of opening stock in arriving at the claimant's earnings from her business for Family Credit purposes. In [claimant]'s case, this could only be done if the said difference could be deducted from the earnings under the provisions of Regulation 22(3A) of the Family Credit (General) Regulations (Northern Ireland) 1987.

4. Regulation 22(1) states:-

"22.-(1) For the purposes of regulation 15 (normal weekly earnings of self-employed earners), the earnings of a claimant to be taken into account shall be -

- (a) in the case of a self-employed earner who is engaged in employment on his own account, the net profit derived from that employment;
- (b) [not relevant]."

5. Regulation 22(3A) provides:-

"(3A) For the purposes of paragraph (1)(a), in the case where the assessment period is determined under regulation 15(1)(b), the net profit of the employment shall, except where paragraph (9) applies, be calculated by taking into account the earnings of the employment relevant to that period (whether or not received in that period), less -

- (a) subject to paragraphs (5) to (7), any expenses relevant to that period (whether or not defrayed in that period) and which were wholly and exclusively incurred for the purposes of that employment;"

6. A difficult situation has arisen for Tribunals in Northern Ireland in relation to deciding whether or not the difference in value in closing and opening stock can be incorporated as an expense within regulation 22(3A)(a). There was a decision - R3/92(FC) of the former Northern Ireland Chief Commissioner to the effect that it could not. There is a later decision of Commissioner McNally in case C1/97(FC) to the effect that it could. As the Tribunal correctly stated there have also been decisions in Great Britain which have taken views contrary to those taken by the former Chief Commissioner. Those decisions are CFC/019/1993, CFC/041/1993 and R(FC)1/96. Those are of course decisions of Great Britain Commissioners and do not have binding force in Northern Ireland though they are strongly persuasive in this jurisdiction.

7. In a situation where a Tribunal is faced with conflicting decisions of Commissioners, and despite Commissioner McNally's efforts to distinguish the former Chief Commissioner's decision I do think that there actually was conflict between the two Commissioner's decisions, Adjudication Officers and Tribunals should follow the principles set out in paragraph 20 of R(I)12/75 (a decision of a Tribunal of Commissioners in Great Britain). That decision laid down that a reported decision "... should *prima facie* be given more weight than an unreported decision." The reason being that decisions are selected for reporting where the Chief Commissioner is satisfied that they deal with questions of legal principle and command the assent of at least a majority of the Commissioners.

8. However where, as here, another Commissioner has in an unreported decision dealt with the earlier reported decision and either distinguished it or considered it to be incorrect for reasons which he has given (and Commissioner McNally has done this in decisions C1/98(FC) and C2/98(FC)), then the Adjudication Officer and the Tribunal are not obliged to give greater weight to the reported decision. It would be helpful if the Tribunal would indicate why it has followed the unreported decision e.g. it may be because the later, unreported decision is considered correct for the reasons given in that decision or because the unreported decision is supported by authorities in Great Britain on the same issue.
9. As the Tribunal of Commissioners stated in paragraph 21 of R(I)12/75, a rigid adherence to certain rules of precedence "...could lead to the perpetuation of error..."
10. In this case I consider that the Tribunal was correct to follow the decision of Commissioner McNally in C1/97(FC). It appears to me that the cost of stock consumed in the trading period of a business is an expense wholly and exclusively incurred for purposes of the employment in that business and is therefore deductible under regulation 22(3A). For the claimant to make a profit on the business, the stock had to be used up and the stock used up is shown by the difference in values of the opening and closing stocks for a period. This shows the stocks consumed and without it no profit can be made. It is consumed solely in relation to the employment in the business. The net profit is calculated by taking the gross earnings less certain expenses and it appears to me completely illogical that those expenses should not include the stock consumed, such consumption being essential for the business to carry on.
11. For the above reasons, which in essence summarise the reasons given by Commissioner McNally in C1/98(FC) and C2/98(FC), I consider the Tribunal did not err in law in its decision.
12. I therefore dismiss this appeal.

(Signed): **M F BROWN**
COMMISSIONER

(Date): **28 OCTOBER 1999**