

Even if only payment = enterprise allowance
can still fulfill the remunerative work condition for
FC, since enterprise allowance counts as earnings.

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WMW/JOB

Commissioner's File: CSFC/4/91

SOCIAL SECURITY ACTS 1975 - 1990

APPEAL TO THE COMMISSIONER FROM A DECISION OF A SOCIAL SECURITY APPEAL
TRIBUNAL UPON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Name: CATHERINE BEATTIE (Mrs)

Social Security Appeal Tribunal: Glasgow South

Case No: 553:16476

1. I hold the decision of the Glasgow South Social Security Appeal Tribunal dated 22 April 1991 to be erroneous in point of law. Accordingly I set it aside. Because I think it appropriate so to do I exercise the power conferred by section 101(5)(a)(i) of the Social Security Act 1975 and give the decision which I consider the tribunal should have given.

2. That decision is to allow the appeal against a decision of an adjudication officer issued on 8 November 1990 holding the claimant not entitled to family credit as at the date of claim - namely 13 August 1990 - and to find instead that the claimant was not then disentitled from family credit by virtue of section 20(5)(b) of the Social Security Act 1986. I remit the case to the adjudication officer to calculate any entitlement to benefit that flows from this decision. In the event of any dispute arising out of that remit I reserve leave to either party to restore the case before me.

3. The facts as found by the original adjudication officer, and the tribunal, are relatively simple and straight forward. In August 1980 the claimant sought family credit for herself, her husband and two dependent children. There was a declaration that with effect from 6 August 1990 both Mr and Mrs Beattie had commenced self employment and each normally worked 40 hours a week. In response to a further enquiry Mr Beattie indicated that the basic, if not the sole, income of the business in which they were engaged was an Enterprise Allowance. The adjudication officer then decided that there was no entitlement to family credit because neither the claimant nor her partner was in paid work for at least 24 hours a week. Section 20(5) of the Social Security Act 1986 and regulation 4 of the Family Credit (General) Regulations 1987 were founded on. The claimant appealed and there was then recorded a refusal to review the November 1990 decision under section 104 of the Social Security Act 1975.

4. Evidence was submitted to the tribunal dealing with the business, its orders, and its prospects of invoice generated income. And so they clearly concentrated upon whether the work being done was paid work or at least work done "in expectation of payment". Reference was made to the decision on file CFC/3/89. The general rule set out therein, that 26 weeks from the date of claim should be considered as the period appropriate within which to seek expected payment, was applied. The tribunal went on to make findings of fact arising out of that evidence but concluded, in light thereof, that there was no expectation of payment within a 26 week period in this case and under

reference to General Regulation 4(1) they held that the work represented by the submitted invoices did not represent work for not less than 24 hours a week on average.

5. The claimant now again appeals with leave of the chairman. The grounds of appeal point to the Enterprise Allowance Scheme and the fact that 36 hours must be worked per week to obtain the benefit of that Scheme. Regulation 21 of the General Regulations is also pointed to as providing that an Enterprise Allowance may count towards the calculation of income for family credit purposes. The adjudication officer now concerned supports the appeal, in particular upon the latter ground. I agree.

6. As the adjudication officer now concerned points out, the decision on file CFC/3/89 did not require to deal with the involvement of monies paid by way of an Enterprise Allowance: properly put an allowance paid under section 2 of the Employment and Training Act 1973. Section 20(5) of the 1986 Act provides for entitlement to family credit if at the time of the claim the claimant's income does not exceed a particular amount - not applicable here. But it is also required that, in such a case as this, there is an engagement in remunerative work. And it would appear that section 20(5)(c) was satisfied in this case there having been responsibility for two children. And so the central issue was and is section 20(5)(b). The heart of the question is whether there was a normal engagement in remunerative work.

7. Regulation 4(1) of the General Regulations provides that -

"Remunerative work is work in which a person is engaged, or where his hours of work fluctuate, is engaged, on average, for not less than 24 hours a week, in work for which payment is made or which is done in expectation of payment."

There is now no dispute about the hours of work. These were declared in the application form as being 40 hours per week by each of the claimant and her husband. The adjudication officer now concerned submits that it was a condition of receiving Enterprise Allowance that the recipient must be working at least 36 hours a week in the business. For the purposes of this case, at least, I accept that submission in light of the factual basis upon which it is put. But given the declaration they were on any view engaged in qualifying work for which payment is being made. I consider that the tribunal were in error in concentrating on the amount of work represented by the invoices. The question at this stage was as to the amount of work actually done.

8. But the other half of the issue, as considered by the tribunal, was whether a payment was made, or whether at least there was an expectation of payment, for that work. There is nothing to show that the payment must be commercially related to the work. And, as the adjudication officer now points out, regulation 21(1) of the General Regulations, in dealing with earnings of those who are self-employed, provides that -

"Earnings", in the case of employment as a self-employed earner, means the gross receipts of the employment and shall include any allowance paid under section 2 of the Employment and Training Act 1973 ... to the claimant for the purpose of assisting him in carrying on his business."

There is no dispute that the so called Enterprise Allowance was paid under that section of the 1973 Act nor that its purpose was to assist the claimant and her husband in carrying on their business. Nor is there any dispute that the payments involved amounted to £80 per week. Accordingly they fell within the category of "earnings" for the purpose of determining the Beatties' entitlement to family credit. General Regulation 5(1) provides that a person is to be treated for the purposes of section 20(5)(b) of the Act as engaged in remunerative work only if he carries out activities in the course of his work for not less than 24 hours in either the week of claim or either of the two weeks immediately preceding the week of claim and he is employed at the date of claim. That condition was also clearly satisfied.

9. For these reasons I hold that the claimant was not barred from family credit by reason of section 20(5)(b) of the Act. It is appropriate that the case be now remitted to the adjudication officer to consider the consequences of my decision.

10. The appeal succeeds.

(signed) W M Walker
Commissioner
Date: 10 January 1992