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# THE SOCIAL SECURITY COMMISSIONERS

*Commissioner's Case No: CSIB/877/01*

## SOCIAL SECURITY ACT 1998

## APPEAL FROM THE APPEAL TRIBUNAL UPON A QUESTION OF LAW

## COMMISSIONER: D J MAY QC

## DECISION OF SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the tribunal given at Edinburgh on 12 February 2001 is erroneous upon a point of law. I set it aside. I make the decision that the tribunal ought to have made. That decision is to dismiss the appeal against the decision made on 5 April 2000 by the Secretary of State and to confirm the decision of the Secretary of State.

2. The Secretary of State has appealed to the Commissioner against the decision of the tribunal which is recorded at page 36. The only issue in the appeal before the tribunal was whether, when the claimant had students living at her address for approximately 2 – 4 weeks at a time in approximately July or August of each year in 1997, 1998 and 1999, on a bed, breakfast and evening meal basis, paying £70 a week, this meant that, for the purpose of incapacity benefit, in terms of regulation 16(1) and 16(2) the Social Security (Incapacity for Work) (General) Regulations 1995, she was to be regarded as a "person who works to be treated as capable of work". Regulation 16(2) provides:-

> "(2) Work to which this regulation applies is any work which a person does ... whether or not he undertakes it in expectation of payment, apart from care of a relative or domestic tasks carried out in his own home."

In order to resolve the issue before them, the tribunal required to decide whether the limited work carried out by the claimant in respect of the students constituted "domestic tasks carried out in [her] own home".

3. The tribunal found that it did. What the tribunal said in their reasons was:-

> "The Tribunal accepted that she did very little for these lodgers who were largely left to their own room. Bearing in mind that she had children of her own at home for whom she cared there was practically nothing extra involved. They received breakfast which comprised cereal, orange juice and toast, and evening meals of mince and potatoes or stews. The only other service undertaken was changing the sheets once a week. Whatever was involved over and above what she did for her own family the Tribunal took the view was not capable of being described as work and the Representative's argument that it was covered by the term 'domestic tasks etc' as above was accepted."

4. The Secretary of State argues:-

> "6. However, CIB/14656/96 Paragraph 12 states that 'domestic tasks carried out in 'her' own home, could include not only the claimant doing domestic tasks for herself, but also such tasks for any member of her home provided he or she could be properly regarded as a member of the home, **and not just as a paying guest or lodger**.
>
> 7. In the present case, I submit that the claimant took in students on a commercial basis, and that the evidence shows that they stayed there as paying guests and not as a member of the claimant's

home. The number of students varied between one and as many as three each week."

5. The claimant responded to that submission as follows:-

We believe that the tribunal did not misinterpret Regulation 16 of the incapacity for work (General) Regulations 1995.
In this case the claimant took in foreign students as part of her home, with the idea of providing the students with a secure family environment in which to live. The tasks performed for them were 'normal domestic tasks carried out in 'her' own home.

In relation to regulation 16 of the incapacity for work (General) Regulations 1995 the tribunal 'accepted that she did very little for these lodgers who were left to their own room. Bearing in mind that she had children of her own at home for whom she cared there was practically nothing extra involved.' They therefore found on the evidence given that these duties were covered by the term 'domestic tasks etc'.

The Secretary of State in his submission quotes CIB/14656/96 Paragraph 12 which states that, 'domestic tasks carried out in 'her' own home, could include not only the claimant doing domestic tasks for herself, but also such tasks for any member of her home provided he or she could be properly regarded as a member of the 'home' and not just as a paying lodger or guest.

The issue in this case is the relationship between the claimant and the students who stayed with her.
As previously mentioned the reason for placing these foreign students with families is to provide them with a secure family environment where they are welcomed as an addition to the family.

We therefore believe that after listening to the facts of this particular case the tribunal were correct in their application of Regulation 16 of the incapacity for work (General) Regulations 1995 and we would ask that the Commissioner uphold the tribunal decision."

6. I am satisfied that the Secretary of State's appeal is well-founded. I do not accept the argument put forward in submission on behalf of the claimant. It is clear that the students who are referred to are not relatives in the sense set out in the regulations, so the question is whether such work as was done for the students, albeit of a limited nature, could be regarded as domestic tasks carried out in the claimant's own home. I cannot accept that the undertaking of services, including the provision of meals and the changing of sheets in the context of provision of accommodation for money, could properly be regarded as domestic tasks. To do so would be to stretch the phrase "domestic tasks" into tasks which are intrinsically commercial. In taking that view it is clear that I do not accept the reasoning of the tribunal. The legislation does not seek to quantify the work done for the purposes of determining whether it falls into the category of "domestic tasks". It is the nature, context and purpose of the work which is material. In these circumstances, the tribunal erred in law as they misapplied the regulations on the facts.

7. I do not consider that CIB/14656/96 assists the claimant. It is clear that Mr Commissioner Goodman applied the regulation in specific circumstances which were peculiar to the case that he had to determine. He said in paragraph 12:-

> "On the special facts of this case which I have dealt with in detail in paragraphs above, I hold that the lodger was clearly not just an entire stranger but had been a close friend of the claimant. He had helped her with running the household in doing certain tasks himself (see above). Because of those special facts, I hold that he was part of the 'home' and therefore domestic tasks carried out by the claimant to benefit him and the claimant jointly do on the facts of this case come within the exception in regulation 16(2).

It is clear that foreign students staying for between 2-4 weeks in certain summer months could not be said to fall within such a special category.

8. Further, and in any event, it appears to me that the Commissioner has misread the regulation himself, as the regulation is not concerned with whether the person who is receiving services in respect of the accommodation provided for him by the claimant is what is described as being "part of the 'home'". I equally do not follow the logic of Mr Commissioner Goodman when he says in paragraph 11 of his decision:-

> "I have set out regulation 16(2) in paragraph 6 above. The exception reads, ' ... apart from care of a close relative or domestic tasks carried out in his own home.' 'Close relatives' are defined by regulation 2(1) of the 1995 Regulations as, 'a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parents, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmmarried couple, the other member of that couple'. Clearly, here, the claimant's lodger was not a 'close relative' within that definition. If he had been, the claimant would have been able to give him 'care' without that being regarded as work. The fact that there is a limited definition of 'close relative' means presumably that the draftsman of the regulation envisaged that there might be others whose 'care' would have to be regarded as work (unless some other exception applied). Presumably, also, the draftsman meant that such persons could come within the ambit of 'domestic tasks carried out in his own home'."

It seems to me that the reference to "care" and "domestic tasks" are separate from each other. The regulation envisages that the exception is to apply alternatively to someone who cares for a relative or to someone who has, for example, the capacity to engage in domestic tasks such as dusting, laundry, cleaning, cooking and the like, though in some cases they may do both. Mr Commissioner Goodman is reading too much into the regulation and his interpretation of it goes beyond what the language of the statutory provisions can reasonably bear. It should be noted, however, that even on his intrepretation he would exclude a paying lodger or guest. In any event, the tribunal made no finding in respect of the reasons for placing foreign students with families, as set out in the response to the Secretary of State's submission by the claimant and I am not directed to any evidence along these lines which was placed before the

tribunal. Even if it had, it would have made no difference to the outcome of the proper application of the regulations for the reasons I have set out above.

9. The appeal succeeds.

(signed)
D J MAY QC
Commissioner
Date: 2 April 2002