

Chris Bennett - Turner - Nicolson
Pamela Bennett in respect of
Fiona Bennett
CAG

06/95
★

JJS/1/LM

Commissioner's File: CF/009/94

CHILD BENEFIT ACT 1975
SOCIAL SECURITY ADMINISTRATION ACT 1992
DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the social security appeal tribunal is not erroneous in law and accordingly this appeal fails.

2. This is a claimant's appeal against the decision of the Aylesbury social security appeal tribunal, given on 26 January 1994, which confirmed child benefit payable to the claimant from 22 July 1993 at figure of £10.00 a week for her son Connor and £8.10 a week for her son Nathan.

3. I have before me written argument prepared on behalf of the claimant by her husband and a submission from the adjudication officer now concerned. The claimant has requested an oral hearing. I considered the circumstances of the case and the reasons put forward in the request for the hearing and I am satisfied that the appeal can properly be determined without such a hearing. The claimant's husband says that he would better understand the proceedings in the decision if he had such a hearing and that he would be able to participate by interaction and questions. But in the circumstances of this case none of that would be of any assistance to him because it is manifest that the tribunal applied the correct principle of law.

4. Child benefit is provided for in Part IX of the Social Security Contributions and Benefits Act 1992. Section 142 of the Act provides the definition of "child", but that definition is of no assistance when considering the point which arises in this case. Section 145 deals with the rate of child benefit and provides that it shall be payable at such weekly rates as may be prescribed; it also specifies that different rates may be prescribed in relation to different cases whether by reference to the age of the child in respect of whom the benefit is payable or otherwise. Regulation 2(1)(a) and (b) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 is of importance. In order to appreciate the point of the case it is necessary to read these provisions which, in so far as relevant, I set out below:

" ... the weekly rate of child benefit payable in respect of a child shall be -

(a) , in a case where in any week that child is the only child, or if not the only child, the elder or the eldest child in respect of whom child benefit is payable to a person, £10.00; and

(b) in any other case £8.10."

The paragraph in its present form results from the amendments introduced by the Child Benefit and Social Security (Fixing and Adjustment of Rates) Amendment Regulations 1991 which provided that child benefit was to be paid at a higher rate in respect of the first or only child.

5. The facts of the case, in so far as they are necessary for the determination of this appeal, are that the claimant was awarded child benefit in respect of her twin sons, Connor and Nathan, who were born on 26 February 1993. Connor was born about 30 seconds before Nathan. Child benefit was awarded from 1 March 1993. On 22 July 1993 the claimant appealed against the decision on the grounds that the higher rate of child benefit should be payable for both children as they are twins. The claimant appealed against that decision and at the hearing before the tribunal was represented by her husband. He submitted that the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations were intended for a normal birth family and that where there was a multiple birth the regulations should not apply in the same way. He argued that the purpose of the higher award for the eldest child and the lower amount for subsequent children was because of the savings that might be enjoyed by a family with more than one child with regard to clothing but that this did not apply where they were two children born at the same time. The members of the tribunal found as fact that the claimant had given birth to twins on 22 February 1993 and that Connor was the eldest by some 30 seconds and Nathan was the younger. They concluded that child benefit on 22 July 1993 was payable at a figure of £10.00 per week for Connor and £8.10 for Nathan. The reasons for their decision were stated in the following passage

"In reaching this decision the Tribunal looked at and considered the law, and were satisfied that both the intention and the letter of the law had been followed by the Child Benefit Office in making the award of the higher rate for Connor and the lower rate for Nathan. The figures contained in the decision relate to the rate of benefit applicable at the date of Mrs Walker's appeal."

The point taken on behalf of the claimant in the appeal to the Commissioner is that the members of the tribunal misinterpreted regulation 2 of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 by holding that it was only Connor who came within regulation 2(1)(a), and they were wrong in not awarding child benefit at the higher rate in respect of Nathan also.

6. Section 145 of the Social Security Contributions and Benefits Act 1992 allows for the prescription of different rates of child benefit. The material regulation is regulation 2 of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations. £10.00 is prescribed as the amount, "in a case where in any week that child is the only child, or if it is not the only child, the elder or eldest child". It seems to me that the meaning of the regulation is clear. It provides for the case where there is an only child and specifies that the higher rate is to be paid in respect of him. If there is more than one eligible child then the higher rate is to be paid in respect of the first born, that is the "elder" if the family consists of two eligible children and the "eldest" where the family consists of more than two eligible children. The ordinary meaning of the word "eldest" child is the first born child. The meaning to be assigned to "elder" in the context in which it is used in the regulation is the first born of two children. I have noted the definition of "child" contained in section 122 of the Social Security Contributions and Benefits Act and that definition is of no assistance to me in so far as the issue in this case is concerned. Its effect is to specify who are eligible children for the purpose of child benefit, but it in no way prescribed the priority for rates of benefit. It was not disputed before the tribunal that Connor was born before his twin brother and the tribunal found that as he was the eldest, albeit by 30 seconds, the higher rate was to be paid in respect of him and the lower rate in respect of his twin brother. Strictly the tribunal should have referred to him as being the elder of the two children, rather than the eldest, that was a venial error. The text of the decision of the tribunal was that child benefit was confirmed on 22 July 1993 at a figure of £10.00 per week for Connor and £8.10 for Nathan. The 22 July 1993 was the date of the appeal and the figures mentioned by the tribunal are the figures resulting from the up-rate. I note that the adjudication officer also dealt with the period prior to the up-rate and strictly the text of the decision should have referred to the earlier period also. However perusal of the decision as a whole shows that the tribunal dealt with the issue before them and decided that the higher rate was payable in respect of the elder child and the lower rate in respect of his twin brother. In those circumstances I do not think it right to set aside the decision and to substitute a decision of my own, throughout the claimant has been paid the full amount which she is entitled to and the tribunal dealt with the principle governing that amount.

7. The claimant's husband contends that there was no precedent on the point which could be followed by the tribunal. That is so, but the tribunal correctly construed the regulation. It has also been submitted on behalf of the claimant that larger expenditure is incurred in the case of twins than in the case of

children born after separate periods of gestation. This may be so, but provision to meet it has not been made in the legislation relating to child benefit.

(Signed) J J Skinner
Commissioner

Date: 16 January 1995