CF 32/1980

JGM/JAJ

CHILD BENEFIT ACT 1975

CLAIM FOR CHILD BENEFIT

DECISION OF THE SOCIAL SECURITY COMMISSIONER

[ORAL HEARING]

Decision C.F. 1/81

Child Benefit No 94222167 DL

1. My decision is that an increase of child benefit in respect of the claimant's child to whom I shall refer as T is payable to the claimant.

2. The claimant came to this country with his two children (one of whom is T) from Vietnam, which he seems to have left in May 1979. His wife is still there and although he would like her to join him in this country and although he has a permit from the Home Office for her to come here she is unable at present to obtain an exit permit from Vietnam from the authorities there, who in fact give little or no attention to applications which issue from this country, for such permits. It seems clear that unless there is a substantially increased measure of dentente between the USSR and the West it is unlikely that any such permit will be obtained and the claimant and his wife are likely to be involuntarily separated for an indefinite time.

3. Child benefit has been awarded to the claimant in respect of the two children. The question in issue is whether, under regulation 2(2) of the Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976 [S.I. 1976 No 1267] an increase of child benefit is payable to the claimant in respect of T as the elder of the children (born in the years 1970 and 1971) in respect of whom he has been awarded child benefit. This increase is intended for the so-called one-parent family, and it is payable under regulation 2(2)(b) among other cases in a case where the person entitled to child benefit in respect of the child either has no spouse or is not residing with his spouse. The claimant claims the increase as being a person not residing with his spouse.

4. The insurance officer however rejected the claim for the increase by reference to the provisions of regulation 11(1) of the Child Benefit (General) Regulations 1976 [S.I. 1976 No 965] under which among other things persons are to be treated as not residing together when their absence from one another has lasted for at least 91 days and is likely to be permanent, but not otherwise. No other provision has been suggested to be relevant. The insurance officer took the view that although the absence of the claimant and his wife from one another had lasted for at least 91 days it was not in terms of the regulation likely to be permanent and decided that the increase was not payable. His decision was reversed on appeal by the local tribunal and the insurance officer now appeals to the Commissioner.

5. The insurance officer in reaching his decision may have, and the insurance officer now concerned in appealing certainly does, rely on Commissioner's Decision CSF 1/79 (not reported) where it was held that absence from one another of a wife and her husband who was near the beginning of a 17 years sentence of imprisonment was not likely to be permanent, the wife having every intention of resuming her life with her husband when he came out of prison. The Commissioner there pointed out that the question is whether the absence of the spouses from one another (and not from the children in respect of whom the increase is claimed) is likely to be permanent. It is undoubtedly possible that the separation of the claimant from her husband in the present case could come to an end long before that in Decision C.S.F. 1/79. Nevertheless I agree with the conclusion of the local tribunal that in this case the separation is, as things stand, likely to be permanent in terms of the regulation. If the outlook changes my decision can no doubt if necessary be reviewed.

6. The word "permanent" is not defined in the Act or regulations but reference to the Shorter Oxford Dictionary and to Chambers Twentieth Century Dictionary show that the compilers of both dictionaries share the opinion that it connotes something that will continue indefinitely rather than for ever. The same view was expressed judically in Henriksen v Graffon Hotel [1942] 2 KB 184 at page 196. I note also that the author od Decision C.S.F. 1/79 considered that the question whether absence is likely to be permanent is not simply a matter of its probable duration but of its prospect of coming to an end. An absence is not of indefinite duration if one can point to a date beyond which it cannot continue. In the case the subject of Decision C.S.F 1/79 the sentence on the claimant's husband was bound to be fully served at the end of not more than 17 years from its start and the absence could well terminate earlier on account of remission or parole. The evidence showed that at the time when it ended the husband and wife were likely to be alive and to resume living together and I can follow that the absence could not be treated as likely to be permanent.

7. In the present case it is impossible to say when if at all the absence will come to an end. It is of indefinite duration. I consider that the degree of likely permanence required by the regulation may be judged by reference to the context. Where the absence of one spouse from the other is of indefinite duration it is appropriate to consider whether it is likely to come to an end at a time while it is relevant to the operation of the regulation, (cf. Beaufort (Duke) v Crawshay (1866) LR 1 CP 699), that is to say while any question of an increase of child benefit for a one-parent family can arise. The longest period for which that can be relevant here is the period until the younger child attains the age of 19, (ie until 1990) and the period may well be shorter. I agree with the local tribunal that, in this sense at least, the absence of the claimant from his wife is likely to be permanent and I dismiss the insurance officer's appeal.

(Signed) J G Monroe
Commissioner

Date: 5 February 1981

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Region: CBC Washington