

DGR/SH/15

Commissioner's File: CFC/011/1990

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 given on 12 April 1990 is erroneous in point of law, and accordingly I set it aside. As it is expedient that I give the decision the tribunal should have given, I further decide that the claimant is entitled to family credit at the weekly rate of £31.23 for 26 weeks from 17 October 1989.

2. This is an appeal by the claimant, brought with the leave of the tribunal chairman, against the decision of the social security appeal tribunal of 12 April 1990.

3. On 9 October 1989 the claimant claimed family credit for herself and one child born on 30 April 1977. At that particular time, the claimant was employed by Trinity Knitwear, but was due to commence work with SBS Knitwear Textiles on 16 October 1989. She had in fact given notice of termination of her employment with Trinity Knitwear at the date of her claim. The claimant's net weekly earnings at Trinity Knitwear were assessed at £76.62, and on that basis the adjudication officer decided that that claimant was entitled to receive family credit only at the rate of £31.23 per week. Had she been at the relevant time working at SBS Knitwear Textiles, where her income was to be less, she would have received a higher award. The claimant contended that calculation of her family credit should be on the basis of her future earnings at SBS Knitwear Textiles, because on the renewal date of her existing award, namely 17 October 1989, she would be working at that particular establishment.

4. In due course, the claimant appealed to the tribunal who in the event upheld the adjudication officer. Undoubtedly, the tribunal came to the right conclusion. The claimant's existing claim was due to terminate on 16 October 1989. The prescribed

time for claiming renewed benefit on the expiry of an existing award was set out in paragraph 7 of Schedule 4 to the Social Security (Claims and Payments) Regulations 1987. This laid down the prescribed time for claiming benefit in the following terms:-

- " (a) Where family credit has previously been claimed and awarded the period beginning 28 days before and ending 14 days after the last date of that award;
- (b) subject to (a), the first day of the period in respect of which the claim is made."

The claimant elected to claim on 9 October 1989, which fell within the prescribed period for claiming. She could equally well have claimed on 17 October 1989, in which event regard would have been had to her reduced earnings at SBS Textiles in computing her entitlement to family credit. However, the claimant did not adopt that course. Unfortunately for her there was no provision in regulation 14 of the Family Credit (General) Regulations 1987 for taking her projected earnings with SBS Textiles as the basis of computation.

5. In this connection the adjudication officer now concerned has made the following helpful submission:-

- " 5. In my submission, it was unfortunate that the claimant made her claim when she did. Had she waited until she had started work for SBS Textiles she could still have made a renewal claim within the period laid down in paragraph 7(a) of Schedule 4 and in that event paragraph (2) of regulation 14 would have required the AO to have regard only to her future earnings. It was also unfortunate that the claimant had not said on the claim form that her earnings from SBS Textiles were likely to be lower than those she was getting from Trinity Knitwear. Had she done so, there would have been a responsibility on the Secretary of State to advise the claimant to defer her claim so that she could benefit from the assessment made on her reduced earnings. Such advise would have been required because regulation 13(3) of the Claims and Payments Regulations specifically excludes Family Credit claims from the advance claim provision."

I am told that since this claim was made, claimants making renewal claims are being advised that they may chose to delay making a claim if there is going to be a change in their circumstances which would give rise to a higher entitlement to Family Credit.

6. However, in this case the claimant did make a claim on 9 October 1989 instead of waiting for the more advantageous date of 17 October 1989. As a result, she is only entitled to family credit at the rate of £31.23 per week. The tribunal reached the right conclusion, but in the course of giving their reasons for their decision they appear to have relied on paragraph 7(b) of Schedule 4 in determining whether the claim was made within the

prescribed time, when clearly the relevant provision was that contained in paragraph 7(a). This approach clearly gave rise to some confusion in the mind of the claimant, and accordingly the best course is for me to set aside the tribunal's decision as being erroneous in point of law. However, it is unnecessary for me to remit the matter to a new tribunal for rehearing. I can conveniently substitute my own decision and dispose of this matter.

7. Accordingly, my decision is as set out in paragraph 1.

(Signed) D.G. Rice
Commissioner

(Date) 1 May 1992