

SOCIAL SECURITY AND CHILD SUPPORT COMMISSIONERS

Commissioner's File Nos.: CA/3184/1999

Starred Decision No: 78/00

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 DSS 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. Northern Ireland Commissioners' decisions are published by The Stationary Office as a separate series.

The practice about official reporting of Commissioners' decisions in Great Britain is explained in reported case R(I) 12/75 and a Practice Memorandum issued by the Chief Commissioner on 31 March 1987. The Chief Commissioner selects decisions for reporting after consultation with Commissioners. As noted in the memorandum there is also 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 is similar, decisions being selected for reporting by the Northern Ireland Chief Commissioner.

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

*Mr P Cichosz,
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 2nd February 2001

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

Decision:

1. My decision is as follows. It is given under section 24(2) and (3)(d) of the Child Support Act 1991.
 - 1.1 The decision of the Truro child support appeal tribunal held on 20th January 1999 is wrong in law.
 - 1.2 Accordingly, I set it aside and refer the case to the Secretary of State for determination.
 - 1.3 I direct the officer who determines this case on behalf of the Secretary of State to proceed in accordance with my interpretation of regulation 15(3)(a) of the Child Support Departure Direction and Consequential Amendments Regulations 1996. The officer will not be bound by the findings of fact made by the child support appeal tribunal, but may find the helpful in deciding whether to give a departure direction.

The appeal to the Commissioner

2. This case concerns an application for a departure direction from the formula assessment of child support maintenance. In the terminology of the child support legislation, the appellant is the absent parent and the applicant for the direction, and the second respondent is the parent with care. I shall refer to them in those terms.
3. This is an appeal to a Commissioner against the decision of the child support appeal tribunal brought by the absent parent with the leave of the tribunal's chairman.
4. The Secretary of State's written submission did not support the appeal. However, in view of the issue that arose I directed an oral hearing. It was held before me in London on 7th November 2000. Neither parent was able to attend. However, the Secretary of State was represented by Mr L Scoon of the Office of the Solicitor to the Departments of Health and Social Security. I am grateful to him for his argument.

The issue for decision

5. The absent parent applied for a departure direction in respect of the costs arising from a long-term illness or disability under regulation 15 of the Child Support Departure Direction and Consequential Amendments Regulations 1996. The costs relevant to an application under that head are the net costs. That means the extra costs arising from the disability in respect of specified matters, for example mobility and clothing, less certain monies available to the parent to meet those extra costs. The issue for me is whether the claimant's disablement benefit is to be deducted from his extra costs in reaching the net figure.
6. The Secretary of State deducted the amount of this benefit from the costs alleged to arise from the claimant's disability on the basis that it was 'financial assistance received from any source in respect of his long-term illness or disability' (see regulation 15(3)(a)).
7. The absent parent argued that this was wrong, as the disablement benefit was taken into account as his income under the formula assessment. So, he argued, the same money was to be available both to pay child support maintenance and to meet the costs arising from his

disability. The submission to the tribunal agreed with this argument, but submitted that the absent parent had not provided evidence of extra costs.

8. The child support appeal tribunal, however, confirmed the refusal to give a departure direction, recording that 'we could see no way that we could reasonably apply a different interpretation to the regulations.' The Secretary of State's written submission supported the tribunal's decision.

The Secretary of State's argument at the oral hearing

9. At the oral hearing, Mr Scoon resiled from the Secretary of State's previous submission. He argued that although the wording of regulation 15(3)(a) was wide, it did not include disablement benefit or any other form of social security benefit. He gave two reasons.

10. The first reason was that 'financial assistance' is not a phrase that is appropriate to include benefits and is not used in this way in legislation. He gave two examples of sources of financial assistance. One example was voluntary and charitable contributions, which are (wholly or partly) disregarded under paragraph 19 of Schedule 2 to the Child Support (Maintenance Assessments and Special Cases) Regulations 1992. The other example was payment under an insurance policy. So, there is scope for regulation 15(3)(a) to operate even if social security benefits are not covered by it.

11. The second reason was that regulation 15(3)(b) expressly deals with disability living allowance and attendance allowance, which would not be necessary if those benefits were already covered by 'financial assistance' in head (a).

12. I accept that argument, which avoids the apparent contradiction of expecting the same money to be available to finance both child support maintenance under the formula assessment and the extra costs of disability.

13. Although it is irrelevant to my decision, I note that my interpretation accords with the policy intention behind regulation 15(3).

Summary

14. The tribunal's decision was wrong in law, because it misinterpreted regulation 15(3)(a) of the Child Support Departure Direction and Consequential Amendments Regulations 1996. So, it must be set aside. I consider it more appropriate to refer the case to the Secretary of State for determination on the basis of my interpretation of regulation 15(3)(a) rather than to an appeal tribunal for a rehearing. If either parent is dissatisfied with the Secretary of State's decision, there is a right of appeal against it to an appeal tribunal.

Signed on original

**Edward Jacobs
Commissioner
7th November 2000**