

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 decision of the social security appeal tribunal dated 23 July 1990 is erroneous in law. I set it aside and direct that the case be reheard by a differently constituted tribunal.

2. By a decision issued as long ago as 6 October 1989 an adjudication officer decided that the claimant was not entitled to family credit in relation to her claim dated 18 September 1989 "because the claimant's income, as calculated, was higher than the level at which family credit would become payable". The claimant appealed and the tribunal confirmed the adjudication officer's decision. She now appeals to the Commissioner.

3. It appears not to be in dispute that at the date of her claim the claimant and her partner had been self-employed for 26 weeks. The task for the tribunal was to determine the claimant's income by reference to her normal weekly earnings in accordance with regulation 15 of the Family Credit (General) Regulations 1987 which, so far as relevant, provides -

"15(1) Subject to regulation 17 (periods to be disregarded), where a claimant's income consists of earnings from employment as a self-employed earner, his normal weekly earnings shall be determined, subject to paragraph (2), by reference to his weekly earnings from that employment -

- (a) except where sub-paragraph (b) applies, over a period of 26 weeks immediately preceding the week in which the date of claim falls; or
- (b) where the claimant provides in respect of the employment a profit and loss account and, where appropriate, a trading account or a balance sheet or both, and the profit and loss account is in respect of a period at least 6 months but not exceeding 15 months and that period terminates within the 12 months preceding the date of claim,

over that period; or

- (c) over such other period of weeks preceding the week in which the date of claim falls as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(1A) ...

(2) Subject to regulation 17, where the claimant has been in employment as a self-employed earner for less than the period specified in paragraph (1)(a), his normal weekly earnings shall be determined by reference to any earnings received for the period that he has been in that employment and by reference to an estimate of his likely weekly earnings over the remainder of the first 26 weeks of the employment or by reference to such other evidence as may, in any particular case, enable his normal weekly earnings to be determined more accurately.

(3) For the purposes of this regulation, the claimant's earnings shall be calculated in accordance with Chapter IV of this Part."

Now the claimant and her partner had apparently supplied details of their earnings over the 26 weeks of their self-employment and it was on the basis of that information that the adjudication officer made his decision. However, having seen the decision the claimant then realised that the information she had given was incorrect and she had her accountant prepare a profit and loss account and balance sheet. These were made available to the tribunal but they decided that because the profit and loss account related to a period ending 30 November 1989 it had to be disregarded because of regulation 15(1)(b). However, having disregarded the accounts they simply said that they were satisfied that the adjudication officer was right. What of course they should have done was to make findings, on the basis of the relevant regulations, as to what were the normal weekly earnings before the date of the claim and then reached their conclusion in light of those findings. They failed to do that. Their decision is on that account erroneous in law and I accordingly allow this case. The case must be reheard by another tribunal.

4. Providing the new tribunal have reliable figures for the 26 weeks immediately preceding the week of the claim they should apply regulation 15(1)(a) of the General Regulations. And although regulation 15(1)(b) will not directly apply because of the period covered by the profit and loss account I do not see why, if it throws any light on the matter, it could not be at least looked at for the purpose of determining the weekly earnings in accordance with regulation 15(1)(a) or (b) or, if it should be shown to be a 15(2) case, for the purpose of that provision. And, in accordance with whatever the facts show to be the relevant paragraph of regulation 15, the new tribunal must prepare and record their calculation showing whether or not the

claimant's income does or does not qualify her for family credit as at the date of the claim. The provisions relating to the so-called applicable amount and maximum family credit are set out in the papers. They will have to be considered by the new tribunal but I do not need to set them out again here.

(Signed) R A Sanders
Commissioner

Date: 6 March 1992