

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Starred Decision No: *5/00

(Northern Ireland Commissioner's File No.: C1/99(IB))

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

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so as to arrive by _____ 2000

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

INCOME SUPPORT

Appeal to the Social Security Commissioner
on a question of law from a Tribunal's decision
dated 4 September 1998

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. This is an appeal by the claimant, leave having been granted by the Tribunal Chairman, against the decision dated 4 September 1998 of a Social Security Appeal Tribunal (hereinafter called "the Tribunal") sitting at Belfast. That Tribunal had decided that claimant's housing costs were payable from week 40 of her Income Support claim calculated from 4 February 1998. The claimant appealed giving her grounds of appeal on the OSSC1 (NI) form dated 24 November 1998. Observations thereon were made by the Adjudication Officer by letter of 18 May 1999 and further comment made by letter of 22 June 1999 from the Law Centre (NI) representing claimant.
2. I held a hearing of the appeal at which claimant was represented by Mr Stockman of the Law Centre and at which Mrs McRory attended to represent the Adjudication Officer. I am grateful to both representatives for their assistance in this matter.

3. The background to this case is that claimant's mortgage was taken out on 3 November 1995 in joint names with her former husband. Her husband left the matrimonial home on or about November 1996 and claimant claimed Income Support on 18 November 1996 following his moving out. This claim ended on 2 February 1997 because claimant started remunerative work on 3 February 1997. She reclaimed Income Support on 5 January 1998 (following the ending of a period of remunerative work on 19 December 1997) and again on 4 February 1998. Both these claims were turned down on the basis that her income exceeded her applicable amount. Claimant claimed again on 19 March 1998 and at this stage met the financial conditions for claiming the benefit, her husband having stopped paying maintenance.
4. The Adjudication Officer who made the decision which was appealed to the Tribunal had awarded Income Support on foot of the claim of 19 May 1998 but decided that claimant's housing costs, having arisen after 1 October 1995 had to be treated as new housing costs and could not be treated as existing housing costs. The significance of this lies in the provisions of paragraph 8 of Schedule 3 of the Income Support (General) Regulations (Northern Ireland) 19987. By reason of paragraph 8(1) of the said Schedule new housing costs (ie those which occurred after 1 October 1995) are not to be met until a person has been entitled to Income Support for a continuous period of 39 weeks or more. However, by virtue of paragraph 8(4) in certain circumstances new housing costs can be met as though they are existing housing costs and treated rather more favourably.
5. It was agreed, in this case, that the only method by which claimant could avoid the 39 week waiting period and have her housing costs counted as existing housing costs was if she was found to have claimed Income Support because of being abandoned by her partner. Sub-paragraph 8(3)(b) provides:-

"This sub-paragraph applies, subject to sub-paragraph (5), where a person claims income support because of-

...

(b) being abandoned by his partner,

and where the person's family includes a child."

The said sub-paragraph 5 provides:-

"Sub-paragraph (3) shall cease to apply to a person who subsequently becomes one of a couple."

6. In essence claimant's grounds of appeal were as follows:-
 1. That the Tribunal had misapplied paragraph 8(3)(b). The Tribunal had taken the view that claimant's circumstances did not enable her to rely on the provisions of the said paragraph 8(3)(b). Claimant contended that having successfully claimed Income Support including housing

costs on 18 November 1996 because she was abandoned, her circumstances had not changed and she could not understand why her claim for housing costs made on 3 February 1998 should be treated differently to that made on 18 November 1996.

2. That in deciding that certain linking rules applied to the claim made on 4 February 1998 and enabled claimant to be treated as in receipt of Income Support from that date, the Tribunal had erred in finding that the subsequent claims for Income Support of 4 February and 19 March 1998 did not link with the claim of 5 January 1998. Her waiting period should, in claimant's submission, have commenced from 5 January 1998. She submitted that the Tribunal had not applied paragraph 14(4) and 14(5A) of the said Schedule correctly.
7. In relation to the second of these grounds Mrs McRory conceded that the Tribunal had erred in law and that in fact claimant should have been treated as entitled to Income Support from 5 January 1998 so that her waiting period could commence from that date.
8. I agree that there is an error by the Tribunal in that respect and I set the decision aside for that reason.
9. The other ground of appeal relates to whether or not claimant claimed because of being abandoned by her partner. I do not agree with the contention made on claimant's behalf that having been abandoned and accepted at one time as claiming because of that and the circumstances not having changed, any subsequent claim for Income Support must be treated as being made because of being abandoned. The legislative phraseology is not "having been abandoned the person claims", it is claims because of "being abandoned". It is not enough to satisfy the provisions of paragraph 8(3)(b) that someone has been abandoned and remains abandoned. It is necessary to claim because of the abandonment. The focus is on the reason for each claim. It is the reasons for the instant claim, not any past claims which are relevant. In addition I am not convinced that there was no change of circumstances since the last claim. Claimant had claimed and then started remunerative work which caused her claim to terminate. From the viewpoint of a claim for Income Support the starting remunerative work was a relevant change of circumstances.
10. I also do not agree that paragraph 8(5) indicates that a person who has been abandoned and claims because of that must always be accepted as so claiming unless he or she subsequently becomes part of a couple. It appears to me that paragraph 8(5) relates only to a claim which was made because of being abandoned and to how long paragraph 8(3) and therefore paragraph 8(4) can apply to such a person. It does not relate to any subsequent claims which were not made because of being abandoned. Paragraph 8(3) does not relate to those claims and paragraph 8(5) refers to the application of paragraph 8(3).

11. I do, however, agree with Mrs McRory that the Tribunal did err in relation to its findings on abandonment. I consider that there was not sufficient investigation as to whether, and if so when, any abandonment had taken place. While it is accepted that the claimant's husband left the matrimonial home in November 1996, there was certainly evidence before the Tribunal that he had continued paying maintenance after that date. Abandonment means more than mere leaving the home. If the legislator had wished to provide that leaving the home alone was enough to trigger the assistance of paragraph 8(3) it could have done so. The word used was "abandoned". Leaving the matrimonial home may form part of abandonment but is not necessarily on its own sufficient. A person could leave the home but share financial responsibility and indeed responsibility for other family matters with the former partner. Abandonment must I think, also have included in it the concept of abdication of responsibilities toward the former partner or to such a level that it could reasonably be said that the remaining partner had been abandoned.
12. Mrs McRory has referred to CIS/5177/97, a decision of Commissioner Howell. I agree with Commissioner Howell that a separation by arrangement would not constitute abandonment. I am less sure, however, that the will and wish of the remaining partner must be against the separation. If for example, the conduct of the departing partner prior to departure was such that the remaining partner while not agreeing to the departure, did not actually oppose it and if the departing partner, having left, ceased to take any future responsibility for the partner (provided of course the latter was not by arrangement or agreement) then I think there could possibly be abandonment. It will all depend on the circumstances of each case and provided that proper investigation has taken place and that its conclusions are not unreasonable the Tribunal must be permitted to reach its own conclusions as to whether or not there was or was not an abandonment and whether the instant claim was made because of it.
13. The present Tribunal did not make sufficient inquiries as to whether, and if so when, any abandonment took place. The Tribunal has found that claimant was abandoned by her husband in November 1996. It is, however, apparent that he continued to pay maintenance after that date. Without further information I am unable to say whether or not the Tribunal's finding was correct as to whether there was abandonment either at all or at that time. Abandonment, if any, could take place some time after physical departure from the home.
14. There are obvious evidential matters to be covered here. I therefore remit this matter for rehearing before a differently constituted Appeal Tribunal which should ascertain what the situation was as regards claimant's husband's departure from the matrimonial home and afterwards. It should ask itself whether there was a departure without agreement and whether there was a relinquishing of responsibility as indicated above so as to constitute abandonment. To ascertain this it may be necessary to enquire as to the date of departure, financial provisions, any agreements or arrangements etc. As what is being dealt with here is Income Support it would seem to me that it is very relevant that the issue of financial provisions be considered and that it should be given considerable weight but the overall standard is whether or not

there has been a departure and a relinquishing of responsibility so as to constitute abandonment. No words can be substituted for those of the statutory provisions.

15. If the Tribunal considers that there was an abandonment it should decide whether the claim in March 1998 was made because of that. In relation to the question of causation I am in agreement with Commissioner Mesher in Great Britain in paragraph 21 of CIS/2790/1998 where he states that no phrase can be used in substitution for the words "because of" in paragraph 8(3). I would also refer the Tribunal to paragraphs 18 and 19 of that decision.
16. The new Tribunal should also correctly apply the linking rules set out in paragraph 14(4), 14(5) and 14(5A) of the said Schedule.

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

(Date): **7 JANUARY 2000**