

IDENTIFIABLE DECISION
NOT TO BE SENT OUT OF
THE DEPARTMENT

CAS.

JJS/SH/3

Commissioner's File: CFC/023/1991

FAMILY CREDIT (GENERAL) REGULATIONS 1987

SOCIAL SECURITY ADMINISTRATION ACT 1992

**APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW**

DECISION OF THE SOCIAL SECURITY COMMISSIONER

Name:

Social Security Appeal Tribunal:

Case No:

1. My decision is that the decision of the social security appeal tribunal is erroneous in point of law and accordingly I set it aside; I remit the case for determination to a new social security appeal tribunal who should have regard to what I have said in the course of this decision.

2. This is a claimant's appeal against the decision of the Exeter social security appeal tribunal who decided that she was entitled to family credit of £26.92 per week from 16 May 1989. Leave to appeal was granted by the chairman of the tribunal.

3. I have before me written grounds of appeal prepared on behalf of the claimant by Mr A C Cole of Ian Bray Farm Accounts and a submission from the adjudication officer now concerned which supports the appeal.

4. The facts of the case, in so far as they are necessary for the determination of this appeal, are that the claimant claimed family credit on 26 April 1989 on behalf of herself, her husband and two dependent children. Her husband was self-employed as a grassland farmer and engineer. The claimant provided business accounts for the year ending 30 April 1988 which were used in the assessment of the claim. The accounts included a receipt of £2,500 in the "capital introduced" column. However this was proved to be a legacy received from the claimant's aunt. This money was paid into the single bank account used for the business and for the claimant and her husband's private use. The claimant admitted that the money was used in the business or in any event to keep the Company afloat. The adjudication officer took this legacy into account when calculating the claimant's entitlement to family credit and awarded £34.60 per week from 16 April 1989. The claimant appealed against this decision and her appeal was heard on 16 October 1990, at which time her entitlement to family credit had been reassessed at £26.92 per week. The tribunal confirmed the decision.

5. The claimant's representative in his grounds of appeal challenges the decision of the tribunal to take the legacy of £2,500 into account as a receipt of the claimant's husband's business. The adjudication officer now concerned relies on a passage from the Commissioner's decision in CF/4/91 as authority for the proposition that the members of the tribunal were justified in taking the legacy into account. However that decision was set aside by consent before the Registrar in the Court of Appeal and the court directed that capital receipts not generated by a claimant's business do not form part of the gross receipts of employment for the purpose of regulation 21 of the Family Credit (General) Regulations. In my judgment the decision to take the legacy of £2,500 into account as a receipt of the husband's business was erroneous in point of law and for that reason the decision must be set aside. I have come to this conclusion in regard to the consent judgment in the Court of Appeal other than to note that the Commissioner's decision no longer stands.

6. The adjudication officer now concerned has identified a further error, in paragraph 12 of his submission to the Commissioner dated 29 November 1991, which bears on the apportionment of expenses. That is agreed to by the claimant's representative and I need say no more about it.

7. A third point arises. It relates to regulation 22 of the Family Credit (General) Regulations 1987. The account submitted by the claimant contained details of the trading stock as at 30 April 1988 and the trading stock as at 1 May 1987. The tribunal did not take these into account. The members said:-

"No account is to be taken of the difference in trading stock as at 30 April 1988 in the sum of £5,050 and the trading stock as at 1 May 1987 appearing in the accounts in the sum of £5,550 as such entries are not included in the formula for calculation of net profits of self-employed earners in regulation 22 which provides for the assessment of such net profits to be ascertained by taking into account the earnings of the claimant and deducting therefrom expenses wholly and exclusively defrayed for the purpose of that employment."

The adjudication officer now concerned supports that finding, but it appears to me that the submission ignores regulation 22(3A) and regulation 15(1)(b). The claim in the instant case was made on 24 April 1989 and the accounts end on 30 April 1988. Consequently the period of relaxation allowed by regulation 15(1)(b) is applicable in the instant case.



(Signed) J J Skinner
Commissioner

Dated: 18 March 1993