



ATH/SH/9/MD

Commissioner's File: CF/1/1988

Region: London South

CHILD BENEFIT ACT 1975
DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name: Carmen Ezetta Skinner

Appeal Tribunal: Sutton

Case No: 153/3

[ORAL HEARING]

1. I dismiss this appeal by the adjudication officer. My decision is:-
 - (i) that the claimant was entitled to receive increase of child benefit (one-parent benefit) for Sonia from and including 16 December 1985 notwithstanding that the claimant received guardian's allowance from and including that date in respect of her grand-daughter Rowena and
 - (ii) that the weekly rate of guardian's allowance payable for Rowena from 10 December 1985 to 19 October 1986 both dates included was not to be reduced by the amount of the one-parent benefit paid to the claimant in respect of Sonia for that period, the claimant being entitled to receive full payment of both benefits.
2. The claimant's youngest child, Sonia, was born in 1969. Since February 1979 the claimant had been in receipt of the increased rate of child benefit in respect of Sonia - "one-parent benefit" - under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976. On 5 December 1985 the claimant's grand-daughter Rowena, was born to another, daughter of the claimant (older than Sonia) but sadly that daughter (the mother of Rowena) died the following day. The claimant applied for and was awarded child benefit in respect of her grand-daughter, Rowena, as from 9 December 1985. On 18 June 1986 the claimant applied for guardian's allowance for Rowena.
3. By a decision issued on 10 November 1986 the adjudication officer decided that guardian's allowance was payable in respect of Rowena from 10 December 1985; but he further decided that since the claimant had been in receipt of one-parent benefit in respect of Sonia from 10 December 1985 to 19 October 1986 both dates included, the claimant was not entitled to full payment of both benefits during that period and that the guardian's allowance was payable at reduced weekly rates to take account of the payments of one-parent benefit (which had totalled £204.60 during that period) and he relied upon Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations, regulation 2(4)(c).
4. By a further decision issued on 7 January 1987 the adjudication officer reviewed the

decision of the adjudication officer awarding increase of child benefit for Sonia because there had been a relevant change of circumstances since the decision was given, and his revised decision was that increase of child benefit was not payable for Sonia from and including 16 December 1985 because from and including that date the claimant was entitled to a "specific benefit" namely guardian's allowance and he relied on regulation 2(4)(a) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976.

5. The claimant appealed against both decisions on the ground that payments of one-parent benefit and of guardian's allowance were paid in respect of different children and there had been no overlap of benefits. On 17 March 1987 the social security appeal tribunal adjourned to enable both sides to make further written submissions and to give the claimant, who was unwell, an opportunity to attend; and on 10 July 1987 the social security appeal tribunal in unanimous decisions did not confirm either of the adjudication officer's decisions and in effect allowed the claimant's appeals. The adjudication officer now appeals with leave of the tribunal chairman.

6. I directed an oral hearing which was held on 30 March 1988. The claimant was present and was represented by Mr Derek Jackson, a welfare rights worker. The adjudication officer was represented by Mr Storey of the Solicitor's Office, Department of Health and Social Security.

7. Guardian's Allowance

Guardian's allowance is awarded under section 38 of the Social Security Act 1975 in respect of a child where the claimant is entitled to child benefit in respect of that child. The claimant was entitled to child benefit in respect of Rowena and the claimant was entitled to guardian's allowance by virtue of section 38(2)(b).

8. One-Parent Benefit

Regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations provides that where, so far as is relevant,

"(2) ... in a case where in any week a person -

- (a) is entitled to child benefit in respect of a child ... and
- (b) either has no spouse or is not residing with his spouse; and
- (c) is not living with any other person as his spouse,

the weekly rate of child benefit payable in respect of that child, or, if that child is not the only, elder or eldest child in respect of whom that person is entitled to child benefit, the elder or eldest child in respect of whom that person is so entitled, shall, ... be increased by [the specified amount]".

That increased weekly rate is known as one-parent benefit and, as I have said, the claimant was in receipt of one-parent benefit in respect of Sonia from February 1979.

9. "Specified Benefit"

Regulation 2(5) of the Fixing and Adjustment of Rates Regulations provides that a "specified benefit" includes guardian's allowance under section 38 of the Social Security Act. Regulation 2(4)(a) and (c) of those Regulations deal with the effect of a "specified benefit" upon a one-person benefit. Regulation 2(4)(a) provides:

"(4) Where -

- (a) throughout any week a person is entitled to an allowance or to an increase of a benefit, pension or allowance such as is referred to in paragraph (5) of this regulation as a 'specified benefit' [e.g. guardian's allowance], paragraph (2) of this regulation [see paragraph 8 above] shall not apply to the only, elder or eldest child in respect of whom that person is entitled to child benefit for that week."

Regulation 2(4)(c) provides: "(4)Where -.... (c)for any week a person has been paid an increase in the weekly rate of child benefit in respect of a child pursuant to the said paragraph (2) and that week is one throughout which that person subsequently becomes entitled to such an allowance or increase as is referred to in sub-paragraph (a) of this paragraph [e.g. guardian's allowance] the increase in the weekly rate of child benefit paid to that person in respect of that child for that week shall be treated as paid on account of any such allowance or increase payable in respect of that week."

10. It was the contention of the adjudication officer that because the claimant was in receipt of guardian's allowance in respect of Rowena, the claimant was not entitled by virtue of regulation 2(4)(a) to one-parent benefit in respect of Sonia; and that the payments of one-parent benefit in respect of Sonia which had been made for those weeks for which the claimant subsequently became entitled to guardian's allowance should by virtue of regulation 2(4)(c) be treated as paid on account of the guardian's allowance in respect of those weeks.

11. Before I deal with those contentions, however, I should state that at the beginning of the oral hearing before me Mr Storey raised the question whether or not regulation 2(4)(c) was ultra vires. This had not been included in or made part of any written submission by the adjudication officer. Mr. Storey pointed out that regulation 2(4)(c) was made pursuant to the power contained in section 17(1) of the Child Benefit Act 1975 which provides:

"17. (1) Regulations may, with effect from any day in the week beginning with the appointed day, reduce the sum specified in any of the provisions mentioned in subsection (2) below [which includes guardian's allowance] to such extent as the Secretary of State thinks appropriate having regard to the introduction of child benefit; and regulations may, with effect from any day on or after that on which there is an increase in the rate or any of the rates of child benefit, reduce any sum as aforesaid to such extent as the Secretary of State thinks appropriate having regard to that increase."

As I understood his argument, it was that the first part of section 17(1) gave power to the Secretary of State to make regulations to reduce the sum payable as guardian's allowance (amongst other allowances) having regard to the introduction of child benefit; and that the second part, with which the present case was concerned, provided that there was power to make regulations so that where there was an increase in child benefit, - one-parent benefit - under regulation 2(2), the rate of guardian's allowance would be reduced having regard to that increase i.e. the one-parent benefit. He pointed out that regulation 2(4)(c) provided that one-parent benefit should be treated as paid on account of guardian's allowance and he suggested that it was questionable whether under the second part of section 17(1) a weekly rate of guardian's allowance could be reduced in respect of a past period and that regulation 2(4)(c) may be outside the powers contained in section 17(1). However, Mr Storey put forward this argument at, in effect, the last minute and only as a possibility and not as a firm submission and in view of the decision that I have reached below I do not consider it necessary to decide the point.

12. Overlapping Benefit

As I have already indicated, the case for the claimant was that the one-parent benefit and

the guardian's allowance were payable in respect of different children and Mr Jackson referred to and relied on regulation 8 of the Social Security (Overlapping Benefit) regulations 1979 which provides:

- "8. Benefit under the Act shall not be required to be adjusted by reference to child benefit other than where an increase of child benefit is payable to a person who -
- (a) either has no spouse or is not residing with his spouse; and
 - (b) is not living with any other person as his spouse,

and for the same period, in respect of the same child, any benefit or allowance or increase of a benefit or allowance under the act is or, but for this regulation, would be payable to a beneficiary, the weekly rate of that benefit or allowance or increase thereof shall be reduced by the amount of the said increase of child benefit."

That regulation is quite clear. Any benefit such as guardian's allowance "shall not be required to be adjusted by reference to child benefit" except in a case where one-parent benefit is payable for the same period as guardian allowance and in respect of the same child; where that happens, the weekly rate of the guardian's allowance shall be reduced by the amount of the one-parent benefit.

13. The appeal tribunal accepted the argument on behalf of the claimant. In their reasons for their decision, which were identical in both appeals, they stated in form AT3, box 4:

"The tribunal accept the argument on behalf of the claimant with regard to this matter. The adjudication officer's interpretation of the Child Benefit (Fixing and Adjustment of Rates) Regulations conflicts with the Social Security (Overlapping Benefits) Regulations. Regulation 8 of the Overlapping Benefit Regulations provides for child benefit increase (one-parent benefit) to overlap with the social security benefits, if and only if it was in respect of the same child. In the case before the tribunal an increase of child benefit is paid in respect of one child whereas the guardianship allowance is paid in respect of the claimant's grand-daughter. The tribunal find that there is a conflict between the Overlapping Benefit Regulations and the Child Benefit (Fixing and Adjustment of Rates) Regulations."

14. In my judgment, the decision of the appeal tribunal in each case was correct. It is true that regulation 2(4)(a) and (c) do not expressly state that the one-person benefit and the "specified benefit" must relate to the same child but the construction for which the adjudication officer contends produces a result which, in my judgment, is inequitable and quite inconsistent with regulation 8 of the Overlapping Benefit Regulations. Child benefit under the Child Benefit Act is payable to a person who is treated as responsible for "a child in any week": section 3(1) of the Act. I can see no reason why regulation 2(4)(a) and (c) should be interpreted so as to apply to different benefits payable in respect of different children and I cannot believe that the draftsman of regulation 2(4) so intended. I can see no reason why the claimant in the present case should in effect forfeit the one-parent benefit payable in respect of her daughter Sonia by reason of the fact that for the same period she received guardian's allowance in respect of her grand-daughter Rowena. In my judgment, regulation 8 of the Overlapping Benefit Regulations "points the way" (to adopt the phrase of Mr Jackson). In my judgment regulation 2(4)(a) and (c) apply where the one-person benefit and the "specified benefit" are payable in respect of the same child. It follows that, in my judgment, the claimant was entitled to receive one-parent benefit for Sonia for the same weeks that she received guardian's allowance for Rowena and that she was entitled to receive guardian's allowance at the full, not at a reduced rate, during the period 10 December 1985 to 19 October 1986, both dates included.

15. For those reasons I allow this appeal. My decision is as set out in paragraph 1 above.

(Signed) A.T. Hoolahan
Commissioner

Date: 23 May 1988