

Commissioner's File: CFC/001/1991

FAMILY CREDIT (GENERAL) REGULATIONS 1987

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

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the social security appeal tribunal erred in law in its decision made in this matter on 20 August 1990, and I accordingly set aside that decision and allow the claimant's appeal. In accordance with the submission of the adjudication officer to a Commissioner I give the decision which the tribunal should have given and award family credit of £13.44 a week from 13 February 1990, following the calculations in Appendices 1 and 2 to that submission which I adopt.

2. The claimant is married and she and her husband have two children born respectively on 23 May 1974 and 10 June 1977. The income of the claimant's husband has to be treated as her income for the purposes of ascertaining any entitlement to family credit which the claimant has claimed, and the issue in the case is to how that income is to be calculated. The claim was dated 7 February 1990 and with it there was sent in the husband's accounts for the year ended 31 January 1990. In determining the normal weekly earnings of the husband there has to be ascertained the net profit derived from his job as a self-employed taxi driver, and relevantly there are to be taken into account in the ascertainment of the net profit those expenses "wholly and exclusively incurred for the purposes of that employment" - regulation 22(1)(a) and (3A)(a) of the Family Credit (General) Regulations 1987 [SI 1987 No. 1973].

3. The account submitted by the husband showed that for the year ended 31 January 1990 he paid as an expense £7,208 for the rental of his taxi cab. From that he deducted £484.05 (5%) for private use. HM Inspector of Taxes accepted 95% of the hire fees as an allowable business expense.

4. The social security appeal tribunal dismissed the claimant's appeal on the basis that the whole of the hire rental was not properly described as an expense "wholly and exclusively incurred for the purposes" of his self-employed taxi business. The tribunal did not however have the benefit of considering Commissioner's decision CFC/25/89 which was decided a few months later. This decision establishes that certain expenses are apportionable, and in my judgment and in accordance with

paragraph 34 of that decision the hire charges in the present case are apportionable. I determine that the 95% is a proper deductible expense and the tribunal erred in law through no fault of its own in rejecting the claimant's appeal.

5. I can on the evidence before me give the decision which the tribunal should have given, and I am much helped in this regard by the careful calculations which accompany the adjudication officer's submission to a Commissioner.

6. My decision is as in paragraph 1.

(Signed) Leonard Bromley
Deputy Commissioner

(Date) 27 February, 1992