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Commissioner's File: CFC/028/1991

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

[ORAL HEARING]

1. My decision is that the decision of the social security appeal tribunal given on 17 July 1991 is erroneous in point of law and accordingly I set it aside. However, as I consider it expedient to give the decision the tribunal should have given I further decide that the claimant is entitled to family credit at the weekly rate of £2.64 for 26 weeks from 18 December 1990.

2. This is the claimant's appeal against the decision of the social security appeal tribunal of 17 July 1991, leave having been granted by the tribunal chairman. I held an oral hearing of the appeal. The claimant was not present but was represented by her husband Reverend W R Hogg. The adjudication officer was represented by Mr S Cooper from the Solicitor's Office of the Departments of Health and Social Security.

3. On 12 December 1990 the claimant claimed family credit for herself, her husband and three dependent children. The claimant's husband is the Vicar of a parish in Yorkshire. The claimant declared that she had two jobs, Vicar's secretary 20 hours per week and vicarage cleaner 10 hours per week. He declared that he received free accommodation with his employment, in respect of which he incurred expenses which were allowed for income tax purposes. In calculating the claimant's income the adjudication officer treated the family as being in receipt of

weekly earnings of an amount equal to £12 because they received free accommodation. As a result the adjudication officer calculated that the weekly amount of family credit payable was £2.64.

4. The claimant appealed against the amount of family credit awarded. She explained that prior to the introduction of the community charge on 1 April 1990, her husband's accommodation was provided free of rent and rates, these being paid direct by the Church Commissioners. However, the claimant and her husband were now liable to pay the community charge. Although the Church Commissioners had increased her husband's stipend to take account of this expense, she argued that the deemed income of £12 should be reduced to offset the additional cost of the community charge because the benefit of the rent free accommodation had been reduced. She submitted that as their joint weekly liability for the community charge was £7.22 the deemed weekly income of £12 should be reduced to £4.78.

5. The claimant was represented by her husband at the hearing of the appeal before the tribunal on 17 July 1991. In the event the tribunal dismissed the appeal. After recording the relevant findings of fact the tribunal gave the following reasons for decision so far as material:-

"..... they have taken the sum of £12 per week for the accommodation provided free by the Church. This is in accordance with Regulation 19(3)(a) of the Family Credit (General) Regulations. There is nothing in the Family Credit Regulations which allows an offset against that £12 in respect of the Community Charge and therefore the appeal by Mrs Hoggs [the claimant] on this point must fail.

The argument advanced by Mr Hogg is that the sum of £12 was fixed at a time when domestic rates were paid and therefore the sum of £12 must reflect to some extent the fact that his accommodation including the rates was free. At the present time there are no rates and he now has to pay a community charge which is a personal tax and therefore the figure of £12 should of necessity be reduced. The Tribunal cannot see that there is any provision in the Regulations for this proposition. Regulation 19(3)(a) of the Family Credit (General) Regulations applied."

6. The sole question for determination in the present appeal is whether in calculating the claimant's income for family credit purposes, the family should be treated as being in receipt of weekly earnings of an amount equal to £12 because they were provided with free accommodation. Regulation 19 of the Family Credit (General) Regulations 1987 ("the Regulations") sets out the categories of earnings of employed earners. It provides, so far as material:-

" 19. - (1) Subject to paragraph (2) "earnings" means in the case of employment as an employed earner, any remuneration or profit derived from that

employment and includes -

(a)-(h) ...

(2) Earnings shall not include -

(a) subject to paragraph (3), any payment in kind;

(b)-(c) ...

(3) Where living accommodation is provided for a claimant by reason of his employment, the claimant shall be treated as being in receipt of weekly earnings of an amount equal to -

(a) where no charge is made in respect of the provision of that accommodation, £12;

(b) where a charge is made and that weekly charge is less than £12, the amount of the difference,

except that where a claimant satisfies the adjudication officer that the weekly value to him of the provision of that accommodation is an amount less than the amount in subparagraph (a) or (b), as the case may be, he shall be treated as being in receipt of that lesser value.."

7. Reverend Hogg told me that prior to 1 April 1990 his accommodation was provided free of rent and domestic rates, which were paid by the Church Commissioners direct to the relevant authority. As the community charge was a personal tax, for which the Church Commissioners were not liable, they "redirected" funds to compensate the clergy for this additional expenditure. As from 1 April 1990 his stipend was substantially increased, although no part of it was specifically earmarked for the payment of the Community Charge. He submitted that in the present case it was crucial to ascertain the nature of the amount of £12 referred to in regulation 19(3) of the Regulations. Regulation 19(2)(a), which was subject to paragraph 3, excluded from the calculation of earnings any payment in kind. It followed that regulation 19(3) was directed to the recoupment of the only type of payment in kind to be included in the calculation of earnings for family credit. Reverend Hogg stressed that regulation 19(3) was a simple recoupment provision in ascertaining earnings and was in no way related to the actual value of the accommodation. He argued on that basis that whereas he had received accommodation free of rent and domestic rates prior to the introduction of the community charge, he was now liable to pay an additional tax which was directly related to his occupancy of the accommodation. It followed that the value of the "package"

of the free accommodation to him had decreased. The proviso to regulation 19(3) provided for such an event so that the amount of the community charge payable fell to be deducted from the notional earnings of £12. The test was subjective and gave the adjudication officer and tribunal a discretion to reduce the amount of £12 in certain circumstances. The adjudication officer and tribunal had erred in law in his view because they had sought a slot in the "mechanism" for the community charge instead of appreciating that they had power to exercise a discretion. Reverend Hogg submitted that any other interpretation of regulation 19(3) would make nonsense of the provision, because it was almost impossible to envisage a weekly rental of less than £12 in the current property market. It followed that a reduction could never be justified and the provision would be unworkable.

8. It is not in dispute that the claimant and her family were provided with living accommodation by reason of her husband's employment. Mr Cooper submitted that regulation 19(3) of the regulation fell into two parts. Sub-paragraphs (a) and (b) determined the amount of earnings to be ascribed to the claimant by reason of such accommodation. In the present case it was accepted that no charge was made so that sub-paragraph (a) applied and the claimant was treated as being in receipt of weekly earnings of £12. Mr Cooper stressed that the amount of £12 was an arbitrary figure and was not, nor intended to be, linked to the market value of the accommodation. Sub-paragraph (b) provided for the exceptional case where the weekly charge made was less than £12. The second part of regulation 19(3), contained in the proviso, referred to the weekly rental value to the claimant of the accommodation. The burden fell on the claimant to show that the amount was less than the amount in sub-paragraph (a) or (b) and on discharge of that burden the adjudication officer had a duty to treat the claimant as being in receipt of that lesser amount. The actual amount of the domestic rate or of the community charge was irrelevant in determining the weekly value to the claimant. Mr Cooper submitted that although the tribunal had dealt adequately with the first part of regulation 19(3)(a) the decision was nevertheless inadequate because the tribunal had failed to record findings as to whether the claimant had produced any evidence that the weekly rental to her of the provision of the accommodation was less than £12.

9. I reject the submission of Reverend Hogg and accept the submission of Mr Cooper. Sub-paragraphs (a) and (b) provide a mandatory sum to be treated as the claimant's weekly earnings where living accommodation is provided free for a claimant by reason of his employment. The proviso imposes a duty on the adjudication officer to reduce the amount further if the claimant satisfies him that the weekly rental value to him of the provision of that accommodation is an amount less than the amount in sub-paragraph (a) or (b). Although the proviso provides an alternative method of calculating a claimant's notional weekly earnings where living accommodation is provided free, the amount so calculated is referable to the weekly rental value of the accommodation to a claimant. In my view it does not permit the

deduction of the community charge from the notional weekly earnings. The tribunal's decision failed to indicate whether they had considered the proviso and as a result the decision did not comply with the requirements of regulation 25(2)(b) of the Social Security (Adjudication) Regulations 1986 to provide the parties with clear and adequate findings of fact and reasons for decision. Reverend Hogg readily conceded that on the basis of Mr Cooper's submission the weekly rental value to him of the living accommodation was not less than £12.

10. In his written observations on the claimant's appeal to the tribunal, the adjudication officer submitted that "regulation 19(1)(d) relates to community charge". Reverend Hogg and Mr Cooper agreed that this regulation was not relevant on the facts of the present case and I do not propose to comment on this issue further. I should also add for completeness that the adjudication officer accepted in his calculation of the amount of family credit payable, the whole of Reverend Hogg's expenses incurred with his work as claimed for income tax purposes.

11. For the reasons stated above the tribunal's decision was erroneous in law. To that limited extent the claimant's appeal is allowed. However pursuant to section 23(7)(a)(i) of the Social Security Administration Act 1992 I give the decision which I consider the tribunal should have given, which is set out at paragraph 1.

(Signed) R.F.M. Heggs
Commissioner

(Date) 26 March 1993